Regulation of new employment forms in the legislation on labor relations and in collective agreements

Analytical study

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1. Introduction to the problematics

The onset of Industry 4.0 and the development of the digital economy[1] create conditions for completely new flexible forms of employment. In addition to the already existing traditional flexible forms, such as shorter working hours, fixed-term contracts, agreements to complete a job or agreement to perform a work, home working or temporary agency work, which have a legal basis, it is more and more possible to find entirely new forms of employment in the labor market. All are characterized by high flexibility, yet lower protection of workers, and thus a greater risk of job loss, and free-floating, or insufficient or unsatisfactory legislation. These are mainly home working, jobs sharing or employment within a shared economy. Negative effects are also evident in temporary agency employment.

The study aims at describing not only the economic aspects of the new forms of employment and their possible impact, especially on low-income workers in traditional industries, but also performing a related analysis of labor legislation and collective agreements.

A combination of several research methods will be used to achieve the established goal: analysis of secondary data (especially Eurostat, OECD, CZSO, Labor Office), time series analysis, critical analysis of related legislation, comparative analysis, deduction, induction and synthesis.

Finally, proposals will be defined on how to eliminate the possible negative impacts of modern flexible forms of employment on workers.

1.1 Explanation of basic concepts

The following terms are enshrined in Act No. 262/2006 Coll., Labor Code, as amended (in the following as "LC").

Employee – according to Sec. 6 LC, a natural person who has reached the age of 15 can become an employee; however, the day preceding the end of compulsory schooling may not be agreed as the day of the start of work. In other words, if an individual is already 15 years old but has not yet completed compulsory schooling (e.g. he reached the age of 15 in March, but only ends schooling in June), such individual may not be employed.

[1] Digital economy is one of the emerging industries characterized by the widespread use of digital technologies and the creation of completely new value-creating chains.

Employer – according to Sec. 7 LC, an employer may be a natural person who has reached the age of 18 or a legal entity. The employer employs a natural person based on a labor relationship.

Dependent work – in accordance with the Labor Code, the employer ensures the performance of so-called dependent work, which has specific characteristics (see Sec. 2 and 3 LC). It is such *work that is performed in a basic labor relationship, namely*:

- in relation to the superiority of the employer and the subordination of the employee;
- on behalf of the employer and according to his instructions;
- the employer performs it for the employee in person;
- for wage (or salary or remuneration for work);
- at the costs and responsibility of the employer;
- within working hours;
- at the employer's workplace, or some other agreed place.

The employer may ensure the **performance of dependent work** by

- *own employee* – who is employed by the employer with a *labor relationship*;
- *employee* – who performs work for the employer *outside the employment relationship* (based on the agreements on work performed outside the employment relationship), or
- *temporarily assigned employee*
  - temporary work agencies – based on an agreement on the temporary assignment of an employee from a temporary work agency (temporary agency employment);
  - another employer – based on the agreement on the temporary assignment of an employee to another employer.

Labor relationship – the legal relationship arising during the performance of dependent work between the employee and the employer (Sec. 1 LC). The basic labor relations according to LC are:

- *employment* – arises on the basis of an *employment contract* (for a definite or indefinite period) or by *appointment*,
- *employment relationships outside the employment relationship* – arise on the basis of *agreements concluded outside the employment relationship* (i.e. agreements on the performance of work or job).

The employment relationship has certain characteristics that can be summarized as follows (Sec. 1a LC):

- specific legal protection of the employee status;
- satisfactory and safe working conditions for performance of work;
- fair remuneration of an employee;
- proper performance of work by an employee in accordance with the justified interests of the employer;
- equal treatment of employees and prohibition of their discrimination.

Precarization of work – comes from the French word *précarité*, which can be translated as *uncertainty*. In the context of labor markets, the term refers to the replacement of a full-time employment relationship by another type of relationship between an employer and employee. In sociology, the term *precariat* refers to a socio-economic group of people who lack job-oriented securities (e.g. job security), satisfaction of their job-oriented needs (e.g. achieving success at work, self-satisfaction – I managed to do a more demanding work task); they work either part-time or occasionally, mostly with minimal job security and low wage.

1.2 Theoretical framework

One of the essential characteristics of the onset of Industry 4.0 and the digital economy development is the mass individualization of production, i.e. the ability to respond flexibly to customer requirements, resulting in a closer cooperation and communication between the manufacturer and service provider with the final consumer. However, this ability requires more versatile and flexible forms of employment and the organization of working time. Furthermore, it also changes the demands on workers' knowledge and skills. Flexible forms of employment allow, on the one hand, a rapid response to changing requirements, on the other hand, many of them are associated with higher insecurity and less protection of workers in the labor market.

1.2.1 Concept of flexicurity

From the point of view of a certain theoretical grounding, flexible forms of employment can be explained within the **concept of flexicurity**, which is considered to be the starting point for reforms of European labor markets. The concept combines two basic elements – *flexibility* and *security*.

As this is a relatively new concept that only emerged in connection with the implementation of the Lisbon Strategy, i.e. in the last decade, there is no uniform definition. Perhaps because it

entails a comprehensive approach to labor markets, involving a number of factors. Flexicurity can be defined, for example, as "*an integrated strategy for enhancing, at the same time, flexibility and security in the labor market*"[2].

Professor *Ton Wilthagen*, director of the flexicurity research program at the University of Tilburg in the Netherlands, considers flexicurity to be a form of "*joint and mutual risk management for workers and employers*"[3]. According to him, employers (companies) have to face a double risk – weakening of their position on the labor market and the lack of the required workforce (inappropriate connection of quality and quantity on the supply side). Workers, on the other hand, risk losing their employment and have to deal with work-life imbalances.

Flexibility means flexible labor laws and contractual conditions, flexible work organization quickly and efficiently responding to new production needs, flexible forms of work, ensuring the necessary qualifications and developing the necessary knowledge and, last but not least, work-life balance.

Security does not mean that a person will keep his job, but the certainty of the possibility to obtain a suitable qualification and find an adequate job. It includes the right to lifelong learning and access to vocational training, ensured with adequate social benefits if necessary. It applies to all workers, especially the low-skilled and older workers.

Simply put, flexibility combines two elements – the possibility of employers to be more flexible in hiring and dismissal of workers, and high social security standards.

The aim of implementing the concept of flexicurity is to create conditions that would allow an individual without major issues to find a job at any stage of active life, apply his skills in the labor market, including the possibility of further career and professional growth. The final aim of a more flexible labor market is to reduce unemployment (or maintain unemployment at a low level) and thus strengthen the overall competitiveness of European countries.

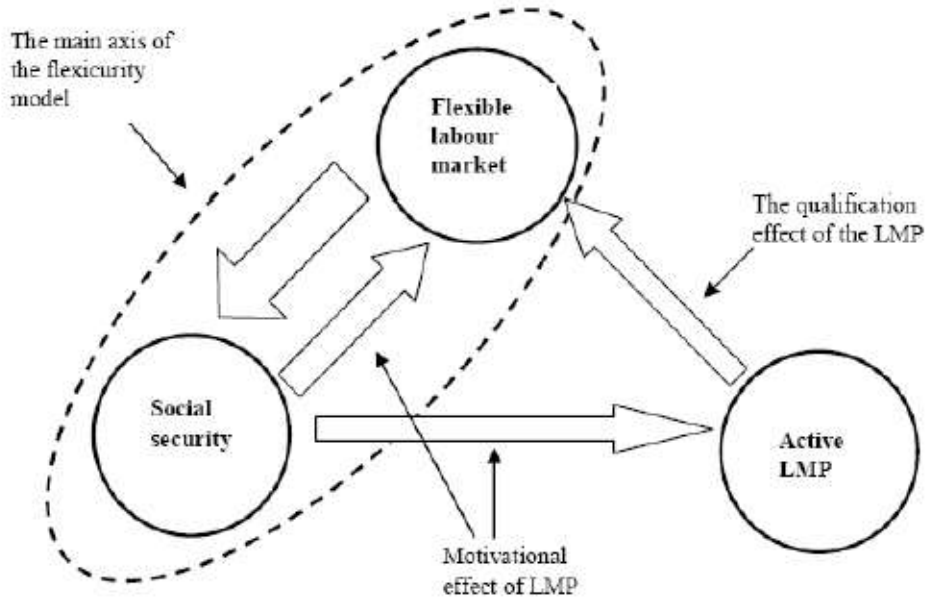
The concept of flexicurity is based on four basic components:[4]

[2] EC: 2007. Communication from the Commission *Towards Common Principles of Flexicurity: More and better jobs through flexibility and security*. Brussels: EC, 27.6.2007. COM (2007) 359 final.
[3] A uniform flexicurity model cannot be created in the EU. *EurActiv* [on line]. June 8, 2007 [cit. 2020-08-18]. Available at WWW: http://www.euractiv.cz/print-version/clanek/v-eu-nelze-vytvorit-jednotny-model-flexikurity.
[4] EC: 2007. Communication from the Commission *Towards Common Principles of Flexicurity: More and better jobs through flexibility and security*. Brussels: EC, 27.6.2007. COM (2007) 359 final.

1. *Flexibility and reliability of contractual agreements* – they are ensured through modern labor laws, collective agreements and work organization (flexible forms of employment also fall into this area).
2. *Comprehensive lifelong learning strategies* – the aim is to strengthen the adaptability and employability of workers, particularly from the most vulnerable social groups.
3. *Effective active labor market policies* – help individuals cope with rapid changes in the labor market, reduce unemployment spells and ease the transition to new employment; if necessary, provide the worker with additional training to help match labor supply and demand in the labor market.
4. *Modern social security systems* – which will provide an adequate income to support employment and facilitate labor market mobility; optimal social protection and its individual components (e.g. unemployment benefits, pensions, health care) will help reconcile work and family responsibilities.

The four components interact and are complementary. Their right setting and combination increase employment (total, women, young and older workers), reduce the risk-of-poverty rate and improve human capital.

Figure 1.1 Golden triangle of flexicurity



Source: Madsen (2006)

Graphically, the concept of flexicurity can be expressed as the so-called **golden triangle**, which interconnects *the flexible labor market, social security system and state active labor market policy* (Figure 1.1). The double arrows between the labor market and the social system show a balanced relationship between flexibility and security. Active employment policy increases the chances of getting a job (the so-called qualification effect). The social benefits system should be set up to activate the unemployed to serach for or accept offered jobs (the so-called motivational effect), particularly in the initial phase of unemployment. A necessary precondition for the successful implementation of this concept is *education* throughout the whole productive life.

Due to the fact that there is a great difference between individual European countries – level of economies, standards of living, historical development of the labor market, collective agreements, social protection systems, etc. – **universal model of flexicurity does not exist**. It will depend on each country, which combination of measures it chooses; what ratio between flexibility and security will be set.

1.2.2 Flexibility in the labor market

In practice, various flexibility strategies or their combination are used. Table 1.1 provides an example of flexibility types according to Goudswaard and de Nanteuil (2000).

Table 1.1 Types of flexibility

	Quantitative (numerical) flexibility	**Qualitative flexibility**
External flexibility	*Type of employment* (types of employment contracts – fixed-term, temporary work, work on call, etc.) ***Numerical / contractual flexibility***	*Production systems* (subcontractors, use freelance labor) ***Productive / geographical mobility***
Internal flexibility	*Working hours* (overtime, part-time work, weekend work, irregular / variable working hours) ***Temporal / financial flexibility***	*Work organization* (job enrichment, multitasking, delegation of responsibility on workers for planning and budgeting, etc.) ***Functional / organizational flexibility***

Source: Goudswaard, de Nanteuil (2000)

The most commonly used mechanisms for adapting the workforce to market needs include contractual flexibility, working time flexibility, organizational flexibility and wage flexibility.

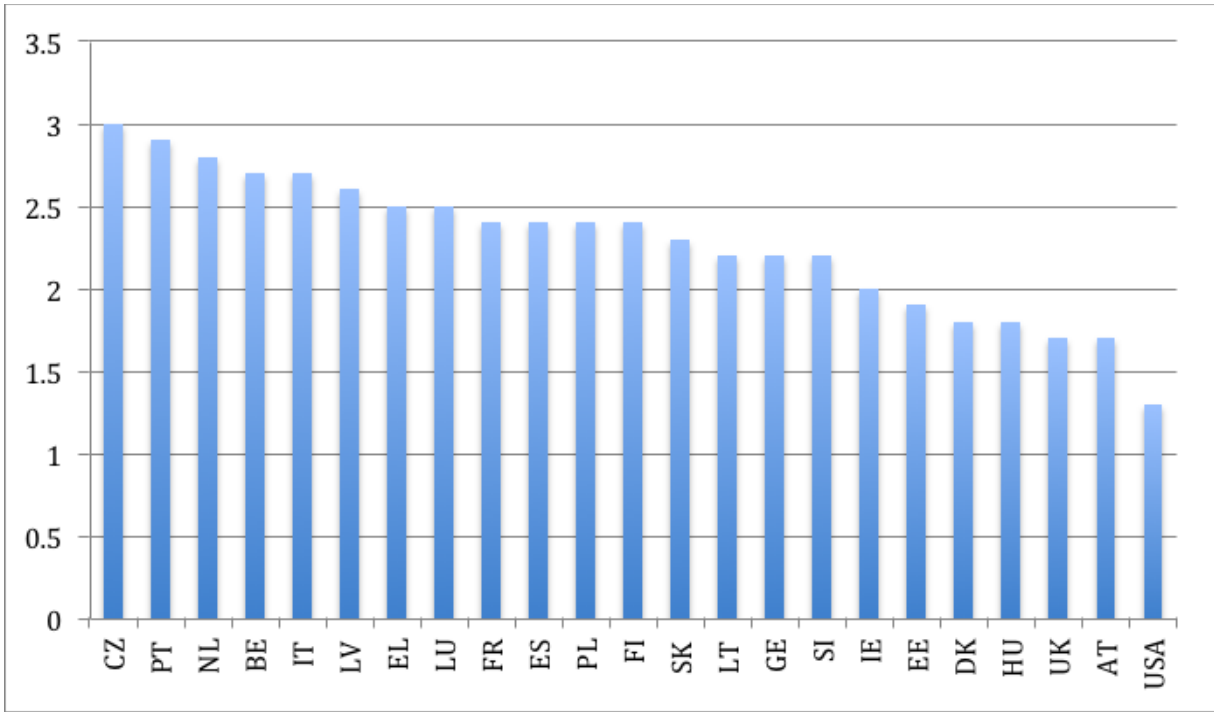
1.2.2.1 Contractual flexibility

External numerical flexibility – also contractual flexibility, is a tool for adapting the number of employees (within the company and from the external labor market) to the incurred needs. The essence is the extension of employment contracts to limited working hours. Companies enter into more fixed-term contracts (including seasonal work), temporary employment contracts (including short-term work provided by the agency), or they arrange work with a contract without fixed working hours. *Companies have the opportunity to dismiss or hire new workers more flexibly as needed and use flexible forms of employment contracts.*

Strict employment protection legislation

External flexibility is measured by the OECD through the Employment Protection Legislation (EPL) Index, which consists of four components – employment protection of permanent workers against dismissal, including collective dismissal (EPRC), employment protection of permanent workers against individual dismissal (EPR), regulation of temporary forms of employment (EPT) and specific requirements for collective dismissals (EPC).

Figure 1.2 OECD Index - Employment Protection Legislation (EPL) in selected countries (2019)



Source: Data OECD (2020), own calculation

Note: The index is given by a scale from 0 to 6; higher value indicates greater protection.

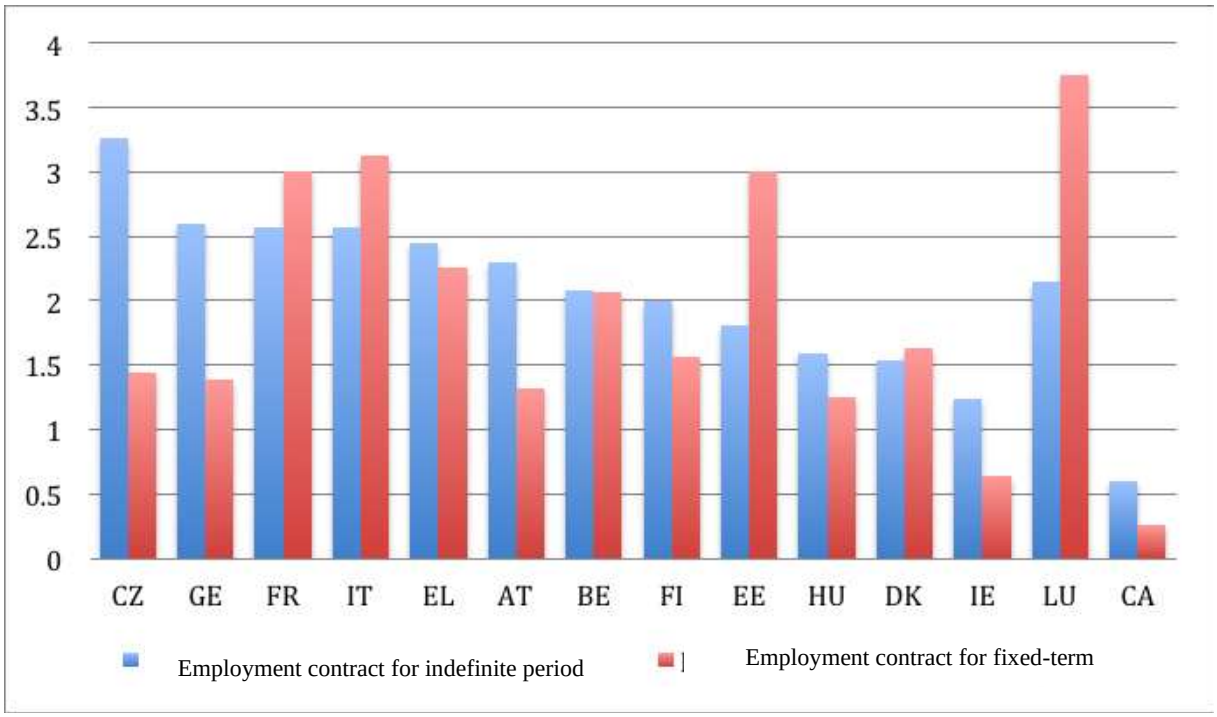
CZ – Czech Republic, PT - Portugal, NL - Netherlands, BE - Belgium, IT - Italy, LV - Latvia, EL - Greece, LU - Luxembourg, FR - France, ES - Spain, PL - Poland, FI - Finland, SK - Slovakia, LT -

Lithuania, GE - Germany, SI - Slovenia, IE - Ireland, EE - Estonia, DK - Denmark, HU - Hungary, UK - United Kingdom, AT - Austria, USA - United States.

Figure 1.2 graphically shows the value of the index in selected EU countries, but also in the USA, with the legal protection of workers from the monitored countries. On the contrary, the index reaches the highest value in the Czech Republic. The index has increased especially in recent years; in 2013 it was still below 2.5 points and the Czech Republic was among the countries with lower workers' protection.

An interesting view of employee protection is provided in the following Figure 1.3, which compares the strictness of employment protection legislation against individual dismissal in employees with indefinite and fixed-term contracts.

Figure 1.3 Protection of employees against dismissal (comparison by type of employment contract) in selected countries (2019)



Source: Data OECD (2020), own calculation

Note: The index is given by a scale from 0 to 6; higher value indicates greater protection.

CZ – Czech Republic, GE - Germany, FR - France, IT - Italy, EL - Greece, AT - Austria, BE - Belgium, FI - Finland, EE - Estonia, HU - Hungary, DK - Denmark, IE - Ireland, LU - Luxembourg, CA - Canada.

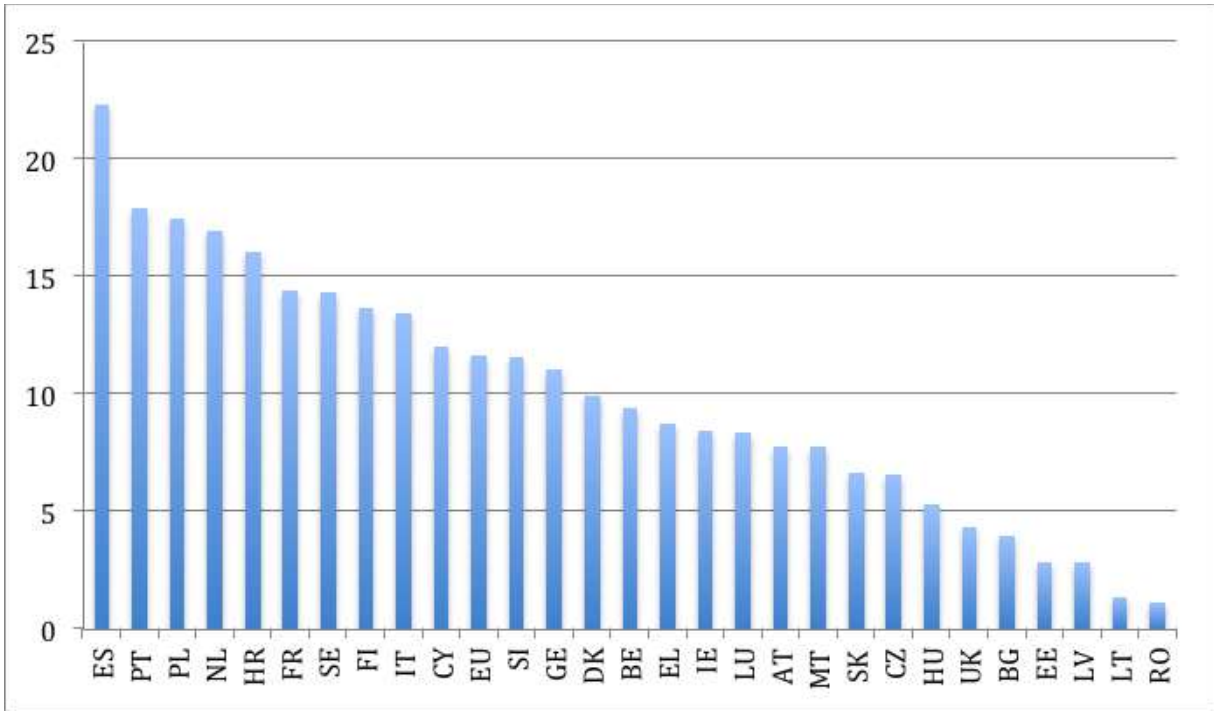
The figure shows that in most of the monitored countries, workers with a contract of indefinite duration are more protected against job loss. However, this is not a rule, the opposite situation

is in Luxembourg (which, however, is not very suitable for comparison due to its specific economic status), Italy, France, Estonia and Denmark. There is a minimal difference between workers in Belgium or Greece. On the contrary, **the Czech Republic has the highest protection of workers, but the difference according to the type of employment contract is the biggest**. Even in comparison with other countries, in workers with a fixed-time employment contract, the protection against dismissal is very limited . However, to effectively use the concept of flexicurity in practice, it is necessary to balance the differences between the two groups of employees.

Number of employees with a fixed - term employment contract

Within the European Union, the *Number of employees with a fixed-term employment contract* indicator has long been used to monitor the development of external numerical flexibility. This type of employment contracts is typically concluded in particular with workers who perform seasonal work, as well as with workers who have obtained employment through an agency or recruitment agency and perform a specific job tasks for a third party, and also with workers with contracts linked to education and training programs. The proportion of persons with a fixed-term employment contract varies significantly from one EU country to another (see Figure 1.4).

Figure 1.4 Employees with a fixed-term contract (15-64 years, EU 28, 2019, % of the total number of employees)



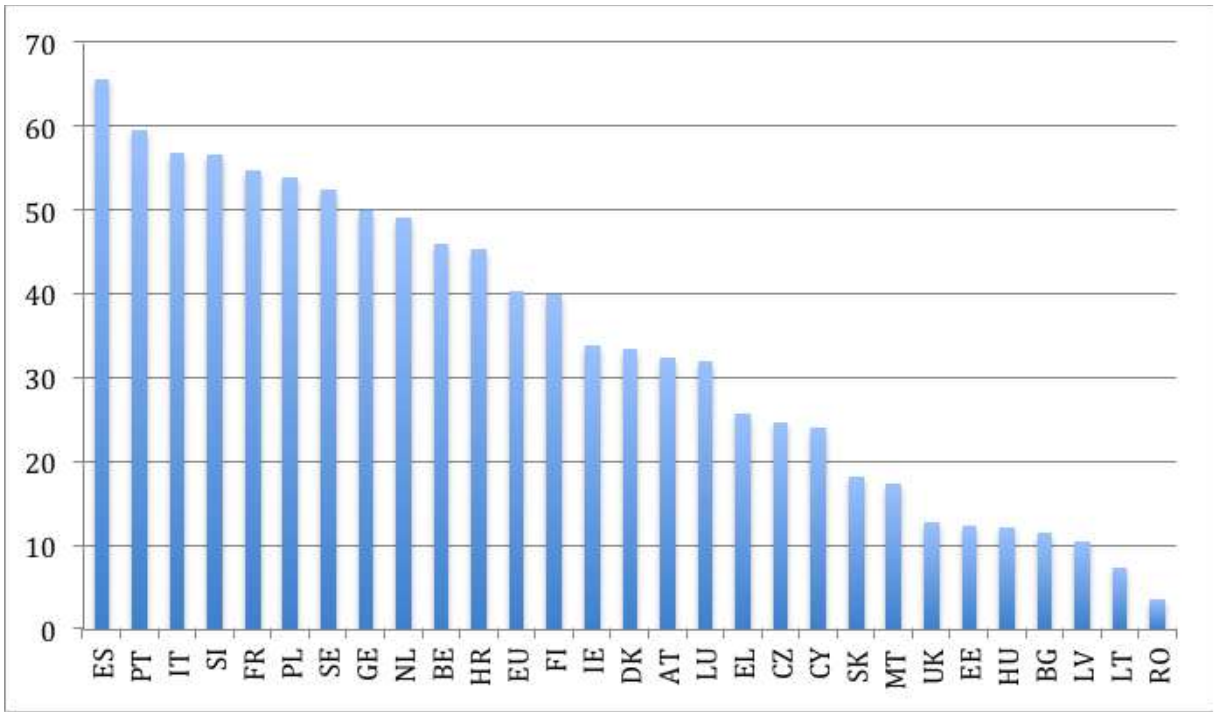
Source: Eurostat Database (2020), own calculation

Note: ES - Spain, PT - Portugal, PL - Poland, NL - Netherlands, HR - Croatia, FR - France, SE - Sweden, FI - Finland, IT - Italy, CY - Cyprus, EU - European Union, SI - Slovenia , GE - Germany, DK - Denmark, BE - Belgium, EL - Greece, IE - Ireland, LU - Luxembourg, AT - Austria, MT - Malta, SK - Slovakia, CZ - Czech Republic, HU - Hungary, UK - United Kingdom, BG - Bulgaria, EE - Estonia, LV - Latvia, LT - Lithuania, RO - Romania.

Figure 1.4 shows relatively large differences between individual countries in the proportion of persons with a fixed-time employment contract in the labor market. Spain has the highest percentage of persons employed with a fixed-term contract in 2019 (22.3%). This group of employees consists of more than 15% in Portugal (17.9%), Poland (17.4%), the Netherlands (16.9%) and Croatia (16.0%). Romania is on the other side of the spectrum, where the share of persons with a fixed-term employment contract was only 1.1% in the monitored year. Values of the index below 5% are in Britain (4.3%), Bulgaria (3.9%), Estonia (2.8%), Latvia (2.8%) and Lithuania (1.3%). The EU average is 11.6%. The Czech Republic has long been one of the countries where the proportion of employees with a fixed-term employment contract is low (6.5%). In general, these are the new Member States, where the proportion of people with a fixed-term employment contract is lower than the EU average (with the exception of Poland and Croatia).

In the long term, **the development of this index affects the economic cycle**. While in 2000 the average proportion of fixed-term contracts in the European Union was 12.3%, in the following years (during the period of economic development) it grew steadily to its peak in 2007, when it reached 14.6%. After that, the labor markets started mirroring the consequences of the financial crisis and economic recession, and the monitored index started slightly decreasing (in 2013 it reached its minimum, 11.5%). With the economic recovery since 2014, it started growing again until 2019, when it declined once again. From the outlined development it can be deduced **that during the recession it is the workers with a fixed-term employment contract who are the first to be dismissed**. However, the available data also show that **fixed-term employment results in permanent employment less often than before 2008** (i.e. before the financial crisis). This unfavorable trend mainly affects young people in the labor market.

Figure 1.5 Employees with a fixed-term contract (15-24 years, EU 28, 2019, % of the total number of employees)



Source: Eurostat Database (2020), own calculation

Note: ES - Spain, PT - Portugal, IT - Italy, SI - Slovenia, FR - France, PL - Poland, SE - Sweden, GE - Germany, NL - Netherlands, BE - Belgium, HR - Croatia, EU - European Union , FI - Finland, IE - Ireland, DK - Denmark, AT - Austria, LU - Luxembourg, EL - Greece, CZ - Czech Republic, CY - Cyprus, SK - Slovakia, MT - Malta, UK - United Kingdom, EE - Estonia, HU - Hungary, BG - Bulgaria, LV - Latvia, LV - Lithuania, RO - Romania.

As Figure 1.5 shows, the proportion of young people under 24 years of age employed on a fixed-term contract is quite high. The average proportion in the EU is 40.3%. In 2019, more than 50% of young people were employed on a fixed-term contract in Sweden (52.3%), Poland (53.9%), France (54.6%), Slovenia (56.6%) and Italy (56.8%). In Portugal, it was almost 60% (59.5%) and in Spain 65.6%. In the Czech Republic, it was nearly one quarter of young people (24.6%).

The situation is fundamentally different for employees over the age of 55. These are experienced employees who have a more stable position in companies, usually with an indefinite employment contract. According to available data, in 2019, only an average of 5.2% of people aged 55-64 were employed on a fixed-term contract in the EU (mostly in Spain – 10.3%, least in Romania – 0.6%). In the Czech Republic, this index reached 4.6%.

Advantages: Contractual flexibility is an important tool for adapting the number of employees (both within the company and from the external labor market) to the incurred needs. Companies can thus respond better to the emerging market situation; they can dismiss but also hire new workers in an easier way. Contractual flexibility also allows employers to assess employees in

terms of their qualifications, skills and abilities, which sometimes cannot be assessed during a three-month probationary period.

Disadvantages: *Employees* with a fixed-term contract often have worse working conditions (e.g. poorer access to training, lower job autonomy, absence of benefits, absence of career growth and personal development) and legal protection against dismissal than employees with an indefinite contract. These workers have also difficulties in obtaining mortgages and consumer credits. The data show that they are more at risk of losing their jobs; in times of economic recession, they are usually the first to be dismissed. A relatively large problem is the high concentration of fixed-term employment contracts in the group of young employees (under 24 years), across all EU countries (this situation is unbearable particularly in the southern eurozone countries most affected by the financial crisis; Spain, Portugal and Italy). In the Czech Republic in 2019, approximately one quarter of all young workers were employed on a fixed-term contract. It should also be noted that young people under the age of 24 usually study and work in companies while studying. However, despite this fact, the proportion of young people with fixed-time employment contracts is high. This is probably one of the causes of *labor market segmentation*.[5]

From business practice – perspective of an employer

In particular, towards the end of an agreed employment relationship, the employee becomes uncertain about whether his employment contract will be extended and, as a consequence, his labor productivity usually decreases (the employment contract may motivate the employee – so that he shows that he deserves an indefinite employment contract; but also demotivate – this depends on the personality of a particular individual, someone may need more certainty). Employees with a fixed-term employment contract are usually less loyal to the company.

Practice shows that employees close to the termination of the employment contract:

- show a greater interest in the possibility of working in another organization,
- monitor job advertisements more often,
- respond more often to job offers elsewhere,
- consider signing an employment contract for another period.

It is therefore important that the employer, if wishing to keep such employee, offers the employee to conclude an employment relationship for an indefinite period or to extend the current employment contract, sufficiently long before the termination of his employment contract.

When concluding an employment contract, the so-called 3-time-rule applies. The employer may conclude an employment contract with the employee for a definite period of maximum 3 years only 3 times in a row, i.e. a total of a maximum of 9 years. The extension of a fixed-term employment relationship is also understood as a recurrently agreed employment relationship. However, if a period

[5] The labor market is not compact, but it is divided into groups (segments) with different approaches to employment and whose positions in the labor market differ (e.g. women, older workers, young people, people with low qualification, etc.).

of three years has elapsed since the expiry of the previous fixed-term employment relationship, the preceding fixed-term employment relationship is not taken into account (Sec. 39 para. 2 LC).

Recommendation: As the presented data shows, the Czech Republic has a very high index value of protection against dismissal (EPL index). However, at the same time, there is a big difference between employees with a fixed-term employment contract and with an indefinite-term employment contract. In the future, it would be desirable to balance the status of both groups of workers in the labor market more. The question also is, whether such a high level of protection of workers does not cause rigidity in the labor market.

Within companies, it would be appropriate to ensure, above all, better access for employees with a fixed-term employment contract to company trainings. Fixed-term employment contracts should not "isolate" workers from the access to new knowledge. Otherwise, it could lead to a further deterioration of their position in the labor market. Fixed-term employment contracts should not be the cause of segmentation of young people in the labor market. In this area, there is a lot of room for cooperation between trade unions and employers, for collective bargaining.

1.2.2.2 Temporal flexibility

Internal numerical flexibility – also temporal flexibility or **working time flexibility**, allows companies to secure a greater degree of flexibility through adjustments and better working time arrangements and more flexible pay conditions. These include, in particular, part-time work, overtime work, weekend work, variable or irregular working hours. Some forms of working time arrangements will be more preferred by companies, others by workers. For example, flexible working hours, part-time work, early or postponed retirement can be beneficial for both parties.

Part-time work

A long-term monitored indicator within the EU, which can be used to express the flexibility of working hours, is the *Number of part-time workers*.

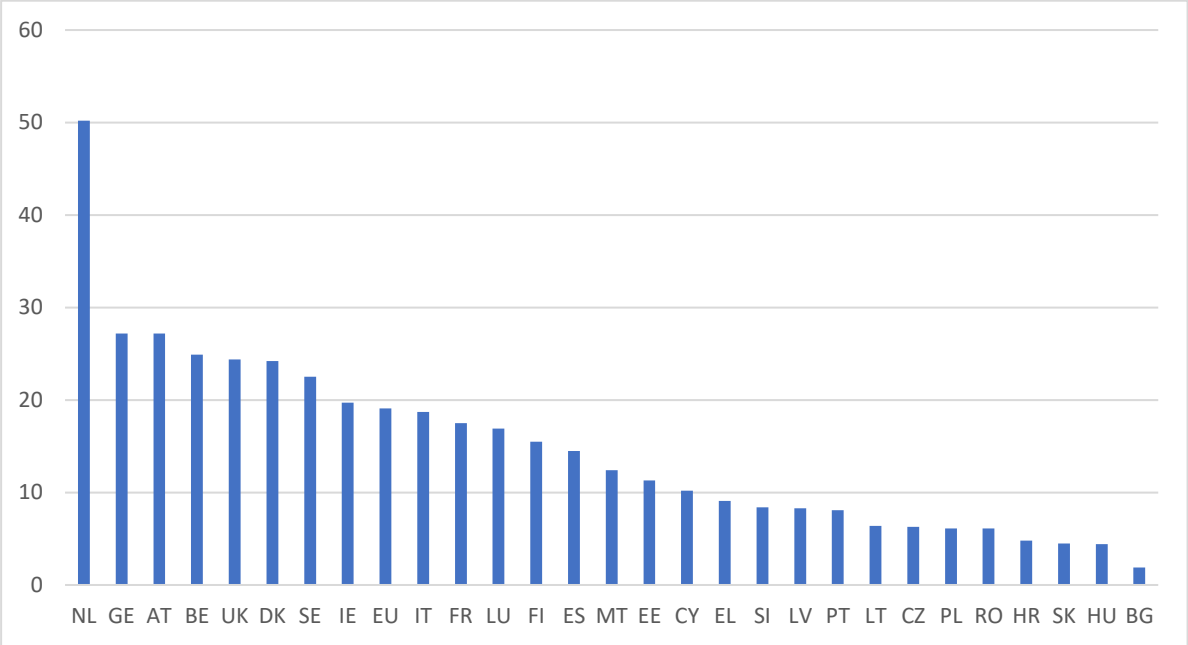
Part-time work (similar to fixed-term employment contracts) is also subject to significant regulation in EU countries; in the EU-15 since the second half of the last century. In the countries of Central and Eastern Europe, this form of employment was legislated only in connection with the implementation of the EU directive on part-time work.[6] In the Czech

[6] Council Directive 97/81 / EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

Republic, it is enshrined in the Labor Code.[7] Regulations vary significantly from country to country, however, in all countries, part-time work may be for a fixed or indefinite period.

The differences in using part-time work across the EU are even greater than in the case of fixed-term employment contracts (for more details, see Figure 1.6).

Figure 1.6 Part-time employees (15–64 years, EU 28, 2019, % of total number of employees)



Source: Eurostat Database (2020), own calculation

Note: NL - Netherlands, GE - Germany, AT - Austria, BE - Belgium, UK - United Kingdom, DK - Denmark, SE - Sweden, IE - Ireland, EU - European Union, IT - Italy, FR - France, LU - Luxembourg, FI - Finland, ES - Spain, MT - Malta, EE - Estonia, CY - Cyprus, EL - Greece, SI - Slovenia, LV - Latvia, PT - Portugal, LT - Lithuania, CZ - Czech Republic, PL - Poland, RO - Romania, HR - Croatia, SK - Slovakia, HU - Hungary, BG - Bulgaria.

While in the Netherlands, more than half of employees work part-time (50.2%), in Bulgaria it is only less than 2%. The figure also shows that part-time work is used far more often in the original EU countries than in the new Member States (the use of part-time work as an effective tool for flexibility does not have a long tradition here). They are widely used in Germany and Austria (both 27.2%), but also in Belgium, the United Kingdom, Denmark and Sweden. With the exception of Greece and Portugal, this indicator is below 10% only in the new Member States. Overall, the situation in this area has not changed significantly in the last decade, on average, there has been only a slight increase in the use of part-time work. This also applies to the Czech Republic. While in 2009, 4.8% of employees worked part-time in the Czech

[7]

Republic, in 2019, it was 6.3% (a slight increase is also evident in the observed decade within the EU, from 18% to 19.1%) . **The Czech Republic has long been among the countries where part-time work is used minimally**. In this sense, the situation is worse only in Poland, Romania, Croatia, Slovakia, Hungary and Bulgaria.

As statistical data show, **part-time work is much more often performed by women than men, in all observed age groups** (see Table 1.2). This applies without distinction to all EU countries. **Part-time work is one of the tools of work-life balance, however, in the Czech Republic, this tool is used insufficiently** (for more details on this issue, see Palíšková, 2019). As the table shows, **the higher the education, the lower the part-time employment rate.**

Table 1.2 Part-time work by age, gender and education in the EU (2019, in %)

Indicator	Total	Women	Men
15–64 years	19.1	31.3	8.7
15–24 years	32.3	40.6	25.3
25–49 years	16.8	28.8	6.5
50–64 years	20.2	33.8	8.4
ISCED 0-2	23.9	41.9	12.1
ISCED 3-4	19.6	34.0	8.1
ISCED 5-8	16.2	24.3	7.5

Source: Eurostat (2020), own calculation

Table 1.3 also provides an interesting view of part-time work. The data concerns the Czech Republic, but it can again be stated that the situation is similar in other EU countries. **Women are more likely involuntarily employed on part-time contract than men** because they cannot find a full-time job. **Education also protects women from part-time work** and unemployment **less than men**.

Table 1.3 Part-time work, gender perspective – in the Czech Republic (2018, in %)

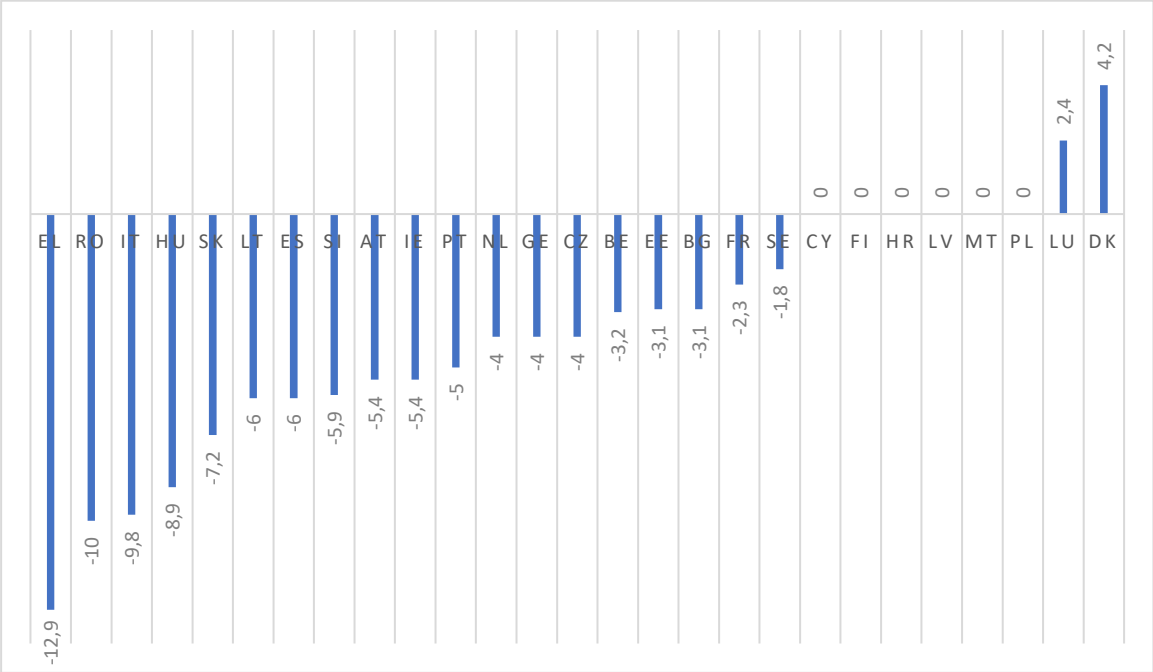
Indicator	Women	Men
Proportion of part-time employees	10.9	2.6
Proportion of part-time employees - INVOLUNTARILY	7.0	5.0

Proportion of part-time employees – WITH TERTIARY EDUCATION	12.8	3.6

Source: Eurostat Database (2020), own calculation

In most countries of the European Union, part-time work is also generally associated with lower incomes (see Figure 1.7).

Figure 1.7 Impact of part-time work on income (2014, % of hourly wage)



Source: Eurostat (2020), SES 2014, own calculation

Note: Data refers to 2014. Published in 2020 in a summary report issued by Eurostat. Newer data is not yet available.

EL - Greece, RO - Romania, IT - Italy, HU - Hungary, SK - Slovakia, LT - Lithuania, ES - Spain, SI - Slovenia, AT - Austria, IE - Ireland, PT - Portugal, NL - Netherlands, GE - Germany, CZ - Czech Republic, BE - Belgium, EE - Estonia, BG - Bulgaria, FR - France, SE - Sweden, CY - Cyprus, FI - Finland, HR - Croatia, LV - Latvia, MT - Malta, PL - Poland, LU - Luxembourg, DK - Denmark.

Figure 1.7 reflects the impact of part-time work on the hourly wage compared to full-time hourly wage. As seen from the figure, part-time work has the greatest negative impact on wages in Greece, Romania and Italy. In some countries (Cyprus, Finland, Croatia, Latvia, Malta and Poland) there is no significant difference in the wages of full-time or part-time employees. The exceptions are Luxembourg and Denmark, where the hourly wage of part-time workers is even higher. **In the Czech Republic, the hourly wage of a part-time worker is about 4% lower than of a full-time worker.**

Table 1.4 brings up an interesting point at the issue of part-time work, summarizing the main reasons for part-time work, both in the EU and in the Czech Republic. The table also provides a gender perspective, which is essential in the case of part-time works.

Table 1.4 Main reason for part-time employment – comparison of EU and Czech Republic (2018, in %)

Reason	Total		Men		Women	
	EU	CZ	EU	CZ	EU	CZ
Impossibility to find a full-time job	25.6	6.7	35.7	5.1	22.6	7.2
Illness or disability	4.8	19.8	7.2	30.8	4.1	16.2
Other family or personal responsibilities	14.0	18.1	9.6	14.8	15.3	19.2
Care for children or adults with disabilities	23.5	22.4	5.9	:	28.7	29.3
Due to education (increasing qualifications)	8.0	10.0	15.7	19.2	5.8	7.0
Other	24.1	23.1	26.0	29.3	23.5	21.1

Source: Eurostat (2020), own calculation

The reasons for part-time employment vary significantly among individual European Union countries. The differences result from the *different economic situation* in the individual countries, which is subsequently mirrored in the situation on the labor markets, particularly in the unemployment rate. The highest proportions of part-time workers, due to their inability to find a full-time job, were recorded in Greece (70%), followed by Italy (66%), Cyprus (65%) and Bulgaria (59%). The Czech Republic is one of the countries with the lowest share of these persons (6.7%); the situation is similar for example in Belgium and Slovenia. The lowest percentage rate of this group of employees was in Estonia (less than 6%).

In the last few years, the Czech Republic has shown rapid economic growth, job creation and a notorious lack of workers at all levels of employment. This was the main reason why the percentage of part-time workers was one of the lowest in the observed period due to the impossibility of finding another full-time job.

The relatively **large difference between the Czech Republic and the EU in the reason – illness or disability** is quite interesting. While in the EU, only an average of 4.8% of employees

stated their own illness or disability as a reason for working part-time, in the Czech Republic, it was 19.8%. This difference is even more pronounced in the case of men! Yet, it cannot be assumed that the Czech Republic would have more disabled persons (the statistical distribution of healthy and disabled persons will not differ fundamentally in individual European countries) or so many more persons with serious illness to work part-time as a consequence of such reasons. The cause will probably be in the system of social benefits, taxation, etc.; when receiving benefits in combination with undeclared work may be more advantageous for some groups of the population than full-time employment. It would be appropriate to analyze this aspect of the researched issue in detail, determine the causes of this phenomenon, and take appropriate measures. The difference is significant.

As mentioned above, women are much more likely to be employed part-time than men. The reasons are also different. These are **mainly women who take care of children or older family members due to disability** (i.e. a certain limitation – movement, mental, etc.). Within the EU, 28.7% of women with part-time work and only 5.9% of men stated this reason. Data for men were not available for the Czech Republic; for women, the situation is similar to the EU average. It can be assumed that the percentage proportion of men will also copy the European average. Historical data shows that the proportion of female and male Czechs who stated the care of children or adults with reduced self-sufficiency as the reason for part-time work increased from 18.8% to 22.4% in the decade between 2008 and 2018.

Examples from practice

Germany and Spain can be cited as examples of two completely opposite approaches to the use of internal numerical flexibility tools. In Germany, the effects of the economic recession (2008 and above) on the labor market have been substantially mitigated by internal numerical flexibility measures. The companies preferred such regulatory measures as limiting production, adjustments and reduction of working hours (kurzarbeit) to dismissals. Owing to that, the decline in employment in 2008-2010 was negligible. In contrast, Spain used the internal numerical flexibility tools only sporadically, but at the same time, showed a high proportion of fixed-term employment contracts, which made it easier to terminate the employment relationship. This combination is unfavorable and, in the event of economic shocks, causes large fluctuations in employment. This was probably also one of the reasons why the decline in employment in Spain did not match the decline in overall economic activity but was much higher. This fact affected young people, in particular those, who were employed mainly on a fixed-time employment contract.

An example of the current use of the internal numerical flexibility tool, namely the kurzarbeit (i.e. certain agreements between employers and the government to maintain employment, where working hours are reduced, and the government pays – according to certain rules – the rest of the missing earnings), is the Antivirus program (Employment protection program]. The state compensates wages up to the full amount in the event of a reduction in work activity on the part of both the employee and the employer, the cause of which must be proven by the coronavirus crisis. If other conditions are met, such as compliance with the Labor Code, the wage is compensated up to the amount of the average

super-gross wage, including compulsory contributions (CZK 48,400). This is a time-limited measure to bridge the worst of the crisis. This measure is more advantageous for the state than dismissal and payment of unemployment benefits. It also works against the acceleration of the crisis, as it maintains the purchasing power of the population.

Advantages: Flexibility of working hours (temporal flexibility) can take many forms. Part-time work is the most widespread. It is a flexible form of employment, which is a suitable tool for harmonizing work-life balance. It is especially sought after by women who are returning from maternity or parental leave to the labor market (and still have small children at home), for students who want to earn extra money while studying and at the same time gain the necessary internships, for a gradual retirement of an employee, or for work in pension. It is therefore a suitable tool for harmonizing *work-life balance*. It usually brings greater productivity and work efficiency to employers. In the form of kurzarbeit, it can be an effective tool for overcoming an extraordinary crisis period. In this case, it always means a time-limited measure.

Disadvantages: Although part-time workers have formally the same legal status as full-time workers, in practice, the former tend to be disadvantaged. The volume of work they do very often exceeds the number of established hours, so they basically work for a lower wage. Generally, they also do not have access to all employee benefits, limited access to education and career growth. As the analysis showed, the incomes of part-time employees are also lower compared to full-time employees (adverse consequences for the calculation of the retirement pension). Part-time work is also associated with so-called underemployment (people want to work full time but do not find work) and with lower protection against dismissal. They can also be a source of gender inequality and labor market segmentation. However, the lack of part-time work (as is the case in the Czech Republic, the employment rate of women with young children is the highest in the whole Union) in combination with the lack of facilities for pre-school children is also harmful – working time flexibility in this case (for this group) is not a work-life balance tool (for more details on this issue see Palíšková, 2019).

Recommendation: In the Czech Republic, it is recommended to expand this form of employment. Particularly for mothers with young children, the combination of a small number of part-time jobs and a lack of pre-school facilities for children, together with underdeveloped related services, is a barrier to returning to the labor market. However, it is also important to *de facto* equalize the position of part-time employees with full-time employees, particularly in terms of remuneration and training. In connection with the onset of Society 4.0, it is necessary to make corporate training, the opportunity to share the latest knowledge in the field, etc.

available to all employees, regardless of employment form. Education (whether as a part of in-company training or active employment policy) is the only effective way to avoid underemployment. Individuals with low level of education, low incomes, and women are mostly affected. The combination of part-time work and lower female pay (gender pay gap) has negative social impacts (single mothers, debts, lower retirement pension, etc.) – too many risks associated with a particular social group. Closer cooperation between trade unions and employers should occur, particularly in the area of employee training and ensuring non-discrimination in the labor market (gender, according to the length of employment contracts).

Note

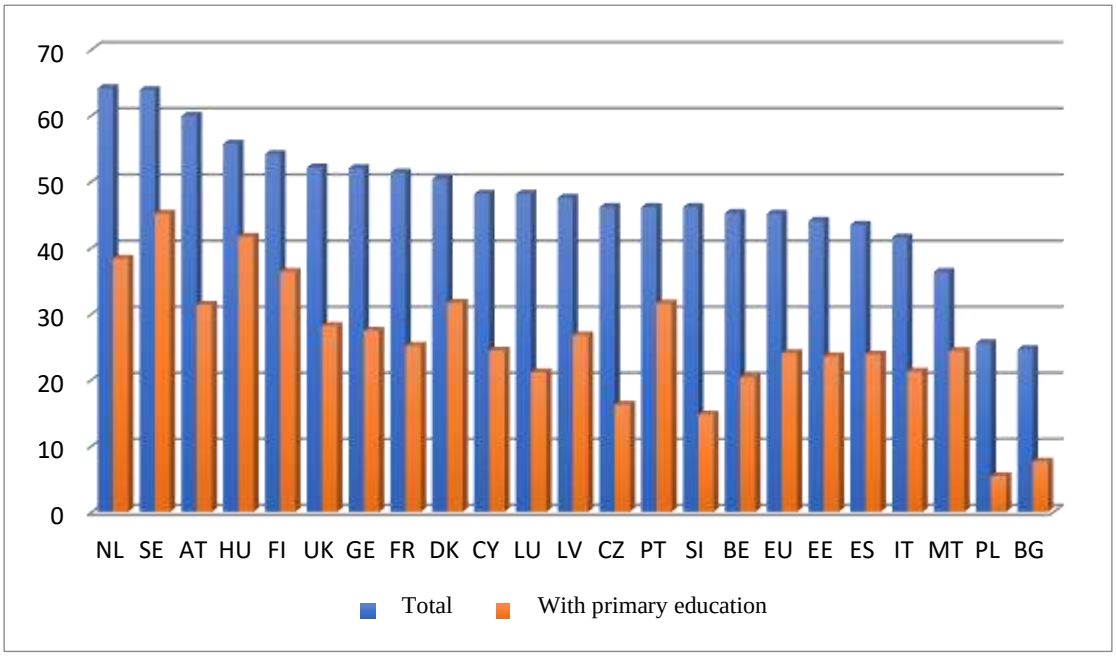
In contrast to the financial crisis (2007/8) that mainly affected male-dominated sectors, the service sector (tourism, accommodation, catering and related services for tourists), where more women work, is currently significantly affected. In this sector, there has been also the biggest drop in wages. There was a partial reduction in wages in passenger transport, especially in long-distance buses. It can be assumed that the situation will deteriorate further in the upcoming months. People are saving, there has been a decline in the purchase of cars, but also consumer goods, particularly clothing. By the end of the year, there will certainly be further dismissal of employees (the Antivirus program will be terminated, seasonal work will also end, and some trades will probably be terminated). Shorter working hours may be a solution – at least for a certain period (an individual does not become unemployed, has at least a partial income, does not lose work habits, maintains contact with the company and colleagues, is not socially isolated, etc.).

1.2.2.3 Organizational flexibility

Organizational (also functional) flexibility expresses **the extent to which employees can be transferred to other work tasks within a company**. It includes various forms of work organization, such as rotation of tasks, simultaneous processing of tasks, teamwork, involvement of employees in planning, etc. These organizational forms not only allow greater flexibility of work performed according to current needs, but also have a positive effect on employee skills development, which leads to an increase in job security and improvement in the overall position in the labor market. A prerequisite for greater organizational flexibility is therefore systematic in-company training. Its goal is to provide the company with the skills and knowledge that are necessary to fulfill company plans and strategies. Due to the lack of free workforce in the labor market and the mismatch between supply and demand in terms of the required professions and skills, companies have in recent years focused on creating their own effective training systems (combining on-site training with external training). In-company training systems are focused not only on training and retraining of employees, but they also include programs for personal development of employees, career growth, work with talents (talent management) and training of successors.

Significant organizational flexibility is in the current times a necessity – companies must be able to respond quickly to changes in the external environment and the individual wishes of customers. Frequent innovations, or the introduction of new production processes and technologies place great demands on the continuous training of employees, at all levels of job positions. **Education not only increases organizational flexibility, but also increases an individual's ability to better adapt to changing requirements (company, labor market) and to better compete in the labor market.** *Education is a way to get a fixed-term and full-time employment contract.*

Figure 1.8 Total participation of adults and participation of adults with primary education (ISCED 0-2) in some of the forms of further education in selected EU countries (25–64 years, 2016, in %)



Source: Eurostat Database (2020), own calculation

Notes: NL - Netherlands, SE - Sweden, AT - Austria, HU - Hungary, FI - Finland, UK - United Kingdom, GE - Germany, FR - France, DK - Denmark, CY - Cyprus, LU - Luxembourg, LV - Latvia , CZ - Czech Republic, PT - Portugal, SI - Slovenia, BE - Belgium, EU - European Union, EE - Estonia, ES - Spain, IT - Italy, MT - Malta, PL - Poland, BG - Bulgaria. No data were available for Croatia, Ireland, Lithuania, Romania, Greece and Slovakia. There are no newer dates yet.

Although the participation of adults in the Czech Republic in further education is slightly above average in the EU (46.1%; in the EU 45.1%), the participation of adults with basic education is one of the lowest (16.2%; the EU average is 24%). For comparison, the same percentage of adults in the Czech Republic participates in further education in Slovenia and Portugal, while the involvement of people with basic education is completely different (in Slovenia even lower than in the Czech Republic, namely 14.7%; Portugal, on the contrary, is successful in involving people with the lowest level of education in further education; their participation reaches

31.5%). Together with the Czech Republic and Slovenia, Poland or Bulgaria are not very successful in involving adults with the lowest level of education in further education, where the overall participation of the adult population in education is lower. On the contrary, the best results in this respect are shown by Hungary, Finland, Sweden, Denmark or the already mentioned Portugal.

Extremely low participation of adults with basic education in the process of further education in the Czech Republic (including vocational training in-company training and retraining as a part of active employment policy) is also adversely reflected in other indicators directly related to the labor market – higher unemployment rate, hire proportion of fixed-term and part-time employment contracts, greater risk of job loss, lower wages, greater risk of poverty and social exclusion (for more details on this issue, see e.g. Palíšková, 2018). In other words, **lower levels of obtained education are associated with less involvement in lifelong learning and, as a consequence, less adaptability of workers, i.e. less ability to adapt to the demands of labor markets in terms of the required knowledge and skills.**

1.2.2.4 Financial and wage flexibility

Financial and wage flexibility expresses the extent to which companies can independently decide on wages (what is the effect of collective bargaining) and what wage differences may exist between individual workers. This type of flexibility plays an important role in the case of remuneration of employees according to performance or if companies prefer wages with a large proportion of the performance component, or according to job position. In other words, it allows the individualization of the company's payroll system.

•

In practice, employers use the adaptation mechanisms mentioned above as needed and in various combinations and extents. They thus respond to the current market situation – particularly to changes in the economic cycle (crisis, recession) or to changes in demand for certain products. However, it can also be a reaction to certain decisions within the state economic policy.

Summary

The concept of flexicurity was developed as a tool for maintaining the balance of labor markets within the EU. It is a combination of flexible forms of employment and work organization, social policy, active employment policy and lifelong learning. Due to the large differences

between EU member states, it is not possible to create and apply a unique (optimal) model. Thus, each country must set its own specific model within the economic policy, an appropriate combination of tools and procedures. **Greater flexibility in labor markets should be balanced by greater security, not in terms of employment, but education; the security of the opportunity to acquire the required skills, or completely change qualifications and participate in the labor market.**

In the last decade, particularly since 2008, when European countries were forced to face the consequences of the economic crisis and subsequent recession, the use of flexible adaptation mechanisms has increased (more frequent use of part-time work, changes in employment contracts, freezes or wage cuts). Even in the current, economically unfavorable times, their greater use can be expected again (e.g. kurzarbeit). Flexible forms of employment can also be an effective work-life balance tool, i.e. creating a certain balance between work and private life.

However, for the concept of flexicurity to work as an effective tool for balancing labor markets, balancing flexibility and security, reducing unemployment and reconciling work and private life, it is important that workers with different types of employment contracts and working hours have *de facto* (not just *de jure*) the same position in the company. However, the practice is more complicated.

Employees with fixed-term contracts and part-time jobs are very often disadvantaged compared to regular employees of the company (i.e. employees with indefinite and full-time contracts). They are more at risk of losing their job and in case of necessity, they are usually the first to be dismissed; they often do not achieve all the corporate benefits; they are not included in training development programs; their work is mostly associated with less important job positions, their work autonomy is therefore reduced; they have only very limited or no opportunities for career growth, etc. Part-time work is also very often associated with lower financial remuneration. Fixed-term employment contracts are mainly associated with young employees (up to 24 years of age); part-time work is mainly associated with women. Both groups have long been among the most vulnerable segments in the labor market.

In the future, it would be desirable **to focus primarily on the training of persons with a low level of education** (both within in-company trainings and in active employment policy). Higher levels of obtained education increase the ability to adapt to changing market demands, thus meaning a better position in the labor market – and thus higher probability to work full-time and on an indefinite contract, and last but not least, also higher earnings. It would also be appropriate to reduce in real terms the differences in the status of employees with different

forms of employment contracts and length working hours. Greater flexibility but less security in the labor market threatens, in particular, individuals with a low level of education, women and young people.

Information technologies have enabled the development of a number of completely new flexible forms of employment and the organization of working time. Flexibility is sometimes also referred to as a new **form of social risk**, especially in the above-mentioned groups in the labor market.

Trade unions shall be recommended to focus on the training of low-skilled workers and jobseekers with low levels of qualification and on equalizing the status of employees with different forms of employment contracts and different lengths of working hours. In this regard, the cooperation of all social partners is necessary – trade unions, the employers' associations and the government (active employment policy).

2. Flexible forms of employment

In addition to the above-mentioned, "traditional" flexible forms of employment, i.e. fixed-term and part-time contracts, which were explained in the theoretical concept of flexicurity, there are a number of other, new flexible forms on the labor market. Some are already supported by Czech legislation; others are developed sort of "spontaneously" with the development of information and communication technologies and are not yet regulated by law.

2.1 Temporary employment through employment agencies

Temporary agency work represents a relatively new, but, especially in recent years, rapidly developing flexible form of employment, which is regulated by the Labor Code (Sec. 307a-309a). It belongs to the so-called **triangular employment relations**, i.e. one worker between two employers. The parties to the legal relationship in this case are:

- employee;
- an employment agency that is his employer;
- user, i.e. a company that demands workforce and hires employees of an employment agency.

The harmonization framework consists of the EC directives on temporary agency work.[8] The biggest problem with agency employment across the EU is meeting the requirement for **agency workers to have the same working conditions as regular workers**. That directive is limited to the field of occupational safety and health. The principle of equal treatment, including wage, is therefore regulated differently in individual countries, by law or collective agreement, or not at all. In the Czech Republic, agency employment is regulated by the Labor Code and the Employment Act (Sec. 58 – Sec. 66)[9].

Agency employment is also considered dependent work (Sec. 307a LC). The employment agency (i.e. the employer) concludes with the employee an employment contract or agreement on work performance. The agency then temporarily assigns its employee to perform work with another employer (user) with a written instruction. It is basically a rental of workforce. It must be emphasized that the Labor Code does not allow for agency work with an agreement on the performance of work.

[8] Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on Temporary Agency Work.
[9] Act No. 262/2006 Coll., Labor Code, as amended; Act No. 435/2004 Coll., on Employment, as amended.

The employment agency and the user conclude a **temporary assignment of an employment agency employee**. The specificity of agency employment is that the user and the employee who performs work for the user do not enter into any contract. There is no legal relationship between them; for this reason, **the user shall not legally act against the employee on behalf of the employment agency**.

Example from practice

The user assigns work to the agency employees, organizes his training, gives him instructions, controls his performance, creates a suitable work environment, ensures safety and health at work (equips employees with suitable protective equipment), schedules working hours, etc. However, the user cannot dismiss the employee because he is not entitled to legally act against the employee.

The basic condition of agency employment is that the employment agency, together with the user, ensures **equal treatment** for the assigned employee, i.e. that his working and wage conditions are not worse than the conditions of a comparable employee of the user.

Agency employees are most often used in production, in the automotive industry, but also in call centers, service centers and administration. Abroad, construction and hotel industry are also among the strong segments for agency employment. In the Czech Republic, networks of small subcontractors tend to predominate in these areas of business.

From practice

There are approximately 1,200 employment agencies in the Czech Republic. The professional organization is the Association of Personnel Services Providers (APPS), which brings together personnel agencies and consulting companies operating in the field of providing personnel services. APPS was founded in 2002. One of the main goals of this professional organization is to eliminate dubious practices and unethical behavior in temporary agency work.

Employment agencies that are members of APPS have common characteristics:

- Valid permit for mediation from the MLSA.
- Bankruptcy insurance.
- Pay salaries and levies for agency employees on time and in accordance with applicable legislation; the employment relationship and the contract on temporary assignment is concluded in writing and before the start of work.
- Observe comparable conditions for agency employees and submit a gross salary calculation to clients.
- Do not use fictitious travel orders, they do not commit so-called hidden assignments, i.e. they do not replace temporary assignments contract by an agreement to perform work or an agreement to complete a job.

Source: https://www.manpower.cz/manpower/cs/co-znamena-prace-pres-agenturu/

Advantages: This form of employment meets the requirement of employers on flexibility and reduction of administrative costs (particularly in the field of human resources and payroll service). It allows them to flexibly hire workers according to current needs. Agency employment is not prohibited from chaining fixed-term employment relationships. However, the rule that the same employee of an employment agency may not be assigned to the same company for more than 12 consecutive months shall be observed. Legal regulation for the termination of the temporary assignment of an employment agency employee is much simpler for the company than for the termination of the employment relationship of its own employee. Temporary employment through an employment agency is traditionally used predominantly to cover seasonal work, part-time jobs, time-limited projects, supplementing the number of regular workers in the case of larger projects, etc. Examples from practice also show that agency employment may be the beginning of establishing contact with the employer and obtaining an employment contract. In these cases, however, it largely depends on the employee's willingness to perform well, his initiative and willingness to further training.

Example from practice – The story of a particular agency employee

During his studies at the University of Economics, Filip worked as an agency worker at the reception of a global technology company. He was working on Tuesdays and Thursdays, when he did not have to be at school. During the company's regular annual audit, he offered to help with the preparation of documents. His approach was noticed by the head of controlling, who agreed with him to expand his working hours and his cooperation in financial analysis for management. After graduating, the employer offered him a transfer from the agency to the status of a core employee at a junior business analyst position.

Source: https://www.manpower.cz/manpower/cs/co-znamena-prace-pres-agenturu/

But it does not have to be the case of only university students. In recent years, a number of companies (e.g. Škoda Auto) have offered employment contracts to agency workers who have worked for them for some time and have proven themselves. These were mainly workers of elementary professions who were trained to work in production.

Disadvantages: A significant disadvantage for employees is usually worse conditions than those of regular workers, usually in all respects – job position protection, wage level, access to company training, minimum job security, etc. In most cases, the nature of the work of agency workers can be described as *precarious*. Another significant disadvantage is the low enforceability of ensuring a level playing field for agency workers. This form of employment also has certain disadvantages for employers. Liability for damage caused to the company by an agency employee is not legally established. It is necessary to provide agency employees with the same salary as to their own employees, and at the same time, the company (user) pays fees

to the employment agency. It is therefore necessary to count with higher costs for temporarily assigned employee. Very low job security.

Recommendation: It is necessary to precisely define "comparable working conditions" for agency and regular workers, especially in elementary professions, where the situation is most serious. The creation of suitable conditions for effective labor inspection controls may possible be a tool of cultivation. Last but not least, the conditions for the establishment and functioning of employment agencies shall probably be tightened.

2.2 Temporary assignment of an employee to another employer

Some companies do not currently have jobs for their employees, others find it very difficult to find suitable employees. The solution may be to temporarily assign the employee to another employer. This is not agency employment. Temporary assignment is regulated by the Labor Code in Sec. 43a.

The essence of temporary assignment is that the employee remains an employee of the assigning (legal) employer, but temporarily performs work for another (economic) employer. **The agreement on the temporary assignment of an employee to another employer** may be concluded by the employer with the employee earliest after the expiry of six months from the commencement of the employment relationship (Sec. 43a para. 1, LC).

The agreement shall be concluded in writing and contain the following requirements (Sec. 43a para. 3, LC):

- identification data – the name of the employer and the name of the employee;
- the date as of which the temporary assignment will commence;
- type and place of work;
- the period for which the temporary assignment is agreed.

Similar to agency work, temporary assignments cannot be used for agreements outside employment relationship.

It is not allowed to provide remuneration for temporary assignments; employers reimburse each other only for the costs associated with the performance of work and assignment (e.g. wages or travel allowances); (Sec. 43a para. 2, LC).

During the temporary assignment of an employee to another employer, the employee is assigned working tasks; the employer to whom the employee was temporarily assigned organizes, manages and controls his work. The employer shall create favorable working

conditions for the employee, including safety and health protection. However, he may not make any legal acts in relation to the temporarily assigned employee (Sec. 43a para. 4, LC).

Also, in the case of temporary assignment of an employee, it is necessary to apply the principle of **equal treatment** (Sec. 43a para. 6, LC).

The temporary assignment usually **ends** on expiry of the period for which it was agreed. However, the Act also allows for the termination of temporary assignments prior to the expiry of this period (Section 43a, Para. 7, LC).

Example from practice

At a time of coronavirus infection and limited production in companies, many Czech companies have problems with the employment of their employees. On the other hand, there are companies that now lack employees, for example due to quarantine or caring for family members.

The Czech Chamber of Commerce has therefore prepared a concept that offers companies and eases the "sharing" of work capacities. This option helps those employers who do not want to lose their employees, even if they do not currently have a job for them. Another employer who, on the contrary, now lacks workers, will temporarily take care of their employment.

WorkLinks.com application helped to create a nationwide "job exchange". In practice, a temporary "employee loan" will work in such a way that, for the duration of the employee's assignment, the new employer will assign working tasks, organize, manage and control his work in the same way as to his regular employees. It is important that the current employment relationship is kept. The original employer "re-invoices" the temporary employer wage costs and levies for temporarily assigned workers. This will save his money, while not depriving him of an investment in his experienced workers.

https://www.podnikatel.cz/clanky/nepropoustejte-zamestnance-pujcte-je-jinemu-podnikateli

Advantages: The described form of employment allows employers to respond to the immediate needs of employees in a flexible way. In a period when the demand for products decreases (change of customer preferences, loss of a significant customer, economic crisis/recession) the company does not have to dismiss its employees, but transfers them to another employer that cannot find workers (e.g. expands production, have more projects) and would have to reject projects or delivery periods would get disproportionately prolonged. An employer who has invested in the development and training of its employees does not lose investment and, at the same time, does not have to worry about finding suitable employees on the labor market in the future (he also avoids time-consuming and costly HR activities of employee recruitment, selection, hiring, and adaptation). An employer to whom employees of another employer are assigned does not have to limit production at the given moment and, at the same time, gains time that he can use to recruit and select suitable employees that he will need in the future. The main advantage for an employee is that he does not lose his jobs.

Disadvantages: The main disadvantage for employees is the need to adapt quickly to the new work environment. The principle of equal treatment is not always observed (the employer should treat temporarily assigned employees in exactly the same way as his own); especially in the field of work safety and health.

Recommendation: Similar to temporary agency employment.

2.3 Agreements on work performed outside the employment relationship

Agreements on work performed outside the employment relationship are a widespread tool for increasing labor market flexibility. The Labor Code enshrines two types of agreements:

- agreement to complete a job; and
- agreement to perform work.

Agreements on work performed outside the employment relationship give rise to the establishment of an employment relationship for the performance of dependent work (similarly to an employment contract, but no employment relationship is established).

Based on **an agreement to complete a job**, the employee may perform work for the employer for a maximum of 300 hours in a calendar year (Sec. 75 LC). An employee in another basic employment relationship with the same employer may not perform in such further relationship work of the same type (Sec. 34b para. 2, LC). The agreement to complete a job must specify the period for which it is concluded (Sec. 75 LC).

Based on an **agreement to perform work**, an employee may perform work that does not exceed, on average, the weekly working hours (i.e. 20 hours) for the entire period for which the agreement to perform work was concluded, however not for more than 52 weeks (Sec. 76 LC). The agreement to perform work **must include the agreed type of work, the agreed scope of working hours and the period for which it is concluded** (Sec. 76, para. 4, LC).

An agreement to complete a job or an agreement to perform work must be concluded **in writing** in two copies – one for the employer, the other for the employee (Sec. 77, para. 1, LC).

Unless the Labor Code provides otherwise, the provisions regulating performance of work in an employment relationship shall also apply to work carried out on the basis of an agreement to carry out work outside the employment relationship. However, this shall not apply to (Sec. 77, para. 2, LC):

- assignment to different work and transfer;
- temporary assignment;
- severance pay;
- working hours and rest periods;
- obstacles to work on an employee's side;
- annual leave;
- termination of an employment relationship;
- remuneration, with the exception of the minimum wage;
- reimbursement of travel expenses.

An employer who performs work for the employer on the basis of an agreement on work performed outside the employment relationship, **the employer is not obliged to schedule working hours**. However, the performance of work may not exceed 12 hours within 24 consecutive hours (Sec. 77, para. 2).

The employee is entitled to be paid remuneration (Sec. 109. para. 5, LC) pursuant to the agreement to complete a job or an agreement to perform work, the amount and conditions of which must be agreed in the agreement (Sec. 138 LC). Remuneration must not be lower than the minimum wage.

Advantages: Agreements on works performed outside the employment relationship still mean for employees a relatively high level of security and, at the same time, make it possible to better reconcile work and family life.

Disadvantages: Agreements protect employees less than employment contracts. For example, the provisions of Sec. 77, para. 2 of the LC do not apply to these agreements (see above). Individuals working for employers only on the basis of an agreement on work performed outside the employment relationship are not entitled to benefits, they are usually not included in training programs, they do not receive performance perks, etc.

2.4 Disguised employment relationships*

In the Czech Republic, the so-called **self-employment** (i.e. work on a trade license) has long been one of the tools to increase the flexibility of the labor market. This form of work is regulated by Act No. 455/1991 Coll., on Trade Licensing (Trade Licensing Act), as amended. The Act regulates the conditions of trade business and at the same time defines (in Sec. 2) what a trade means – *a systematic activity carried out independently under the conditions laid down in this Act, under a person's own name and liability with a view to making a profit and under the conditions*.[10] This definition of trade shall help distinguish whether it is really entrepreneurship (self-employment) or employment (i.e. dependent activity). In practice, however, it is very difficult to **distinguish real entrepreneurship from a disguised employment relationship.**

"Employment of the self-employed" (the so-called Schwartz system) is relatively widespread in the Czech Republic. According to the most conservative estimates, around 100,000 people work within this system, i.e. about 2% of employees (the estimate of the Czech Chamber of Commerce is approximately once as much). This is followed by a wide "gray zone", where it is not entirely clear whether it is "employment of entrepreneurs" or standard entrepreneurship (e.g. the work of designers or consultants) (RILSA, 2019).

The research of the Research Institute of Labor and Social Affairs focused on new forms of employment, carried out in 2019, showed that in recent years, the number of people who voluntarily left the employer for self-employment has increased in the Czech Republic. This trend is mainly associated with the development of ICT, which has enabled the emergence of a number of completely new forms of employment. An important factor was also the rapid economic growth in the past period and the high demand for workers at all levels of education

[10] A similar definition of a trade is contained in Act No. 89/2012 Coll., the Civil Code, as amended; Sec. 420.

* Disguised employment relationship= hidden employment relationships

and job positions. At the same time, there are large differences between regions, educational groups, professions and sectors of the national economy.

Advantages: Above all, time flexibility, work autonomy and a feeling of self-realization. Opportunity to accept only work that brings a feeling of satisfaction and personal growth. It is also a suitable tool for work-life balance. Possibility of tax optimization of incomes. Průša et al. (2008) shows in model cases that the net income of a self-employed entrepreneur is higher at the same earnings (sales) than that of an employee. The "employer" minimizes the costs associated with employing workers; save on social and health insurance contributions, which he is legally obliged to paid for his employees. He may interrupt the cooperation with the "employee" at any time, without notice, reasons, or any costs.

Disadvantages: The self-employed often minimize their social and health insurance contributions and do not realize their future social problems. Minimum social protection; the self-employed person is not protected by the Labor Code. High level of risk in case of economic shocks (crises). The business risk of the "employer" is also transferred to the "employee" – in the case of economic problems of the company, the "employee" – subcontractor – is the first at risk. On the contrary, in a period of economic growth, this relationship is disadvantageous for "employers", because an "employee" can leave at any time for a more advantageous job offer.

Recommendation: Probably the only way to at least partially eliminate disguised labor relations is to reduce the difference in taxation and contributions to health and social insurance for employees and self-employed persons.

2.5 Home working

Home working[11] has a long tradition in the EU. However, the development of modern technologies has significantly expanded the use of this form of employment by so-called *teleworking*. The legal regulation of home working differs among individual EU countries. In some countries, this form of employment is regulated by labor law (e.g. Greece, Poland, Portugal), however, in the Scandinavian countries, it is regulated by national collective agreements. The legal status of employees working from home is also different. Generally, home working is carried out on the basis of a standard employment relationship, but some

[11] Not to be confused with the term *home office* – this is a form of benefit where an employee who comes to work on a daily basis has the opportunity (e.g. once a week) to work on a computer from home. Therefore, home office cannot be used in all professions.

countries (e.g. Germany or the United Kingdom) also allow home working to be performed as a self-employed activity.

In the Czech Republic, home working is regulated by the Labor Code[12] and is performed on the basis of a standard employment relationship. This form of employment has also been used in the Czech Republic for many years, however, with the development of ICT, the structure of workers using it has changed significantly and this form has also expanded significantly.

In home working/teleworking, up to 90% of work is performed from home by the employee. Until a few years ago, this form of employment was used mainly by women on maternity leave or in pre-retirement age, or people with disabilities. Today, teleworking is widely used in many professions, such as graphic designers, programmers, translators, sales representatives, insurance agents, accountants, etc.

Advantages: This form of employment brings lower costs per employee to employers (e.g. in the form of savings on office operations), but also usually a more satisfied employee, and thus an increase in labor productivity. Also, for employees, teleworking means a number of advantages, especially the possibility of flexible time planning, savings on costs due to commuting, including time saving, the possibility of better work-life balance.

Disadvantages: On the part of the employer, the main disadvantage of home working is the loss of full control over the employee's work performance and also his more demanding motivation, or possible increase in the cost of IT and telecommunications tools and services. For employees, teleworking is associated mainly with the cost of their own work equipment and the disadvantage is also the limitation of social contacts, especially with colleagues in the workplace.

Recommendation: The benefits and costs of teleworking are relatively evenly distributed between employers and employees. It depends on their mutual agreement how they will proceed in concrete terms. Greater regulation cannot be recommended, it would significantly reduce the attractiveness of this form of employment on the part of both the employer and the employee. (Note: the draft amendment to the Labor Code contains a certain regulation in terms of reimbursement of costs incurred by employees in connection with teleworking by the employer.)

[12] Act No. 262/2006 Coll., Labor Code, as amended.

2.6 Job sharing

Job sharing is a modern, flexible form of work organization. In practice, one job is most often shared by two employees (there may be several employees) who work part-time. Upon mutual agreement, they must cover all the obligations associated with the job and the entire working time. Remuneration, or the benefits are then divided between them according to the time worked. In practice, the most common division is into 4 + 4, or 6 + 2 hours a day, 3 and 2 days a week, alternating every other week or after two weeks. However, they may also agree, for example, that each of them will work 2.5 days a week, or they will alternate after a week (there are a number of possible combinations). The advantage is the maximum use of working hours. However, it is important that the sharing of information needed to perform work tasks works well between the employees sharing a job. Otherwise, there may be huge issues and misunderstandings (for example, even in relation to customers – if the main duties of this job position include communication with customers). In practice, this new form of work organization is used mainly in the position of receptionists, in offices, banks, etc. It is also an effective tool for work-life balance. Job sharing is also suitable if the employee is of pre-retirement age and is interested in part-time job, or when it comes to students who want to gain experience while studying. Shared jobs are regulated by an amendment to the Labor Code, which will enter into force in 2021 (Sec. 317a). At the same time, the mentioned form of work organization has its advantages and disadvantages.

Advantages: Good substitutability, for example in the case of leaves or illness of one from the couple; there is no transfer of work to other colleagues from the workplace. Securing a job position in the event that one of the employees decides to leave the company. There is still a second employee who knows the duties at the position and can participate in the training of a new employee. The possibility of double checking for important documents (e.g. invoices) leads to the elimination of errors; possibility of feedback (employees inform each other about the fulfillment of tasks), greater variability of solutions (discussion of possible procedures). Lower workplace equipment costs – one piece of equipment for two or more employees sharing a job (e.g. one computer, one desk). Close cooperation (mutual sharing of information, mutual communication, joint fulfillment of the tasks of a given position, etc.) may lead to better work results and higher performance than in the case of traditional working hours.

Disadvantages: Especially in the initial phase, it is more difficult to set up competencies and a system of communication between employees sharing a job. Greater risk of losing data that employees share. This is usually the result of insufficient communication (or incorrectly set

communication channels). Maintaining a workplace can also be challenging. It is necessary to choose a uniform style of sorting and storing documents, a uniform style of working and communicating with other employees. It is necessary to precisely divide competencies and powers so that co-workers know who they approach in certain matters, or to avoid duplication of work. The cooperation and communication of the employees sharing the job is absolutely necessary to have a mutual overview of what each of them did (so that they can provide colleagues with up-to-date information, to act uniformly when communicating with customers, etc.). Greater demands on work organization and management on the part of the immediate superior. A senior manager must manage and lead two or more employees in connection with one job position. This brings more organizational issues (division of workload and responsibilities), increased administrative burden associated with more part-time contracts, etc. The disadvantage for employees is also low remuneration (depending on the proportion of work within job sharing), and therefore low contributions for health and social insurance, from which sickness benefits or pension are then calculated.

From practice

Job sharing is most popular in the UK, where it is used by around 46% of companies and organizations, both in the private and business sector. Vacancies are directly advertised as shared jobs and there is great interest in them. This is followed by the Netherlands, Austria, Switzerland and France, where employers use this option in about 20%. In Germany, it is allegedly 15% and only 7% in the Czech Republic. However, it is quite possible that the Czech Republic will face a similar trend in the future as in Western countries, where the number of job sharing began to grow significantly in the last decade..

Source: https://www.novinykraje.cz/blog/2020/07/24/nemuzete-pracovat-na-plny-uvazek-job-sharing-bude-mozna-prave-pro-vas/

2.7 Newly defined flexible forms of employment

In 2015, Eurofound (European Foundation for the Improvement of Living and Working Conditions) published a study that identified **new flexible forms of employment** that started gradually emerging in the European labor market since 2010. In addition to the above-mentioned job sharing, these new forms of employment are generally not legally enshrined, and their use depends entirely on the agreement between an employer and an employee. These are, for example, the following forms:

- *ICT-based mobile work* – employees can perform their work with the support of modern technologies from anywhere and at any time.
- *Interim management* – temporary management; highly qualified experts are recruited on a fixed-term contract to manage a specific project or solve a specific problem; this integrates external management capacities within the organization of work.

- *Portfolio work – a self-employed person performing a smaller-scale work for a large number of clients.*
- *Crowd employment – group employment; Employers are looking for employees and workers are searching for employment through an online platform, often involving the division of large tasks among a "virtual group" of workers.*
- *Collaborative employment – an employment based on cooperation, particularly of independent workers, self-employed persons or micro-enterprises. This form of cooperation allows overcoming the limitations arising from their size and professional isolation.*
- *Employee sharing – a group of employers hires one worker together to cover the personnel needs of different companies; the worker thus obtains full-time employment.*
- *Casual work – the employer is not obliged to provide the employee with work on a regular basis but has the opportunity to call him as needed (similar to on-call work).*

New forms of employment are characterized by certain characteristics, which can be summarized as follows:

- Job sharing, employee sharing, and temporary management provide workers with a good level of job security, including greater flexibility.
- Work performed through ICT, regardless of work location and performance, provides a high degree of flexibility, greater autonomy, but with the risk of higher work intensity, more stress and blurring the boundaries between work and private life.
- Portfolio work, group work and collaborative work allow a high degree of diversification, and thus work enrichment, which thus becomes more interesting and more motivating.

The future will be associated with greater employment flexibility. Especially with the creation of international (global) virtual work teams and the start of **collaborative work**. Rapid technological progress and a large amount of information within individual fields mean that the knowledge of one person can no longer cover the entire field of activity. Cooperation within teams thus becomes a necessity. This trend will be reflected not only at the international level, but teamwork on joint projects will also be extended within companies (interconnection of departments).

From practice

As the results of a study carried out by RILSA (2019) suggest, these new forms of employment are mostly used by university students under the age of 30 living in Prague. At the same time, some forms

are dominated by men, namely interim management, collaborative employment and work through platforms. At the same time, the data shows that experience with individual forms is often cumulative in individuals. These are mainly people for whom it is common to have more part-time jobs, or they use a combination of part-time employment contracts, agreements on work performed outside the employment relationships and self-employment.

Summary

Labor markets have undergone a fundamental change in recent years. The onset of Industry 4.0 and the development of the digital economy are accompanied by the expansion of IT technologies and the extensive use of social networks. Members of generations Y and Z who enter into employment relationships often have a different value orientation than previous generations. All this leads to a gradual transformation of the labor market, with one of the features being the fact that both employers and employees expect more flexibility from each other (Mandl et al., 2015). One form of these changes is the **move away from standard employment to atypical flexible forms of employment**. Most of these forms of employment contribute to the innovation of the labor market, to its attractiveness both for employers and a wider range of potential workers. However, some of the forms are associated with a higher degree of uncertainty for employees and the threat of precarious work. This is most often associated with casual work (agreement to complete a job, one-time purchase of a service), temporary agency work or part-time work.

The main problem is that **flexible forms of employment combined with lower security and a higher risk of job loss are concentrated in certain segments of the labor market** (part-time work predominates in women, fixed-term contracts in young people and graduates, agency work in manual workers and individuals with the lowest level of education) and **certain sectors** (manufacturing, particularly automotive, agriculture, construction). For more details on this issue, see e.g. Palíšková (2018, 2019), Kohout and Palíšková (2017).

The rapid spread of new forms of employment raises **several issues**. First, little information is yet available on their specific features and impacts on working conditions and the labor market. Second, there is generally no legal framework and therefore it depends solely on the agreement between the employer and the employee. Over time, there is also a certain shift in the content of flexible forms of employment. While relatively recently, part-time work, fixed-term employment contracts, temporary agency work, flexible working hours, etc. were still considered flexible forms of employment, i.e. forms of employment based on a still standard employment contract, which establishes an employment relationship between an employee and

an employer according to the Labor Code, the "new forms of employment" may no longer meet this characteristic.

Trade unions in EU countries (including the Czech Republic) fear that the digitization of the labor market will quickly lead to a significant reduction in employee protection and, in general, to a deterioration of working conditions (Drahokoupil, 2017). This threat mainly concerns employment through platforms, where employees hardly reach the minimum wage, mainly due to the time costs of finding and obtaining fragmented work tasks, as well as the decline in wage demands in the global labor market. In a study focused on this topic, Šulc (2017) emphasizes that while trade unions have so far fought the phenomenon of the Schwartz system, it is now a turbo Schwartz system or a second-generation Taylorism.

It is worth noting another aspect that appears in connection with the digitization of the labor market. Fragmented job opportunities, portfolio work, the ability to commit quickly, but also to get out of a job opportunity do not allow for linear job development and career growth, but rather lead only from one job opportunity to another. As Kotýnková (2015) states, the personal as well as work life of an individual thus loses a clear time structure and in this scheme, it is then easy to slip into the so-called precarity.

Last but not least, it is necessary to mention the fact that new flexible forms of employment bring with them new forms of uncertainties, in particular, the loss of privacy, which can result in new forms of bullying in the workplace (mobbing, bossing, etc.).

Recommendation

A broad opportunity is opening up for trade unions and other social partners. It will be necessary to answer a number of questions, such as: How to ensure greater flexibility and inclusion of the labor market? How to prevent standard forms of employment from being replaced by forms that are associated with a high risk for employees? How to ensure adequate social protection and working conditions? How to legalize undeclared work?

First of all, it would be appropriate to precisely define the individual new forms of employment to make their meaning clear, what is characteristic of them, what is the proportion between flexibility and security, etc. This will facilitate communication between stakeholders, especially at national level. Probably, something similar should be created at European level, as it would facilitate the exchange of information and experience in the given field and eliminate ambiguities as to what exactly to imagine under each of the new forms of employment.

For those forms of employment that are associated with higher insecurity for employees (especially casual work), it would be appropriate to introduce a system of protection. This could be included in collective agreements, or in legislation.

Any future regulation of new forms of employment should be done with caution, based on a deeper understanding of the consequences. Regulation that is suitable as a form of protection against employment polarization will certainly not be suitable for such flexible forms of employment as ICT-based mobile work.

3. Impacts of anti-pandemic measures on the labor market in the context of flexible forms of employment

It is already clear today that measures against the coronavirus COVID-19 pandemic are being negatively reflected in economic development and will have a significant impact on labor markets in the future. A global economic recession can be expected. It is very difficult to predict future development, however, using available data and analogy with the crisis in 2008, it is possible to point out some trends.

Despite the efforts of government programs to prevent rising unemployment, **the differences between labor market segments are likely to deepen**; disadvantaged groups (i.e. **young people, graduates, women, people over 50 and individuals with low levels of education**) will feel the greatest impact. For more details on this issue, see also Palíšková (2019). These segments show a long-term lower level of employment, higher unemployment and, at the same time, they show **a higher percentage of flexible forms of employment**. It is these groups in the labor market that are traditionally most at risk of losing their jobs. Statistical data from the period of the economic crisis (2008 onwards) confirm this hypothesis (for more details, see also e.g. Palíšková, 2014). It should be noted that there are significant differences between EU countries, but these trends apply to all countries.

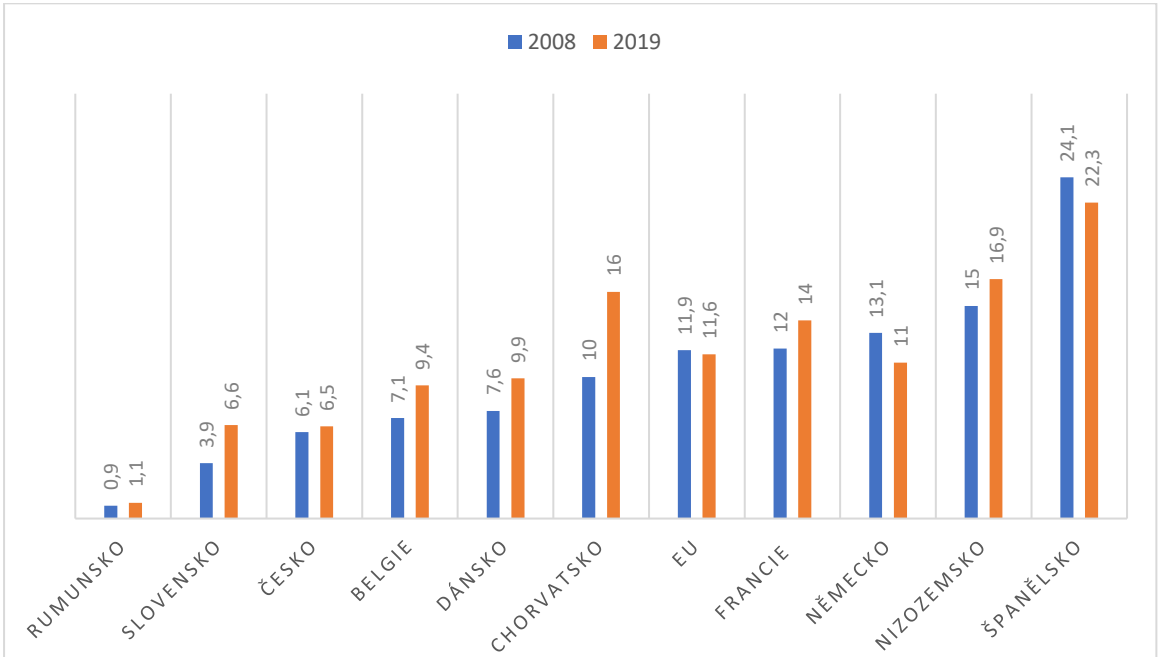
Unlike a number of European countries (e.g. Spain, Italy, France, etc.), the development in the Czech labor market after 2008 was associated with low unemployment; in the last five years with a lack of workers at all levels of employment. In the last year, this situation prevented some companies from even accepting new projects and expanding production. At the same time, **forms of employment have changed in the last decade, towards greater flexibility** (throughout the EU, including the Czech Republic). There has been an increase in fixed-term

and part-time contracts. The number of self-employed persons has increased significantly on the Czech labor market. See Figures 3.1 to 3.3 for details.

It can be assumed that the implemented measures against the pandemic will further increase the uncertainty, which will lead to an increase in the percentage proportion of part-time and temporary jobs, or work in the Schwartz system.

Figure 3.1 shows the development of the proportion of employees with a fixed-term employment contract in selected EU countries. On average, there has been a slight decrease in fixed-term employment contracts within the Union (but especially in countries such as Spain, Slovenia and Portugal, where there is a high proportion of such contracts), or only to a slight decrease in other countries (e.g. Lithuania, Latvia, Hungary), where their occurrence is sporadic. In a total of 18 EU countries, there has been an increase in this flexible form of employment. In the Czech Republic, the proportion of fixed-term employment contracts has increased only minimally in the last decade, by 0.4 b.p.

Figure 3.1 Development of the number of employees with a fixed-term contract (15–64 years, in %)



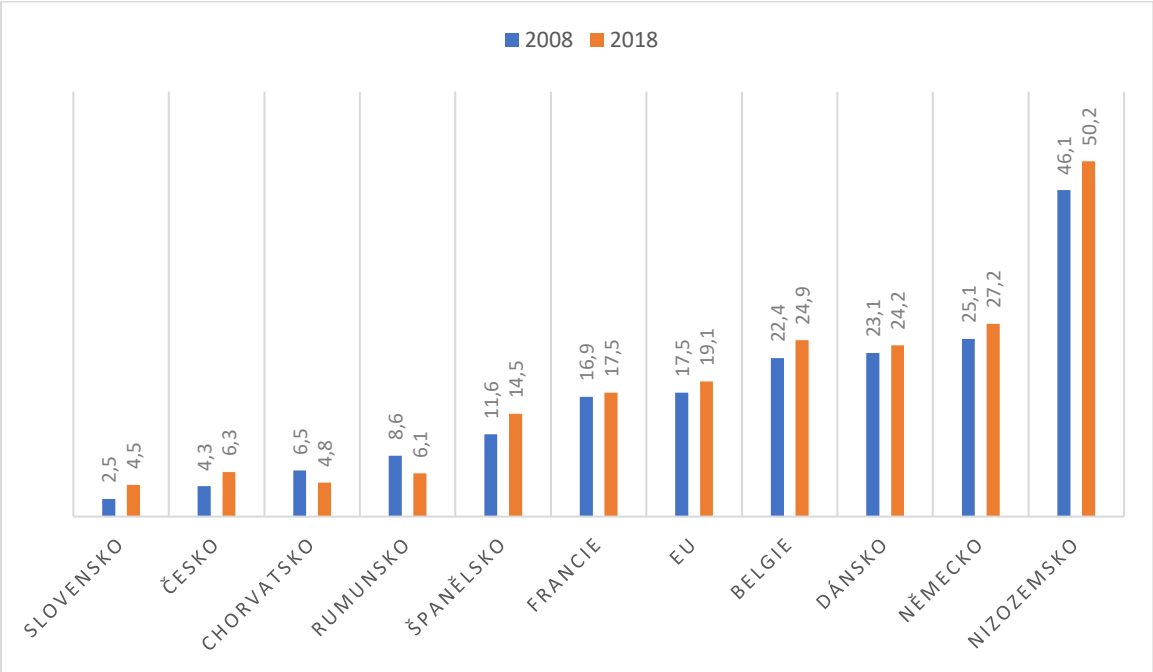
Romania, Slovakia, Czech Republic, Belgium, Denmark, Croatia, EU, France, Germany, Netherlands, Spain

Source: Eurostat Database (2020), own calculation

In terms of part-time work, their growth across EU countries has been higher (for more details, see Figure 3.2).

With the exception of five EU countries (Bulgaria, Croatia, Lithuania, Latvia, Romania and Luxembourg), part-time work has become more widespread in all Member States. In the Czech Republic, the use of part-time work increased by 2% in the observed decade, however, it is still insufficient, and the Czech labor market rather suffers from the lack of part-time work.

Figure 3.2 Development of the number of part-time employees (15–64 years, in %)

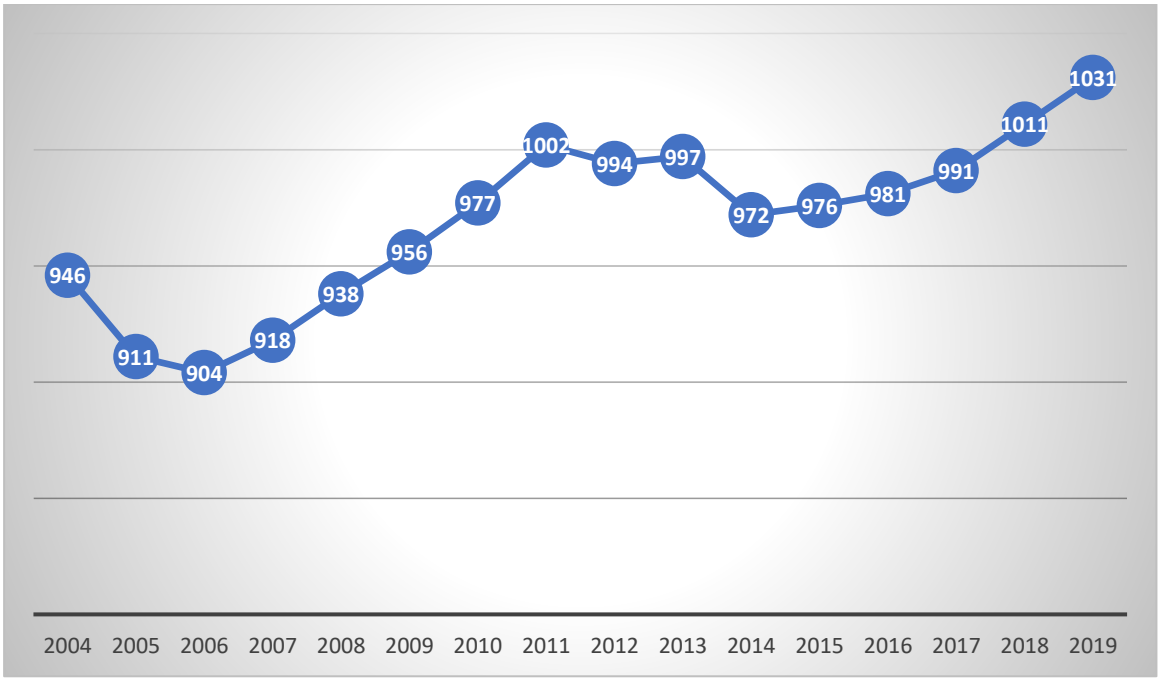


Slovakia, Czech Republic, Croatia, Romania, Spain, France, EU, Belgium, Denmark, Germany, Netherlands

Source: Eurostat Database (2020), own calculation

As mentioned above, **a high number of self-employed persons is typical for the Czech labor market**. The development of the number of self-employed persons over the last 15 years is shown in Figure 3.3.

Figure 3.3 Development of the number of self-employed persons in the Czech Republic (2004–2019, in thousands)



Source: Czech Social Security Administration (2020), own calculation

As for the increase in secondary self-employment activity, the number is the highest in history, while the number of primary self-employment activity still does not reach the maximum from 2009–2011 (see Table 3.1). The main reason for this development was the rapid growth of the economy and the lack of workers. Many employees thus had the opportunity to earn extra money to their main job by working on a trade license. This development is clearly visible in Figure 3.3 – in the last quarter of 2014, there was a turning point in economic development and the period of recession was replaced by economic growth. As the CSSA data suggest, women after maternity leave had the largest proportion in the increase in secondary self-employment, women 55+ and women earning extra money in addition to primary employment. In recent years, a significantly predominant number of women start new business than men.

Table 3.1 Development of the number of self-employed persons in the Czech Republic

as of December, 31	Primary self-employed	Secondary self-employed	Total
2019	598 086	433 279	**1 031 365**
2018	590 705	420 650	**1 011 355**
2017	582 226	409 218	**991 444**
2016	577 818	403 537	**981 355**
2015	578 544	397 408	**975 952**

2014	586 112	386 244	**972 356**
2013	602 395	374 833	977 228
2012	627 596	366 492	994 008
2011	649 990	351 774	1 001 764
2010	640 406	336 663	977 069
2009	648 941	306 718	955 659

Source: CSSA (2020), own calculation

However, the increase in self-employment (primary and secondary) also expresses a certain shift in values. In particular, members of Y and Z generations place more emphasis on work-life balance than previous generations. Among young people, there is also a reluctance to stay working for a long time for one employer, they long for independence, many start a business. A new form of business is the so-called **freelancing**.

From practice – freelancing

In 2015, the Navolnenoze.cz portal organized a unique survey with a representative sample of 2,300 respondents focused on the attitudes and opinions of independent professionals (freelancers). The majority (86%) are self-employed (self-employed), as well as owners of small s.r.o. (16%), specialists hired for projects on a contract basis, users of photobanks and online platforms (e.g. Fler or Airbnb).

The distribution of freelancers' field in the Czech Republic is similar to elsewhere in the world, with a predominant representation of creative and technical professions, language services, marketing, education or consulting. These are often better paid professional activities with higher qualifications, often performed primarily on a computer. As many as 56% of surveyed respondents have a university degree, which is more than four times the national average. This indicates a significant shift in the career orientation of the middle class and the so-called white collars (formerly corporate employees).

What is their motivation and why are they getting into the precarious waters of business? There are probably many reasons, but the emotional ones predominate: 97% state that as freelance they feel the same or are happier (74%) than before. They most often appreciate flexibility and freedom (86%), that they do what they enjoy (75%) and are their own masters (74%).

The profile of a typical independent professional is as follows:

- 97% say that as freelancers, they feel the same or are happier (74%) than before;
- 96% started their business either without capital or from their own and family savings;
- 92% state the payment morale of clients to be decent, very good or excellent;
- 90% work at least occasionally on weekends and holidays;
- 88% spend half, most or all of their working time on a computer;
- 86% evaluate their financial situation as adequate to very good;
- 86% consider flexibility and freedom to be the biggest advantage of freelancing;
- 86% are sole-traders and other self-employed persons;
- 85% speak English;

- 82% work commonly at home;
- 81% respond to demand within 1 working day;
- 80% have a freelance job as their main source of income.

The fact that more and more qualified professionals work as "freelance" and prefer business flexibility is a global trend, which is confirmed by a number of independent studies (e.g. the study of the American Freelancers Union).

Source: https://navolnenoze.cz/blog/vysledky/

3.1 Employees vs. Self-employed

Government measures against unemployment (Antivirus program, kurzarbeit) **are primarily focused on employees and job retention. The protection of the self-employed is** significantly **lower** and **individuals working on the basis of an employment relationship outside the employment relationship** (i.e. on the basis of an agreement to complete a job or an agreement to perform work) **and agency workers** are completely excluded from any protection. The position of employees with a fixed-term and part-time employment contract is also less stable.

Employees

Employees are **protected by the Labor Code** and consequently by the protection of the social-law system. However, the Czech Republic has long demonstrated a relatively large *difference in the status of employed women and men* (for more details, see, for example, Palíšková, 2019). While around 10% of men do not work on the basis of a standard employment relationship (i.e. a full-time indefinite employment contract), in women, this proportion reaches 15% (EU-SILC, 2018). Both cases are represented by younger people (men under 30, women under 39). At the same time, the largest proportion of non-standard working relationships is among mothers with children under 9 years of age – one-fifth.

Self-employed persons

The self-employed are **minimally protected**. There is also a significant *difference between* self-employed *men and women*. While almost 17% of men in the Czech Republic has self-employment as a primary activity, for women, it is only around 8% (EU-SILC 2018). At the same time, men work mainly in the positions of craftsmen and on construction sites, while women predominate in the area of services (especially in tourism, catering, accommodation, hairdressing and beauty services, etc.), i.e. in the areas of business most affected by the consequences of the pandemic. **The government's decision to suspend some services in the**

spring affected self-employed women rather than men. Most women do business activities (or are employed) in the worst-affected tourism sector. For example, the position of guide is occupied by 80% of women, among receptionists of hotels and other recreational facilities, women represent 83% of the total number. As many as 89% of women work in the field of professional rehabilitation care. In the fields of hairdressing and cosmetics, women make up the vast majority (CZSO, 2019).

Table 3.2 shows the difference in the perception of the impacts of emergency government measures by employees and self-employed persons. These are the results of a survey conducted by the CZSO in the second quarter of this year.

Table 3.2 The difference in the perception of the impacts of emergency measures by employees and self-employed persons

Employees	Self-employed persons
43 % feels negative impacts on the employer	**60 %** feels negative impacts
35 % temporary impacts on the employee	**43 %** temporary problems
8 % impacts threaten the employee's job position	**17 %** serious impacts threatening their business
57 % does not feel negative impacts on the employer	**40 %** does not feel negative impacts

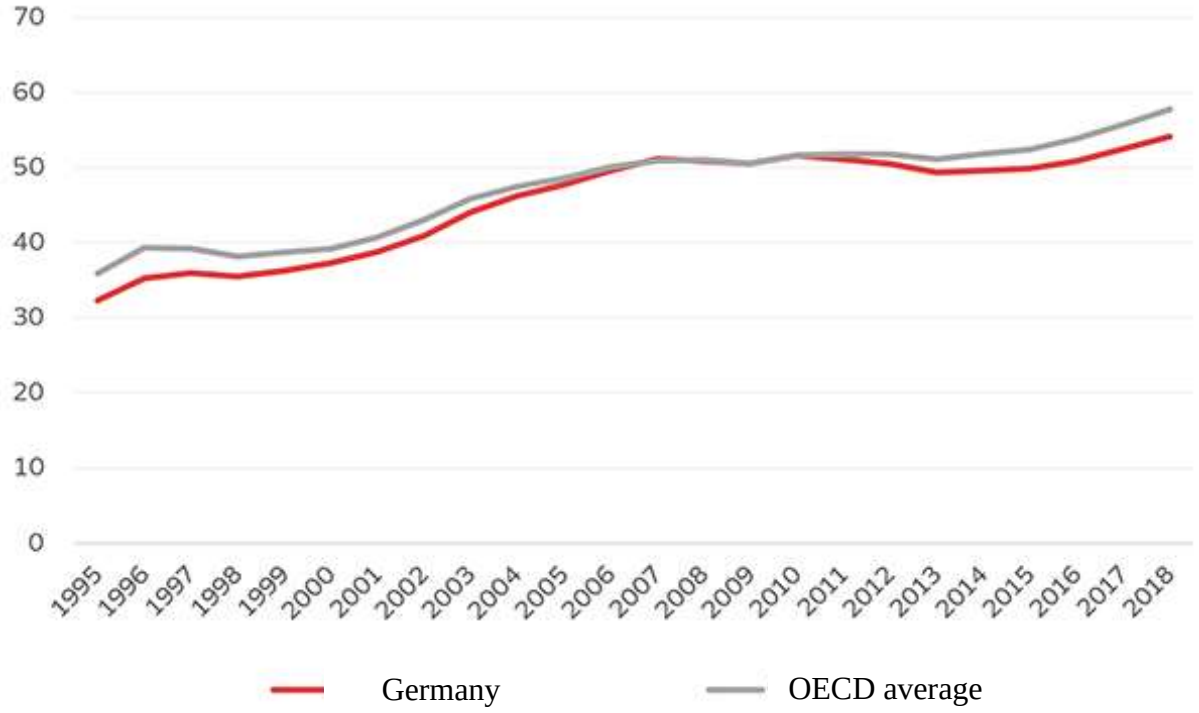
Source: CZSO (2020), own calculation

It is immediately apparent from the above table that employees perceive the negative impacts of the measure more moderately; the self-employed suffer the adverse consequences far more. The results of the survey also showed large differences between sectors and regions.

3.2 Work for low wages

Wages in the Czech Republic, similarly to other Central and Eastern European countries, have a **long-term low level** compared to the original EU member states. Although the wage gap is gradually decreasing, the process is very slow and large differences still persist. According to OECD data, in the mid-1990s, the Czech wage level was around 30% of Germany's wage level; it is currently at around 55% (Figure 3.4).

Figure 3.4 Development of the average wage in the Czech Republic as a proportion on the average wage in selected countries (in USD, in PPP, in %)

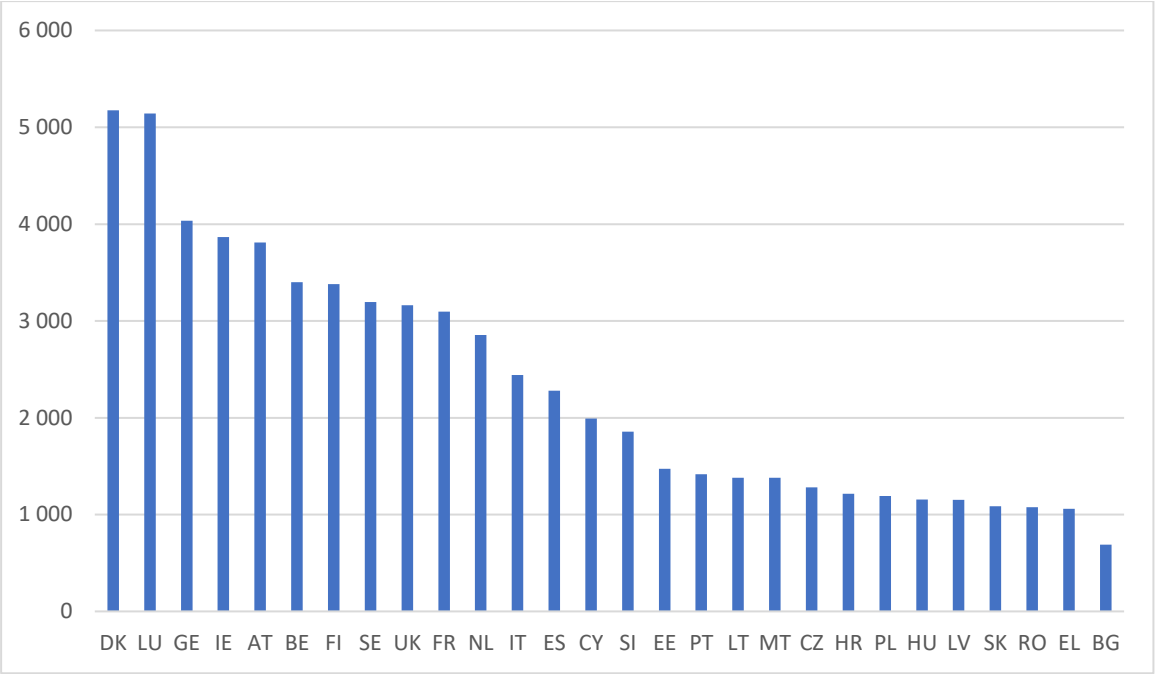


Source: Fialová (2020)

As can be seen from the available data, the dynamic increase in wages, and thus the faster closing of the wage level gap, can be observed until 2009. Then, due to the economic recession, this trend stopped and continued only after 2014 (with economic recovery) until the beginning of this year. In the future, we can expect wage freeze and stagnation in the Czech Republic, or its reduction, and thus a slowdown in approaching the wage level in the Czech Republic to developed EU countries.

The current differences in the wage level in individual EU countries are well illustrated in Figure 3.5.

Figure 3.5 Average gross monthly wage in individual EU countries (June 2020, in EUR)



Source: Eurostat Database (2020), own calculation

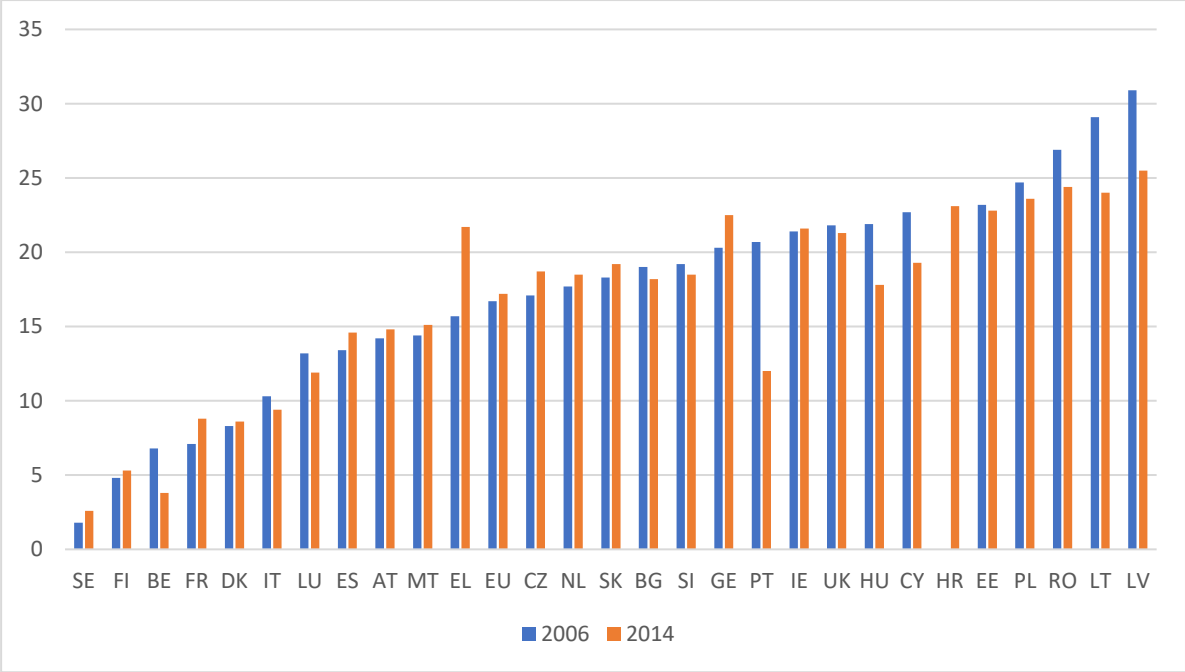
Notes: DK - Denmark, LU - Luxembourg, GE - Germany, IE - Ireland, AT - Austria, BE - Belgium, FI - Finland, SE - Sweden, UK - United Kingdom, FR - France, NL - Netherlands, IT - Italy , ES - Spain, CY - Cyprus, SI - Slovenia, EE - Estonia, PT - Portugal, LT - Lithuania, MT - Malta, CZ - Czech Republic, HR - Croatia, PL - Poland, HU - Hungary, LV - Latvia, SK - Slovakia, RO - Romania, EL - Greece, BG - Bulgaria.

The Figure shows that there are large differences in the amount of gross monthly wage between EU member states. While in Denmark and Luxembourg it exceeds EUR 5,000, in Germany EUR 4,000, in Bulgaria it is only EUR 690. In the Czech Republic, it is at a very low level, namely EUR 1,280.

In addition to the low wage level, the Czech Republic also shows a very **low wage share in value added**. This indicator expresses how the generated income (wealth) in society is divided between wages and profit (measured as a share of GDP). Compared to the original EU member states, but the countries in the region, the above indicator reaches low values in the Czech Republic (approximately 55% in 2018, approximately 65% in Germany). In the period of economic growth, the low or declining wage share is not reflected, among other things, into an adequate improvement in household incomes. According to Fialová (2020), low wages allow for increasing the profits of companies in order to increase investment activity and thus, indirectly, creating new job positions. However, research shows that in developed countries, the shift of generated income towards capital (profit) has not been accompanied by growth of investment. The declining share of labor income thus had a negative impact on private consumption and led, among other things, to a higher dependence on household loans.

Another worrying trend in wage developments in the Czech Republic (and in the EU as a whole) is the **growth of the share of low-income wages** (see Figure 3.6).

Figure 3.6 Development of the share of low-income wages (% of the total number of wages, EU)



Source: Eurostat Database (2020), own calculation

Comments: SE - Sweden, FI - Finland, BE - Belgium, FR - France, DK - Denmark, IT - Italy, LU - Luxembourg, ES - Spain, AT - Austria, MT - Malta, EL - Greece, EU - European Union , CZ - Czech Republic, NL - Netherlands, SK - Slovakia, BG - Bulgaria, SI - Slovenia, GE - Germany, PT - Portugal, IE - Ireland, UK - United Kingdom, HU - Hungary, CY - Cyprus, HR - Croatia, EE - Estonia, PL - Poland, RO - Romania, LT - Lithuania, LV - Latvia. Data for Croatia for 2006 are not available.

Data on low-income wages is published by Eurostat in longer time intervals; newer data is not yet available. A low wage is considered to be a wage of up to two-thirds of the median wage. From Figure 3.6 it is evident that within the EU, the share of low-income wages increased on average over the reviewed period. The differences between countries are again large (from 2.6% in Sweden to 25.5% in Latvia). The largest increase in low wages in the reviewed period was in Greece, which has been facing major economic problems since the 2008 crisis, as well as in Germany and the Czech Republic. **The share of low wages in the Czech Republic is slightly above the EU average** (which is 17.2%) and reaches 18.7%. So **almost one-fifth of workers receive low wages!**

Typically, **low wages are also accompanied by higher income instability**. This is mainly due to the fact that they **occur more often in connection with precarious forms of work**, i.e. part-time work, fixed-term employment contracts, temporary agency employment, agreement work,

or with participation in the "gray" informal economy. Workers with low wages usually also have lower social protection and are among the first to lose their jobs in the event of an economic recession. It can therefore be stated that in a **period of economic recession, the adverse consequences affect the group of low-income workers more than others.**

A number of studies (e.g. also Palíšková, 2019) show that **women predominate** among employees with low wage. In the Czech Republic, the proportion of women working for low wages is almost three times higher than that of men. Another group with a higher low-wage share is older people over 45. However, the obtained level of education plays really a key role.

Low wages **also increase the risk of at-risk-of-poverty households**. This is also related to the growth of household indebtedness and the rapid increase in the share of debtors in enforcement. This negative trend was evident in the Czech Republic even before the outbreak of the pandemic. Deepening of the trend may be expected in the future.

Summary

As follows from the above analysis of selected indicators (due to the scope and focus of the study, it was not possible to go further in depth; however, for the purposes of this work, the indicated trends and issues are sufficient), the number of flexible working relationships has increased in the last decade. At the same time, it can be assumed that due to the deteriorating economy, labor flexibility will further grow.

Developments in recent months have shown that **flexibility is in many cases a suitable and desirable tool for adapting to changes**. For example, employee sharing platforms have become effective; for example, the StartupJobs project helped companies in financial difficulties place their employees temporarily in companies that, on the contrary, obtained new projects and did not have enough employees for their realization. Newer, alternative types of employment, such as job sharing, temporary management, casual work, portfolio or mobile work, will also expand in the future.

On the other hand, there are flexible forms of work that are concentrated in certain segments of the labor market (women, older workers, graduates, workers with low qualification) and which are **associated with precarious work**, i.e. with lower security on the labor market, lower legal protection against dismissals and lower wages. The combination of higher uncertainty, higher wage volatility and lower wages can lead to households being at risk of poverty, lower living standards and thus other related issues (non-payment of rent, debt, bankruptcy, social exclusion, etc.).

From the above stated, it can be assumed that **differences in the workforce will further be increasing**. Those workers who have the required knowledge and skills will be able to demand higher wages, teleworking and attractive benefits, including further training and personal development. In contrast, employees with less sought-after skills and a low level of education will have to count with greater risks (e.g. reduction in wage or even dismissal).

Recommendation

In the short and medium term, a combination of several measures may help maintain employment and acceptable wage levels, including income stability in vulnerable groups of workers.

The Antivirus program and the related kurzarbeit (i.e. a system of subsidies for time-limited reduction of employees' working hours) in combination with a system of social benefits (linked to active participation in the labor market and unconditional employment). In order for kurzarbeit to be effective and not lead to a large reduction in wages (and thus to a significant reduction in the purchasing power of the population, which would further worsen the situation in the economy), it is necessary to set the parameters appropriately. According to the author's opinion, ceiling the support up to the average wage (currently discussed) is not appropriate. Mainly employees of companies that pay better or have qualified employees would be disadvantaged. Any decision should first and foremost motivate employees to further education – not the other way around.

Trade unions should focus primarily on increasing job security for the most vulnerable groups of workers. The path of education and development is not simple, but effective, either within the framework of in-company training or active employment policy (retraining). Acquiring the required knowledge and skills significantly increases job security and the possibility of finding a job for a higher wage. Workers with flexible working relationships should have the possibility to participate in in-company vocational training and development.

It would be appropriate to reduce the low wage share, as low wages combined with relatively high social benefits and benefits do not motivate individuals to return to the labor market or to be willing to further education. Thus, they often prefer to work in the "gray zone". Their contributions to health and social insurance are minimal, which is later adversely reflected in the amount of retirement pension.

The Czech Republic has long been one of the countries with high labor taxation. The abolition of the super-gross wage is a suitable way to reduce the tax burden on employees with low wage

(according to Eurostat, the tax burden on employees with an average wage was 43.8% in the Czech Republic in 2018 (the EU average was 39.9%). Even greater differences were in the taxation of employees whose wages reached only half of the average wage (in the Czech Republic 38.9%, the EU average 31.9%).

The future goal should be primarily to maintain inclusion in the labor market, i.e. to prevent increasing differences between individual segments, reduce the share of low-income labor and maintain stable domestic demand.

Achieving this uneasy goal will require the cooperation of all the institutions involved (representatives of trade unions, companies and the government).

4. Regulation of new forms of employment in labor law legislation (selected institutes)

4.1 Shared workplace

4.1.1 Legislation

The institute of shared workplace was enacted by a novelization of the Labor Code as amended by Act No. 285/2020 Coll., amending the Act No. 262/2006 Coll., Labor Code, as amended, and some other related acts, with effect from January 1, 2021.

Among other things, the statutory legal regulation stipulates:

- An employer may enter into agreements with two or more **part-time employees with the same type of work**, according to which **employees will schedule** working hours into shifts upon mutual agreement, so that each of them, on the basis of a common working time schedule, will complete the average weekly working time **no later than in the four-week compensation period**.
- The sum of the weekly working hours of employees in one shared workplace **must not exceed the length of the set weekly working hours**; however, this does not apply in the case of employee representation.
- Agreements must be concluded **in writing** with each employee and must include **more detailed conditions** for scheduling the working hours.
- Employees involved in a shared workplace are required to submit to the employer **a common written schedule of working hours** at the shared workplace, at least **one week before the beginning of the period** for which the working hours are scheduled. If the employees do not submit a common working time schedule, the employer shall schedule the working time into shifts without undue delay.
- Employees are obliged to inform the employer in writing of **any changes** to the schedule **at least two days in advance**, unless they agree with the employer on another time of notification.
- The employer may require the employee to **represent** an absent employee in the same shared workplace only if the employee has given his **consent** in the agreement or for a specific case.
- The obligation under the agreement may be **terminated by a written agreement** between an employer and employee on the agreed date; an employer or employee may also **terminate** this obligation **in writing** for any reason or without giving any reason,

on 15 days' notice beginning on the date on which the notice was given to the other party.

- **If the obligation** under the agreement of at least one employee **expires**, **the working regime** of the shared workplace will apply to the other employees in the same shared workplace (only) **until the end of the current compensation period**.

4.1.2 Possible negatives – examples

4.1.2.1 Type of work and conditions under which the agreed type of work is performed

Following from the legal diction, in order for an agreement on a shared workplace to be concluded with employees, the **same type of work** must be agreed with them. However, it cannot be ignored that every single type of work performed for an employer **is performed under specific working conditions**, which may not be identical for all employees.

This may, for example, include

- consent to go on business trips (cf. the provisions of Sec. 42, or Sec. 240 para. 1 of Act No. 262/2006 Coll., Labor Code, as amended, in the following as the Labor Code); The second provision cited applies to pregnant female workers, female and male workers caring for children under the age of 8, provided that such female and male workers may be instructed to go on a business trip outside the municipality of their workplace or residence only with their consent.

  Whether it is a general consent granted pursuant to the provisions of Sec. 42 or a consent granted with reference to the provisions of Sec. 240, para 1. of the Labor Code, there is no doubt that the consent granted by individual involved employees does not have to be granted under exactly the same conditions.
- consent to possible overtime work for employees with shorter working hours (cf. Sec. 78 para. 1, letter i) of the Labor Code, which stipulates that employees with shorter working hours cannot be instructed to work overtime);
- ability to perform a given type of work with regard to possible prohibitions on the performance of work in specified cases, with regard to capabilities and health condition (cf. the provisions of Sec. 103, para. 1, letter a) of the Labor Code).

Selecting employees who will be able to participate in the performance of work in a shared workplace in the future **cannot be a formal process**:

- The employer will have to take into account, in particular, a number of contexts and conditions expressed in the employee's consent, if such consent is required by statutory provisions.
- The employer shall also assess, in particular, whether
  - all eligible jobseekers (employees) meet the requirements set by legislation and the requirements set by the employer for the performance of the agreed type of work (it can be assumed that it will be necessary to supplement or adjust the requirements for work within a shared workplace);
  - none of the eligible job seekers (employees) have a formal or factual obstacle preventing him from performing work within the shared workplace;
  - all eligible jobseekers (employees) are gifted with such social skills that will enable them to work within a shared workplace.

The described procedures of the employer cannot be eliminated by a change in legislation. Therefore, considerations de lege ferenda are not proposed in this context.

4.1.2.2 Shared workplace administration / increased costs

Compared to the standard situation, the application of the legislation of the shared workplace will represent an **increased administration** in several ways:

- An agreement on shared workplace must be concluded with all involved employees (instead of one employment contract with one employee in the case of an employment relationship set for a weekly working time).

  As mentioned above, each employment contract concluded with the involved employees must take into account the specific working conditions under which they are to perform work in the shared workplace. It will therefore not be possible to use the standardized text of an employment contract, but it will be necessary to draw up employment contracts with the involved employees ad hoc.

- The administration/costs in relation to the processing of the personnel and payroll agenda will increase – this will be reflected not only in the external processing of the personnel and payroll agenda if the supplier charges a price based on the number of employees to whom it processes the personnel and payroll agenda. However, an

increase in the number of employees of a given employer, and thus an increase in wages and other personnel costs incurred on them, cannot be excluded.

- The costs of ensuring safe and healthy work conditions will increase – for example, costs
  - for entry, periodic and other prescribed medical examinations;
  - for the provision of personal protective equipment;
  - for regular training in legal and other regulations on work safety and health (including verification of acquired knowledge) and others.

If an employer is to apply shared workplace, the stated possible increased costs cannot be eliminated by a change in legislation. Therefore, considerations de lege ferenda are not proposed in this context.

4.1.2.3 Provision/non-provision of leave in the event of obstacles to work on the part of the employee

If there is an obstacle to work on the part of the employee who is to perform the work according to the written schedule that is not governed by any law (the so-called unqualified obstacle), such employee will need to be represented by another involved employee. Although the employer may require another employee to represent the absent employee, but only if this has been previously agreed, or if the addressed employee agrees with the performance of work in such a case ad hoc.

It can be expected that the employer will not be so benevolent in providing leave in these cases not to rely on the will of other employees to represent the absent employee.

In this context, it is possible to make comparisons regarding the performance of employees with agreed shorter working time than the predetermined weekly working time, but these employees do not share the workplace with other employees.

As known, employees with less than the predetermined weekly working hours cannot be instructed to work overtime (cf. the provisions of Sec. 78, para. 1, letter i) of the Labor Code). However, the legislation does not address the performance of work within the so-called hours to the working time (these hours are in practice also referred to as the so-called additional hours). Specifically, the legislation does not stipulate that the employer must agree with these employees to perform overtime work within a predetermined weekly working time. In practice,

it may commonly be seen that employers commonly instruct employees to perform work within these “hours to the working time”.

If an employee performing work within a shared workplace has to agree to any extra work, not only overtime but also with work within the “hours to the working time”, it will be unequal treatment of employees with shorter working time who share the workplace with other employees versus those who are contracted for a shorter working time but do not share the workplace with anyone else.

To eliminate the described inequality between employees with shorter working hours, it is possible to consider legislative changes in such a way that the consent to represent an absent employee is not required.
This is an amendment to the provisions of Sec. 317a, para. 4 of the Labor Code, as amended, effective from January 1, 2021.

4.1.2.4 Handover of work/workplace/information

The ways of handing over work/workplace/information between the involved employees can also be considered a certain negative.

In the case of information, it may be, for example, the transmission of information from meetings organized by the employer, in which only the employee performing the work at the time of the held meeting. The way of transmitting information can of course be agreed with all involved employees, but for employees transmitting information from meetings, it will be extra work, i.e. work to the detriment of the performance of work, which was agreed with him in the employment contract.

If there were considerations that all interested employees would take part in the meeting, then such a procedure is possible, but the fact that this procedure will reduce the time that employees could devote to the work for employers agreed with them in the employment contract, may not be overlooked.

Given that this is a way of organizing work belonging to the employer, considerations de lege ferenda are not proposed in this context.

4.1.2.5 Extinguishment of the obligation of one of the involved employees – uncertain legal status of employees

If one of the involved employees terminates an agreement on shared workplace, it will be up to the employer to decide whether he will be interested in replacing this employee and continuing in the shared workplace regime, or whether he will not proceed to it for various reasons. The fact that if the obligation under an agreement of at least one employee expires, the working regime of the shared workplace will apply to other employees in the same shared workplace (only) until the end of the ongoing compensation period, may not be overlooked here.

In this context, these basic possibilities may arise:

- **The employer will have a replacement for the employee who terminated the agreement**.

  In such a time horizon so that this "new" employee is available before the agreed compensation period expires.

  In this case, the shared workplace regime will continue.

- **The employer will not be able to replace the employee who terminated the agreement by the end of the compensation period**.

  As mentioned above, the shared workplace regime in such a case will end at the end of the compensation period, i.e. that the employment of all involved employees (including the employee who terminated the agreement on shared workplace) continues.

  This means that here it is the employer's competence to determine the period within which employees originally involved in the shared workplace perform the work, which may be contrary to their interests (employees could enter into an employment relationship with the employer precisely so that they could determine the time of work performance in the shared workplace themselves).

It cannot be overlooked that the will of one of the employees can significantly affect not only the legal status of the other involved employees, but also the organization of work, which is in the exclusive competence of the employer.

Legal uncertainty on the part of the employer may be manifested in several ways:

- regarding how the work performance corresponding to the shared workplace will be carried out in the future, as well as
- what work will be performed and in what regime by the employees who originally shared the workplace.

The second indent concern the question of whether the employer will be able to assign work to these employees according to an employment contract, i.e. in a job position other than a shared job, within the agreed shorter working hours. The employer may also reach a conclusion that these employees will cease to be placed in a formalized workplace and decide whether they have not become redundant for him.

Given that the provisions of Sec. 52, letter c) of the Labor Code states as the reason for dismissal by the employer, inter alia, the employer's decision to reduce the number of employees, not the employer's decision to abolish the job position, it can be considered that in the case described, the reason for dismissal due to redundancy will be fulfilled.

To remove these uncertainties, the idea of amending the legislation in such a way to see whether the termination of the shared workplace regime should not be linked to the termination of the employment relationships of the involved employees (within a reasonable timeframe, unless otherwise agreed by the parties).
It would be a supplement to the provisions of Sec. 48, para. 1 of the Labor Code, or a specifying, added provision.

While this proposal may seem like a solution to the detriment of the employees involved, in this context, it should be understood that the involvement in a shared workplace is perceived as an ancillary employment that bridges a specific life situation of the employees involved.

Summary

Only employees with shorter than predetermined weekly working hours may share a workplace, and their total working hours may not exceed the predetermined weekly working hours.

The shared workplace regime can be agreed in an employment contract or in a separate agreement; if the duration of this regime is not defined, it holds that it has been agreed for an indefinite period.

The basic attribute of performing work within a shared workplace is the fact that the involved employees will schedule their working hours into shifts on the basis of mutual agreement; this agreement must be in writing and must be submitted to the employer no later than one week before the start of the compensation period. The compensation period is a maximum of four weeks.

This is another exception to the basic rule, which stipulates that the working hours are scheduled by the employer, in addition to flexible working hours (subject to the so-called basic working hours – cf. Sec. 85, para. 2 of the Labor Code) and performance of work a place agreed with the employee other than the workplace of the employer according to the provisions of Sec. 317 of the Labor Code).

In the event that employees do not agree on the schedule of working hours, the competence to schedule working hours passes back to the employer.

Only employees with whom the same type of work has been agreed can share one job position. To avoid possible irregularities, it is most appropriate that the agreement should not only concern the type of work, but also the working conditions under which the involved employees perform the work for the employer.

The agreement on shared workplace may be terminated by an agreement, or it may be terminated without giving any reason or for any reason; the notice shall be subject to a 15-day notice period beginning on the date on which the notice was delivered to the other party.

If the obligation under the agreement of at least one employee expires, the working regime of the shared workplace shall apply to the other employees in the same shared workplace until the end of the current compensation period.

The employment of the involved employee (employees) does not end with the extinguishment of the obligation or the termination of the shared workplace regime.

It is only possible to instruct an employee to represent an absent employee only provided that this option has been agreed with the employee, or if the employee gives an ad hoc consent.

By applying the shared workplace regime, the competence to schedule working hours is transferred from the employer to the involved employees, but on the other hand, it can be expected that his operating costs will increase in several ways.

An employee whose obligation to the shared workplace extinguishes from the originally concluded agreement will find himself in a precarious legal status, particularly if the employer replaces him with another employee. The employment relationship of this employee will continue, or does not end, but the employee may become redundant for the employer.

See above for suggestions on individual possible negatives.

4.2 Work in a different location agreed with an employee than the employer's workplace

4.2.1 Legislation

Working in another location agreed with the employee than the employer's workplace, i.e. the institute known as the "**home office**" or "**home working**", is nothing new in labor legislation. Only the designation was different – the Labor Code of 1965 (Act No. 65/1965 Coll., as amended) referred to employees who did not work at the employer's workplaces, but according to the conditions agreed in the employment contract performed the agreed work for him at home during working hours, which they scheduled themselves, as the so-called **domesticated employees** (cf. the provisions of Sec. 267, paras. 2 and 3 of the cited Act).

Domesticated employees are also mentioned in the effective Act No. 187/2006 Coll., on Sickness Insurance, as amended, in the following as the "Sickness Insurance Act", which entered into force on 1 January 2009, in the provisions of Sec. 3, letter n).

The effective Labor Code regulates "home working" in the provision of Sec. 317, while from the legal diction contained in this provision it is possible to deduce the following:

- Home working **cannot be instructed to the employee**, but can **only be agreed with** him; this agreement may be agreed both with an employee performing work on the basis of a concluded employment relationship and with an employee performing work on the basis of a legal relationship established by one of the agreements on work performed outside the employment relationship (the Labor Code mentions employment relationships in this context, not only employment status).
- The basic attribute of home working is the fact that the **employee schedules working hours himself**. This means that the employer agrees with the employee on the scope of working hours, i.e. work for a predetermined weekly working time or for shorter working hours, and it is up to the employee when he performs the work for the employer. The employer's frequent request that the employee be available to him at a certain time seems to be somewhat contrary to the meaning and nature of home working, but this approach must also be taken into account if the parties agree on it.

The reason which moves the regime of performing work from home to a new position is undoubtedly the fact that during the period for which this institute is known, **the nature of work performed from home has changed greatly**. Whereas originally, it

was usually the case of an employee producing certain simple products at home, now it is, for example, working on a computer or teleworking. In this context, it can be stated that the effective Act on Sickness Insurance did not record this shift, as it still mentions that "an employee performs the work" - cf. provisions of Sec. 30 of the cited Act.

With regard to agreements on work performed outside the employment relationship, it generally depends on the employer whether he schedules working hours for employees or not, he is not obliged to under the law (cf. Sec. 74, para. 2 of the Labor Code). Thus, the performance of work performed on the basis of one of the agreements on work performed outside the employment relationship is **not subject to the legal regulation of working hours and rest periods**, however, it stipulates that the performance of work may not exceed 12 hours within 24 consecutive hours (provisions of Sec. 77, para. 2. letter d) of the Labor Code).

- For home working performed in an employment relationship, the **schedule of working hours or idle time or interruption of work caused by adverse weather conditions shall not apply**.
- Giving that an employee working from home schedules working hours himself, **he is not entitled** to wages or salary or compensatory leave for overtime work or compensatory leave or compensation of wages or surcharge for work on public holidays.

  As set out in the legal regulation of remuneration for work (Chapter VI of the Labor Code), the Labor Code guarantees employees remunerated by wages and salaries and other components than just remuneration for overtime work and work on public holidays. This is a surcharge for night work and also a surcharge for work on Saturdays and Sundays, which are not listed in the list of wage and salary components, which the employee is not entitled to when working from home. In the event that the employer fails to agree with the employee on other conditions under which the employee will work from home, it cannot be ruled out that the employee will be entitled to these (additional) surcharges.
- With regard to obstacles to work on the part of the employee, the difference compared to employees performing work at the employer's workplaces is due to important personal obstacles regulated by Government Decree No. 590/2006 Coll., which stipulates the scope and extent of other important personal obstacles at work.

The legal regulation of these obstacles at work does not apply to employees performing home working, with the exception of marriage, death and relocation of the employee.

4.2.2 Circumstances arising from the legislation

4.2.2.1 Circumstances arising from the Act on Sickness Insurance

If the employee performs home working, **a special legal regulation of sickness benefits applies** to him pursuant to the provisions of Sec. 30 of the Sickness Insurance Act.

According to the cited provision, it applies: *"If a domesticated employee performed work for a period during which his temporary incapacity for work or ordered quarantine lasted for at least in part of it, the amount of his sickness allowance shall be reduced to calendar days accrued for the period of temporary incapacity for work or ordered quarantine, so that the total of sickness and chargeable income for this period does not exceed the product of the daily assessment referred to in Sec. 21, para. 4, and the number of calendar days of this period, the number of calendar days, exclude days per calendar year for the first 14 calendar days of temporary incapacity for work or ordered quarantine and, in the period from January 1, 2012 to December 31, 2013, the calendar days per period of the first 21 calendar days of temporary work incapacity or ordered quarantine."*

As apparent from the quoted diction, the law presupposes a sort of delivery period, or more precisely, the performance of work within a certain period, which undoubtedly lags behind the nature of the work that is done from home.

This employee also **has no right to nursing** – cf. Sec. 39, para. 5, letter c) of the Sickness Insurance Act.

4.2.2.2 Other obstacles on the part of the employer

The statutory regulations also know other reasons and facts that prevent the employer from assigning work to the employee to the extent he has entered into, other than idle time and interruption of work due to adverse weather conditions.

In particular, **it refers to the so-called other (another) obstacle at work**, which is defined as another obstacle for which the employer cannot assign work than idle time and interruption of work caused by adverse weather conditions or natural disasters (cf. Sec. 208 and reference made in it to the provisions of Sec. 207 of the Labor Code).

While idle time and interruption of work caused by adverse effects or natural disasters are obstacles that arise independently of the will of the employer, other (another) obstacles, on the other hand, are usually caused by the employer's decision relating to the organization of work. In the event of other (another) obstacle to work, the employee is entitled to compensation of wages or salary in the amount of 100% of the average earnings.

Th cited provisions of Sec. 207 letter b) of the Labor Code stipulates not only the interruption of work caused by adverse weather conditions, but also a natural disaster, which is not listed in the list of obstacles to work that do not apply to employees working from home.

In addition to the mentioned other (another) obstacle at work, an employee performing home working may also experience an obstacle pursuant to the provisions of Sec. 209 of the Labor Code, i.e. the so-called **partial unemployment**. This obstacle can only apply to employers who reward employees with wage, i.e. only those who are not listed in the exhaustive list contained in Article 109, para. 3 of the Labor Code. The cause of partial unemployment is a temporary drop in sales of the employer's products or drop in demand for services rendered by him. If there is an agreement between the employer and the trade union organization regulating the level of compensatory wages, the employer is obliged to agree with the union on the amount of compensatory wage that will be provided to the employee at the minimum level of 60% of the average his earnings. Where no trade union organization operates at the employer's undertaking, the employer decides on the issue of partial unemployment within his competence. It follows from the foregoing that partial unemployment cannot be direct, i.e. without an agreement with a trade union organization or an internal regulation of the employer.

The following options may occur in an employee performing home working:

- the employee performs work; therefore, he is entitled to a wage or salary for it (cf. the provisions of Sec. 109 para. 1 of the Labor Code
- on the part of the employer there is other (another) obstacle to work, as a result of which the employee is entitled to wage or salary compensation in the amount of 100% of average earnings (cf. the provisions of Sec. 208 of the Labor Code);
- in the case of an employee remunerated by wage, the employer may apply partial unemployment, in which the employee is entitled to compensation of at least 60% of his average earnings, on the basis of an agreement concluded between the employer and the trade union organization or on the basis of an internal regulation, if the trade union does not operates at the employer's undertaking (cf. Sec. 209 of the Labor Code).

A **combination** of the possibilities stated above may also occur for an employee performing home working, i.e. that on some days of the week the employee performs the work, while on other days, some of the above obstacles are applied on the side of the employer.

4.2.2.3 Costs of performing home working

In connection with the novelization to the Labor Code, which was prepared in 2017 and whose legislative process was not completed with regard to the results of elections to the Czech Parliament, it was considered to enact an explicit obligation for employers to contribute to employee on costs incurred for work performed for the employer.

Given that the provision of Sec. 2, para. 2 of the Labor Code includes among the conditions under which dependent work is performed, the fact that dependent work is performed at the employer's costs, **the enactment of this explicit employer's obligation may be considered superfluous**.

In addition, the calculation of the employer's contribution on the performance from home working is very individual. In order for the employer to be able to calculate the incoming contribution, the employee's cooperation is also necessary to prove, among other things, the status of previously incurred costs (for the consumption of electricity, etc.).

4.2.3 Possible negatives – examples

4.2.3.1 Ensuring safe and healthy working conditions

If the employee performs home working on the basis of an agreement with the employer, the employer is in no way relieved of his legal obligation to ensure safe and healthy working conditions, even though he has very few options to ensure or influence such conditions.

The obligations of the employer set in the area of **health and safety at work** are not in any way limited or narrowed in relation to home working. Many of them also in this case concern the prevention of hazards. In particular, it refers to the obligation to identify hazardous factors and processes in the work environment, identify the causes and sources of hazards, identify and assess the risks of potential health hazards, as well as the obligation to take measures to eliminate the identified risks, and if they cannot be eliminated, take measures to at least minimize them.

In order for the employer to fulfill these and other obligations and get as close as possible to the legislation, it is up to the employee **to agree with the employee on other conditions under which him will perform home working**. This is, for example, the right of the employer to adequately control the workplace where the employee will perform work on the basis of an agreement with the employer or the employee's obligation to maintain this workplace in a condition corresponding to the type of work performed and other.

The procedure in the event that an employee incurs an accident while performing work for the employer cannot be neglected – the employee's legal obligation to immediately notify his immediate superior of his work accident and participate in clarifying its causes also applies for home working (accident at work means employee's damage to health or death, if they occurred independently of his will by short-term, sudden and violent action of external influences during the performance of work tasks or in direct connection with them – cf. the provisions of Sec. 271k, para. 1 of the Labor Code). Pursuant to the provisions of Sec. 273, para. 2 of the Labor Code, the performance of work tasks means, inter alia, activities carried out for the employer at an employee's own initiative, unless the employee needs a special authorization or performs it contrary to the employer's explicit prohibition.

In this sense, it would be possible that the employer explicitly prohibits the employee to perform certain activities, especially those in which he has certain doubts about their safety. By this procedure, the employer has the opportunity to narrow the scope for the application of his obligation to compensate the employee for damage and non-property damage caused by a work accident.

Legislation on safety and health at work is mandatory in nature, hence any proposals for changes must respect such nature.

Given that the employer is in many ways bound by the will of the employee to agree to certain employer's actions, it is possible to consider extending the employee's obligations to tolerate certain actions of the employer.
This would mean a supplement to the provisions of Sec. 317 of the Labor Code.

4.2.3.2 Protection of personal data

From the employer's point of view, the **protection of personal data** with which the employee manipulates while home working is also a very risky area. In this context, it may not only be

the case that personal data (usually saved in the computer on which the employee works) is unlawfully disclosed to a third party, but also the risk that this third party will permanently delete the relevant personal data.

This allows the following considerations:

- breach of confidentiality of personal data, i.e. unauthorized or accidental provision or disclosure of personal data;
- breach of the availability of personal data, i.e. unauthorized or accidental loss of access to personal data, as well as destruction of personal data, or
- breach of the integrity of personal data, i.e. unauthorized or accidental alteration of personal data.

Given that the administrator (here the employer) is obliged to carry out an impact assessment of the intended processing operations before starting the intended personal data processing, if a certain type of processing is likely to result in a high risk to the rights and freedoms of natural persons, it is up to the employer, to consider whether or not to carry out an impact assessment in the light of all the circumstances of home working.

As part of considerations de lege ferenda, it is possible to consider enshrining the employee's explicit obligations in relation to the protection of personal data that will be available to third parties as part of the performance of home working.
This would mean a supplement to the provisions of Sect. 317 of the Labor Code.

4.2.3.3 Business trips/trips from home at the employer's workplace

Given that the place of performance agreed in an employment contract (agreement to its amendment), agreement to perform work or agreement to complete a job is not the employer's workplace but another place agreed between an employee and an employer, it must be respected that the trip from the agreed place (from home) to the employer's workplace **is a business trip, or a trip outside the regular** workplace (for this concept, see the provisions of Sec. 34a of the Labor Code).

If the employer intends to behave economically, it is up to him to consider at what distance from his workplace he will agree with the performance of work, or at what frequency he will instruct the employee to travel to his workplace, as an employee working from home will be entitled to travel allowances for these trips under the conditions of the Labor Code.

Trips to the employer's workplace also include the possibility of an accident on such trip, which would need to be assessed as an occupational accident (cf. the definition of an occupational accident according to the provisions of Sec. 271k, para. 1 of the Labor Code).

The choice of the place where the employee performs work is subject to agreement between him and the employer. For this reason, considerations de legge ferenda are not presented, as it is only the employer's decision that can influence the amount of travel costs.

4.2.3.4 Meals

Given that an employee performing home working schedules the working hours himself, it may be argued that he does not have a shift; hence, the employer is **not obliged to provide him with meals**, which is imposed on him in the case of employees working at the employer's workplaces in Sec. 236 of the Labor Code.

There might be a possible change the legislation in the sense that the employer had the opportunity to provide meals at advantageous prices also to employees performing home working.
This would mean a supplement to the provisions of Sec. 236, para. 3 of the Labor Code, regulating the possibility of providing meals at advantageous prices to the listed entities.

Summary

To perform work at a place agreed with the employee other than the employer's workplace (so-called home working) can only be agreed with the employee, it cannot be instructed. This is one of the exceptions in which the scheduling of working hours is not decided by the employer but by the employee.

In the case of home working, the regulation of working hours and rest periods does not apply. However, the fact that the performance of work may not exceed 12 hours within 24 consecutive hours, shall be valid. An employee is not entitled to wage or salary or compensatory leave for overtime work or compensatory leave or compensation for wage or allowance for work on public holidays.

Obstacles to work on the employer's side do not include idle time or interruption of work caused by adverse weather conditions. Employees performing home working are not subject to the legal regulation of important personal obstacles at work regulated by Government Decree No. 590/2006 Coll., with the exceptions of a wedding, funeral and relocation of an employee.

Agreed home working does not relieve the employer of obligations in the area of safety and health at work and protection of personal data with which the employee works.

The employer bears the costs on work performance, whereby these costs may not be passed on to the employee. Although the legislation does not explicitly stipulate it, the employer is obliged to co-finance the costs incurred to the employee. To fulfill his obligation, it is necessary that the employee collaborates with the employer.

If the employer instructs the employee to come to the employer's workplace, the employee is entitled to travel allowances under the conditions of the Labor Code.

For employees working from home, different rules apply for sickness benefits; this employee is not entitled to nursing allowance.

The employer is not obliged to provide the home working employee with meals.

See above for suggestions on individual possible negatives.

4.3 Temporary agency employment

4.3.1 Legislation

The institute of temporary agency employment is regulated by Act No. 435/2004 Coll., on Employment, as amended, in the following as the "Employment Act" (cf. Sec. 58 et seq.), and by the Labor Code Sec. 307a et seq.).

Among other things, the legal regulation contained in the Employment Act stipulates that:

- Employment agencies can intermediate employment in the Czech Republic or from the Czech Republic to abroad and from abroad to the Czech Republic.
- Employment agencies can provide employment intermediation **free of charge or for a fee**, including a profit-making fee.
- When intermediating employment for a fee, no fee may be required from a natural person to whom the employment is intermediated.
- An employment agency that has been granted employment intermediation authorization is **obliged to take out bankruptcy guarantee insurance**

bankruptcy, under which a temporary employee is entitled to insurance payment if the employment agency has not paid him his salary due to its bankruptcy.

- **Both legal and natural persons** can apply for an authorization to mediate employment and thus become an employment agency; the authorization is granted by the General Directorate of the Labor Office.
- The legal regulation stipulates the conditions for granting an authorization to mediate employment, as well as the mandatory annexes to the application.
- The General Directorate of the Labor Office **may revoke employment mediation authorization** if a legal or natural person violates an obligation imposed on employment agencies by the Labor Code.
- The user must inform the employment agency that has temporarily assigned an employee to perform work in good time that he will send this employee to work as part of a transnational provision of services in the territory of another Member State of the European Union; the information must include at least the information listed in the provisions of Sec. 309a of the Labor Code.

The legal regulation contained in the Labor Code stipulate, among other things, the following:

- The employment agency may assign to another employer (user) **only an employee in an employment relationship or an employee who performs work on the basis of an employment agreement**, not an agreement to complete a job.
- The following documents are decisive for agency employment: an employment contract or an agreement to perform work, an agreement concluded between the employment agency and user, and a written instruction on the basis of which the employee is assigned to the user.
- The employment agency and the user are obliged to secure that the **working and wage conditions** of the temporarily assigned employee **are not or would not be worse** than those under which a comparable employee works or would work. If, during the period of work performance for the user, the working or wage conditions of the temporarily assigned employee are worse, the employment must ensure equal treatment for its employee, acting either at the employee's request or on its own initiative when it learns about such fact in another way; the agency employee temporarily assigned to perform work for the user is entitled to demand the satisfaction of his rights, having thus arisen to him, from the employment agency.

- For the duration of the temporary assignment of an agency employee to perform work for the user, the user sets down tasks for the agency employee, organizes, manages and controls his work, gives him instructions, creates favorable working conditions and ensures health and safety at work. However, the user **is not allowed to make legal acts towards the agency employee**, for example, he cannot terminate his employment relationship or agreement to perform work.
- Where the employment agency has settled the employee some damage that has arisen to him during the performance of working tasks for the user or in direct connection therewith, the employment agency shall be entitled to compensation of this damage from the user, unless otherwise agreed with him.
- The scope of agency employment **may only be limited by a collective agreement** concluded at the user's enterprise.
- The user must inform the employment agency that has temporarily assigned an employee to perform work in good time that he will send this employee to work as part of a transnational provision of services in the territory of another Member State of the European Union; the information must include at least the information listed in the provisions of Sec. 309a of the Labor Code.

4.3.2 Possible negatives – examples

4.3.2.1 Conditions for unilateral termination of temporary assignment of an employee to a user

The employee **is not a party to the agreement** concluded by the employment agency with the user, which, among other things, obligatorily contains the conditions under which the temporary assignment by the employee or user may be terminated before the expiration of the period for which it was agreed. As a consequence, **the employee does not have the opportunity to influence the content of such agreement**, as well as the conditions that will allow him to early terminate his temporary assignment to the user (these conditions are agreed by the employment agency with the user on the employee's behalf). The employee will learn about these conditions only from a written instruction, on the basis of which he is assigned to the user.

To strengthen the status of an agency worker, it is possible to require that the conditions under which the employee may terminate his temporary assignment to the user be agreed

with him in an employment contract/agreement to perform work and, conversely, that the user be the entity to take into account the content of such action.
This change would require a supplement to the provisions of Sec. 307a of the Labor Code (or an inserted provision), as well as an amendment to Act No. 21/2005 Coll., on Labor Inspection, as amended.

4.3.2.2 Securing working conditions by an employment agency

The provisions of Sec. 309, para. 5 of the Code stipulates that the employment agency and the user are obliged to ensure that the working and wage conditions of a temporarily assigned employee are not worse than the conditions of the user's comparable employee.

With regard to working conditions (in the narrower sense), this is an area that is closely connected to the organization of work, which is exclusively of the user and which the **employment agency cannot influence in any way**. These include not only the organization of working hours, the provision of breaks at work, instructing overtime, posting on business trips, but also risk factors affecting safe and healthy work, measures adopted to eliminate or minimize health hazards, etc.

In some circumstances, working conditions are understood more broadly than as conditions relating to the performance of work by an employee for employers in a basic employment relationship.

Working conditions in this broader sense also include performance which, in relation to the performance of work in a basic employment relationship, represent a certain superstructure, i.e. performance usually provided in the regime of civil law regulations. This broader concept of working conditions is indicated, for example, by the wording of the provisions of Sec. 10, Paragraph 1 of Act No. 427/2011 Coll., on Supplementary Pension Savings, stipulating that the participant's employer may pay his contribution or its part thereof if the participant agrees with it, given that it is not contrary to the principle of equal treatment to provide a different amount of employer's contribution depending on the risk, difficulty or effort of the work performed, if this is agreed in the collective agreement or stipulated in the employer's internal regulations.

In other words, if the employer differentiates regarding the amount of contributions to the supplementary retirement scheme and this differentiation is not supported by differences in risk, difficulty or effort of the performed work and this differentiation has no basis in a collective

agreement or in an internal regulation, the employer violates the legal principle of equal treatment.

With regard to the fact that the employment agency, as the employer of a temporarily assigned employee, cannot influence the user's working conditions, it may be proposed that the employment agency be deleted from the provisions of Sec. 309, para. 5 of the Labor Code.
This change would also require an amendment to Act No. 21/2005 Coll., on Labor Inspection, as amended.

4.3.2.3 Compensation for damage caused by an agency employee to the user

The legal regulation **does not address the issue of compensation for damage caused by an agency employee to the user** (only compensation for damage caused to an agency employee and compensated to him by his employer, i.e. the employment agency – cf. Sec. 309, para. 4 of the Labor Code).

Thus, the question of liability for entrusted things in the sense of the provisions of Sec. 252 et seq. Labor Code, failed to be addressed.

An agreement on liability for the protection of the things entrusted to the employee for settlement concluded with reference to the cited provision may be concluded with the employee within the employment contract, or agreement to complete a job or as a separate contractual agreement. However, the things entrusted to the employee on the basis of such agreement are not the property of the employment agency, the agency does not record them, does not account for them, but **the property of the user**. The employment agency may conclude the agreement in question with its employee, this agreement, however, cannot fulfill the intended content, i.e. by entrusting the things intended for being accounted by the employer (i.e. the employment agency) to its employee.

A more complicated situation may arise if several employees, who have concluded a liability agreement to protect the things entrusted to them, work at one workplace, and it is agreed with them that they are jointly liable for the damage, i.e. the shortfall. It cannot be ruled out that both the user's employees and the employees of an employment agency are part of a jointly responsible group of employees. If an employee of an employment agency is employed as a manager or his deputy, the employment agency needs a number of data about the user's employees to quantify their share of compensation – at least it needs to know their earnings

since the last inventory until the identified shortfall, as well as their average earnings before the occurrence of the damage. In this context, it should be pointed out that it is not only a question of protecting the property of the employment agency or the user, but above all of the legal certainty of the employees of both these employers. On the method of determining the share of individual jointly liable employees on the compensation, cf. provisions of Sec. 260 of the Labor Code.

With regard to the absence of legal regulation on the obligation of an agency employee to compensate the user for an occurred damage or non-material damage, it is therefore entirely appropriate to fill this gap in the law. There may be a breakthrough rule that would stipulate that the user cannot make legal acts towards an agency employee. This breakthrough should not apply in general (it is not permissible for the user to terminate an employment of an agency employee), but only in relation to the conclusion of an agreement on the protection of entrusted things, or an agreement on liability for the loss of entrusted things.

4.3.2.4 Entry medical examinations

The employer, i.e. the employment agency, is must secure an entry medical examination of the job applicant before the commencement of the employment relationship (cf. the provisions of Sec. 59, para. 1, letter b, point 1 of Act No. 373/2011 Coll., on Specific Health Services, as amended). The employment agency also bears the costs for this medical examination.

In order for the employment agency to fill in the application for an entry medical examination, it is necessary that the user provides the agency with all relevant information on working conditions, risks of health, etc. An optimal solution is when the entry medical examination is performed by the occupational health service provider with which the user has concluded an agreement, because such provider knows (should know) the user's workplace. However, this procedure must be agreed between the employment agency and the user.

The meaning and purpose of the entry medical examination is to verify the medical fitness of the future employee to perform work with regard to his health condition in specific working conditions (here, working conditions valid for the user).

As stated in point 3.2.2, the employment agency cannot in any way influence the user's working conditions; therefore, the proposal concerns the transfer of the obligation to ensure an initial inspection from the employment agency to the user.

This change would also require an amendment to Act No. 21/2005 Coll., on Labor Inspection, as amended.

4.3.2.5 Fulfillment of obligations in the event of work-related accident

In relation to work-related accidents, the following list outlines the primary obligations in a very simplified way**:**

a) an obligation to clarify the causes and circumstances of the accident, with the participation of the employee where his condition of health so permits and with the participation of witnesses, the competent trade union organization representatives, and not to change the state of things at the injury site without a serious reason until the causes and circumstances of the injury are clarified;

b) the obligation to inform another employer (here the employment agency) without undue delay, if it is an accident at work of an employee of another employer, to enable him to participate in clarifying the causes and circumstances of the work-related injury and acquaint him with the results of the clarification;

c) the obligation to keep records of all industrial injuries;

d) in specified cases, the obligation to draw up and keep records of all industrial injuries;

e) the obligation to notify of an industrial injury;

f) the obligation to send a record of such injury to the competent agencies and institutions;

g) the obligation to take measures against the recurrence of industrial injuries;

h) the obligation to compensate the injured employee for damage and non-material damage caused to him due to an industrial injuries (cf. Sec. 105 and Sec. 269 para. 1 of the Labor Code).

For better clarity, the fulfillment of individual obligations in relation to work-related accidents (industrial injuries) ("II") is listed below in the following table:

Table 4.1 Fulfillment of individual obligations in relation to work-related accidents

Obligation	**Who fulfills the obligation**	**Legal basis for performance of the obligation**
a) clarify the causes and circumstances of the II	User	follows from Sec. 105 para. 1 of the Labor Code

b) inform another employer, enable him to participate in the clarification of the causes and circumstances of the occurrence of II and to acquaint him with the results of this clarification	User	Sec. 105 para. 1 of the Labor Code
c) keep records of all II	employment agency and user	Sec. 2 para. 2 of Government Decree No. 201/2010 Coll.
d) make records of II	employment agency	Sec. 5 of Government Decree No. 201/2010 Coll.
e) report II	employment agency	Sec. 4 para. 1 e) of Government Decree No. 201/2010 Coll.
f) send a record about the II	employment agency	Sec. 6 of Government Decree No. 201/2010 Coll.
g) take measures against the recurrence of II	employment agency	Sec. 105 para. 5 of the Labor Code
h) compensate the injured employee	employment agency	Sec. 269 para. 1 of the Labor Code

Source: Own elaboration

Within the considerations de lege ferenda, it would be beneficial for the quality of the legal regulations to transfer these obligations to users in cases where the employment agency does not have the possibility to influence certain circumstances or procedures and thus to fulfill certain legal obligations. From the obligations listed in the table, these would entail the obligations listed in d) to g).

This change would also require an amendment to Act No. 251/2005 Coll., on Labor Inspection, as amended.

Summary

An employment agency is a legal or natural person who was authorized to mediate employment by the General Directorate of the Labor Office. Employment mediation can be provided free of charge or for a fee, also for profit-making purpose.

If the employment agency does not fulfill the obligations stipulated by the Labor Code, the General Directorate of the Labor Office may revoke its employment mediation authorization.

A key document affecting the legal status of an employee that is temporarily assigned to a user is a written agreement between the employment agency and the user, among other things

containing the conditions under which the temporary assignment of an employee may be terminated before the expiry of the agreed period.

Agency employment is only possible for employees who are employed by the employment agency or on the basis of an agreement to perform work. The scope of agency employment may be limited in the collective agreement concluded at the user's enterprise.

Both the employment agency and the user must secure that the temporarily assigned employee does not have worse working and remuneration conditions than of the so-called user's comparable employee.

The legislation completely fails to address the issue on compensation for damage caused by an agency employee to the user. In particular, this entails an obligation to compensate the employer for damage in special cases, i.e. in the event of a shortfall in the things of values that an employee was entrusted with and are subject to accounting, or in the case of entrusted things. If the things of values are subject to accounting, then these are not in the property of the employment agency, and thus not entrusted to the employee (simply put). On the other hand, the user cannot act legally against the agency employee, i.e. that the user cannot conclude a liability agreement with the employee for the things of values entrusted to him.

Another almost stalemate situation may occur in the event of a work-related accident happening to an agency employee. Legislation in this regard does not meet the needs of practice, as a number of obligations are imposed on the employer, i.e. the employment agency, but it does not have a real opportunity to fulfill some of the obligations.

5. Regulation of new forms of employment in collective agreements

In connection with new, modern forms of employment, which were described in previous chapters, the possibility and suitability of regulations of these institutes in collective agreements, which are in some sectors the cornerstone for the employee-employer relationship, is crucial for their implementation into labor legislation and labor practice.

The introduction of new forms of employment in some fields can have a positive effect on employment. Also, the current situation regarding the global coronavirus pandemic Covid-19 has helped to accelerate the onset of these different forms of alternative work and there are indications that it would be appropriate to consider these tools in the future should the situation recur.

This chapter will therefore first introduce the issue of collective agreements in the Czech law and the possibility of including and introducing new forms of employment in collective agreements.

The second part of the chapter will analyze the contractual arrangements of modern forms of employment such as flexible jobs, home working, shared workplace, employment within a shared economy or agency employment in several specific collective agreements, both for higher-level collective agreements and for company collective agreements.

The conclusion will outline the evaluation to what extent the legal regulation of collective agreements is prepared for the possibility of regulating new forms of employment in higher-level collective agreements and company collective agreements.

At the same time, it will be verified to what extent new forms of employment are implemented in collective agreements and whether there is room for improvement and streamlining of labor legislation processes precisely through the above-mentioned modern forms of employment.

5.1 What is a collective agreement?

Labor law is traditionally divided into individual labor law and collective labor law, which differ both in the entities concerned and in the types of legal relationships emerging within these sectors.

Individual labor law deals with the relationship between employees and employers, regulating primarily individual employment contracts.

Collective labor law deals with collective labor relations, which are primarily regulated in collective agreements. "*By collective labor relations we mean relations between bodies that represent or act on behalf of employee groups and employers' associations, or individual employers, whose main goal is to improve employees' working and wage conditions*" (Bělina et al., 2013).

A collective agreement is a special type of employment contract that is concluded between an employer and a trade union organization. Other entities to the collective labor relations may be, for example, trade unions, employee councils, occupational health and safety representatives and employers' organizations.

"*Collective agreements are, by their nature, private law contracts, which, however, also contain, to a certain extent, public law elements. This applies in the case of normative parts, when the state guarantees through legal norms the binding nature of collective agreements even outside the group of their participants (or more precisely, employees and employers represented by them) and makes them a source of law*." (Bělina et al., 2019).

The content of the collective agreement consists of various employees' working conditions, including wage conditions. The collective agreement also contains other rights and obligations of the contracting parties.

As concluded from the case-law, a collective agreement "*may contain any obligations the content of which is not contrary to legislation. In the provisions governing individual or collective relations between the employer and the employees, from which claims arise for an unspecified group of individual employees, the collective agreement is of a normative nature. Other provisions on obligations which do not give rise to claims for individual employees or which govern other rights and obligations of the contracting parties are of a contractual nature.*"[13]

[13] Judgment of the High Court in Prague File no. 6 Cdo 94/94 of 22.11.1994.

In accordance with the provisions of Sec. 23, para. 4 of Act No. 262/2006 Coll., the Labor Code, as amended, two basic types of collective agreements are distinguished, namely:

- **plant agreement –** agreement concluded between an employer and a trade union organization operating at such plant;
- **higher level agreement –** agreement concluded between an organization of employers in a given sector and a trade union organization.

The relationship between a plant agreement and a higher level agreement is such that in a plant agreement it is not possible to regulate employees' rights to a lesser extent (i.e. to grant them a worse status) than those granted by a higher level agreement. Therefore, if the status of employees according to the plant agreement was worse than in the case of a higher level agreement, the regulations according to the higher level agreement would apply, or, more precisely, the parties to the contract could, in a specific case, rely on the regulations in a higher level agreement.

5.2 Collective bargaining

The legal regulation of collective agreements and collective bargaining leading to their conclusion, can be found mainly in the Labor Code and in Act No. 2/1991 Coll., on Collective Bargaining, as amended.'

„Collective bargaining can be defined as legally regulated negotiations between an employer or more employers or one or more organizations of employers on the one hand and one or more trade unions on the other, the subject of which is to determine working and possibly non-working employees' conditions of, regulation of relations between employers and employees and between employers or their organization(s) and the trade union organization(s).“ (Šubrt, 2018).

5.3 Collective bargaining bodies

Within the framework of collective bargaining, the roles of individual employees in negotiating working conditions are staying behind in favor of employee representatives. These representatives include **trade union organizations, works council** and **a representative for health and safety at work**.

The employer is subject to a number of obligations in relation to the employees' representatives, which he must fulfill in accordance with the Labor Code and the Act on Collective Bargaining. If the employer fails to fulfill these obligations towards the employees' representatives, he may commit an infraction pursuant to Sec. 10 or Sec. 23 of Act No. 251/2005 Coll., on Labor Inspection, as amended. The penalty for this offense may be a fine of up to CZK 200,000.

5.3.1 Trade union organizations

The trade union organization is an independent legal entity and therefore has legal personality. A trade union organization can take part in collective bargaining, which leads to the conclusion of a collective agreement.

The employer has a number of obligations in relation to the trade union, including, in particular, the employer's obligation to acquaint the trade union organization with selected facts, inform it about such information, or discuss it with the organization. For certain negotiations, the employer needs a prior consent of the trade union organization; for some issues, it is necessary to conclude an agreement with the trade union organization.[14]

In accordance with the provisions of Sec. 61 of the Labor Code, where notice of termination or immediate termination of an employment relationship concerns a member of the trade union organization operating within the employer's undertaking during the member's tern of office or for a period of one year afterwards, the employer shall ask the trade union organization for its prior consent to such notice of termination or immediate termination. Where the trade union organization refuses to give its consent, the dismissal or immediate termination of employment relationship is made void, unless the court rules in a dispute concerning the void termination of employment relationship that the employer cannot be justly expected to employ such employee any further.

The employer should reach an agreement with the trade union in the case of collective leave taking or in the case of allocation of money by the employer to the cultural and social needs fund and its use according to Sec. 225 of the Labor Code and Decree No. 114/2002 Coll., on the Fund for Cultural and Social Needs, as amended. The employer needs prior consent of the trade union, for example, for the issuing the work regulations according to Sec. 306 of the Labor Code.

The employer's obligation to consults certain issues with the trade union organization covers a wide range of topics. For example, the provisions of Section 99 of the Labor Code stipulate*:*

[14] Cf. Part Twelve of the Labor Code.

„Measures concerning collective regulation of working hours, overtime work, the possibility to order performance of work on non-working days and night work with regard to occupational safety and health protection shall be consulted by the employer in advance with the trade union organization.“

The employer should give employee representatives the opportunity to comment on the identified issues and to take their views into account when making decisions. This include, for example, the following issues:

- amount of work and work pace;
- changes in the organization of work;
- economic situation of the employer;
- evaluation and remuneration of employees;
- training and education of employees;
- dismissal or immediate termination of employment.

The employer's obligation to inform the trade union organization about selected issues is also relatively broad. This concerns, for example, the issue of wage or salary development at the employer's undertaking, the amount of compensation for damage caused by the employee and the content of a liability agreement for damage in excess of CZK 1,000, as well as matters defined in Sec. 279 of the Labor Code (e.g. economic and financial situation of the employer and its probable development, the employer's activities, the legal status of the employer and its changes, the internal organizational structure and persons authorized to act on behalf of the employer in labor relations, measures by which the employer secures equal treatment of fame and female employees and prevention of discrimination).

The employer also shall acquaint the trade union with cases of termination of employment relationship.

At the same time, several trade union organizations may operate within one or more employer's undertaking.[15] In accordance with Sec. 24 of the Labor Code, a trade union shall act also on behalf of employees who are not trade union members, as these employees are also affected by the collective agreement.

[15] For example, the Association of Railway Workers, the Federation of Train Drivers of the Czech Republic, the Federation of Train Crew, the Union of Railway Workers, the Federation of Wheeltappers, the Federation of Railway Workers of the Czech Republic, the Train Drivers Guild of the Czech Republic, Confederation of Union of Service and Transport of the Czech Republic, Trade Union of Employees of Network Industries and others.

Unless an employee who is not a trade union member determines otherwise, the trade union that brings together the largest number of employees shall act on his behalf.

„An unresolved question in this context is to what extent trade union organizations should respect, in the case of a plurality of trade union organizations operating at on employer, the opinion of an employee, who is not a trade union member, on which of the trade unions will represent him in collective bargaining. We believe that the employee's choice should be respected, unless precluded by, for example, narrow profiling of trade union organizations on a professional basis, etc." (Bělina et al., 2019).

In order for a trade union organization to be authorized to act in labor relations, it must first meet the conditions under the provisions of Sec. 286 of the Labor Code. First of all, the authorization of the trade union to negotiate with the employer must be stated in the statutes of the trade union organization and at least three of its members must be in an employment relationship to the employer.

The right to act in employment relations commences on the day following the date when the trade union organization notified the employer and lasts until the trade union ceases to meet these conditions, of which the trade union must notify the employer.

The employers shall create, at his own expense, conditions for the employees' organizations to perform their activities. In particular, it concerns the provision of optimal premises for the activities of the organization and the financing the costs of its operational activities.

Where no trade union organizations other interest representatives operate at the undertaking, the employer must discuss the defined issues individually with individual employees. Conversely, where more than one trade union organizations exercise their activities within one undertaking in those cases in which concern all the employees or trade union members, the employer shall fulfill the duties in relation to all the union organizations.

In addition to the trade union organization, works council and representatives for occupational safety and health protection may also operate at the undertaking.

5.3.2 Works Council and Representatives for Safety and Health at Work

In addition to the trade union organization, works council and representatives for occupational safety and health protection may also operate at the undertaking pursuant to the provisions of Sec. 281 et seq. Labor Code.

The works council has 3 to 15 members, and this number must always be odd.

The number of representatives for occupational safety and health protection shall depend on the number of employees and the risk factor of the type of work performed. However, one representative may be appointed per no more than 10 employees.

A term of office of members of both of the above functions shall be three years. The function is created on the basis of direct, equal and secret election of employees, whereby all employees have the right to vote and be elected.

Employees exercise, through the works council and the representative for occupational safety and health protection, in particular, the right to information and prior discussion of certain issues by from the side of the employer.

5.4 Content and form of the collective agreement

In terms of content, the collective agreement must primarily include the mandatory requirements under the Labor Code and the Act on Collective Bargaining.

However, the collective agreement may also regulate other employer's and employee's requirements and obligations, provided that they do not conflict with labor law standards or other legal regulations.

The content of collective agreements can be divided into the following parts (Galvas et al., 2004):

- **normative –** establishes the claims of individual employees and is therefore a source of labor law;
- obligatory – establishes only the obligations of the contracting parties and is not a source of labor law;
- proclamatory – is not a source of law and does not establish any obligations.

„In practice, we may encounter a very varied and often differently approached content as well as a "general concept" of collective agreements. The freedom of the contracting parties in drafting collective agreements is considerable, although the content of collective agreements must also be viewed using the principle "what is not prohibited is allowed". (Bělina et al., 2019).

In terms of form, the collective agreement shall be obligatorily concluded in writing. The collective agreement must be signed by the contracting parties on the same deed.

The contracting parties to a collective agreement shall acquaint the employees with its content, within 15 days of its conclusion. The employer shall arrange for the valid collective agreement to be accessible to all his employees.

The rights and obligations having arisen from the collective agreement to individual employees shall be claimed and satisfied as in the case of individual employment contracts.

5.5 Procedure to conclude collective agreements

The Act on Collective Bargaining regulates the procedure for concluding collective agreements in the provision set out in Sec. 8. Collective bargaining begins through submitting a written proposal by either future contracting party to the other contracting party.

The other party to whom the offer was addressed should reply to the proposal in writing, no later than in seven working days, unless another time has been agreed, and providing statements on those proposals which it has not accepted.

The parties to the future collective agreement shall negotiate with each other and provide each other with the required cooperation, provided that such a procedure does not conflict with their legitimate interests.

The participants to a collective agreement should start negotiations on the conclusion of a new collective agreement at least 60 days before the expiry of the existing collective agreement. This applies in cases where a fixed-term contract expires, or if the collective agreement has been concluded for an indefinite period and the participants have agreed to amend it on a certain date.

Similar applies in the case of termination of the collective agreement. The notice period for a collective agreement for a definite or indefinite period is 6 months and begins on the first day of the month following the delivery of the notice to the other contracting party.

5.6 Settlement of collective agreement disputes

In the event of a dispute during the conclusion of a collective agreement, or regarding the fulfillment of obligations under the collective agreement, these disputes shall be resolved in accordance with the provisions of Sec. 10 et seq. of the Act on Collective Bargaining.

The Collective Bargaining Act contains special tools for resolving these disputes, including the resolution of a dispute through a mediator and an arbitrator.

A mediator is any competent person or legal entity that agrees to perform this function, which the contracting parties have chosen by agreement and who has their full confidence and ability to resolve the dispute.

If the parties to collective bargaining do not agree on a mediator, it will be appointed by the Ministry of Labor and Social Affairs (in the following as the "MLSA") on the proposal of either party. In the event of a dispute regarding the conclusion of a collective agreement, the proposal for the appointment of a meditator may be submitted no earlier than 60 days after the submission of the written proposal for the conclusion of the agreement. By delivering the decision on the appointment of a mediator, or by accepting the request of the parties to resolve the dispute, the proceedings before the mediator shall begin.

The mediator is required to submit to the parties, within 15 days of the commencement of the hearing, its written proposal to settle the dispute, unless the parties agree otherwise. Should the dispute not be settled within 20 days from the commencement of the proceedings, the hearing by mediator fails. In such a case, the hearings can either be repeated by appointing a new mediator, or dispute settlement may be submitted to an arbitrator.

Written requests and agreements of the parties on the appointment of an **arbitrator** are required to initiate the procedure before an arbitrator. If an arbitrator is not appointed in this way, the MLSA shall appoint and arbitrator from the list of mediators and arbitrators[16] it maintains for these purposes[17].

The conditions for the performance of the arbitrator's function are the same as in the case of a mediator. An arbitrator may not be a person who has already acted as a mediator in the dispute.

Unlike a mediator who only submits a proposal to the parties to settle a dispute, arbitrators already have the power to authoritatively decide upon the merits of the dispute. Within 15 days of the commencement of the arbitrary procedure, the arbitrator shall notify the parties in writing of the decision, and the collective agreement shall be concluded by the delivery of this decision to both parties. The decision of an arbitrator in a dispute over the performance of a collective agreement may be reviewed by a court upon application of any of the parties to the dispute, in accordance with the provisions of Sec.14, para. 2 of the Collective Bargaining Act. The regional court in whose jurisdiction the contracting party against which this petition is directed has its registered office has the competence settle the dispute. In connection with its decision-making, the regional court shall proceed in accordance with the provisions of Act No. 99/1963 Coll., Civil Procedure Code, as amended, in accordance with the provisions governing the

[16] The list of mediators and arbitrators is available online on the website of the Ministry of Labor and Social Affairs https://www.mpsv.cz/seznam-zprostredkovatelu-a-rozhodcu.

[17] However, this procedure (appointment of an arbitrator by the Ministry of Labor and Social Affairs) applies only if the dispute concerns the conclusion of a collective agreement arising at a workplace where strikes are prohibited, or a dispute regarding the fulfillment of obligations under a collective agreement.

proceedings at first instance. The court shall decide by a resolution against which no appeal or reopening of the proceedings is admissible.

If a dispute regarding the conclusion of a collective agreement is not resolved by an intermediator and the parties do not request the dispute to be settled by an arbitrator, the trade union organization may a declare a strike, given that all the legal conditions are met.

„In the case of strikes in a dispute regarding the conclusion of a collective agreement, the strike is declared and decided to be initiated by the relevant trade union organization operating at undertaking under the condition that at least two-thirds of the employees of the undertaking participating in voting on strike agree with it, provided that at least half of all employees to the collective agreement participated in the voting. In disputes regarding the conclusion of a higher level agreement, the trade union organization also announces a strike, and decides on its initiation under similar conditions as in the case of a collective agreement. The trade union organization shall notify the employer in writing at least three working days in advance about the initiation of the strike, the reasons and objectives of the strike, the number of employees participating in the strike and the lists of workplaces that will not be in operation at the time of the strike." (Běli et al., 2017).

The counterbalance to a strike is the so-called **lockout**, which the employer may applied in pursuant to the provisions of Sec. 27 et seq. of the Collective Bargaining Act. The lockout refers to a complete or partial cessation of work from the side of the employer. In the event of a lockout, employees are entitled to wage compensation, but only in the amount of half of the average wage.

5.7 Analysis of individual collective agreements

This part of the chapter analyzes selected specific higher-level agreements and plant agreements in terms of whether and how the modern forms of employment listed in the introduction of this chapter are regulated. As already mentioned above, provided that the legal requirements are met, the content of the collective agreement is virtually arbitrary, provided that it does not conflict with labor law or other legal norms.

The subject of this analysis includes three higher level agreements and three plant agreements with employers from various sectors and various segments of the economy.

5.7.1 Regulation of new forms of employment in higher level agreements

Collective agreements of a higher level, the deposition of which was announced in the form of a Communication published by the MLSA in the Collection of Laws, are deposited with the MLSA and made available on its website in accordance with the provisions of Sec. 9 of the Collective Bargaining Act.[18]

In the case of higher-level collective agreements, it is possible to extend their binding effect to other employers under the conditions set out in Sec. 7 and Sec. 7a of the Collective Bargaining Act. If all the conditions stipulated by law are met, the binding nature of the given higher-level collective agreement will be directly extended to other employers with a predominant activity in the sector indicated by the NACE code[19], regardless of whether a trade union organization is operating at such undertakings.

5.7.1.1 Association of Aerospace Manufacturers, z.s. VS. Trade Union KOVO

The first of the examined agreements is a collective agreement concluded between the Association of Aerospace Manufacturers, as an organization of employers and the Trade Union KOVO, for the period from February 1, 2020, to December 31, 2020 (in the following as "KS ALKV x KOVO").[20]

Even though the contract itself does not directly refer to any of the above-mentioned modern forms of employment, nor does it explicitly regulate them, the KS ALKV x KOVO includes some provisions that enable or support the introduction of new forms of employment from the side of the employer.

For example, in Sec. 12 letter d) of KS ALKV x KOVO the employer undertakes *„to create by suitable motivation the interest of employees in the field of invention and improvement, aimed at streamlining their own production processes and at improving health and safety conditions."*[21] This could also include new forms of employment, which can ultimately streamline the employer's production processes.

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[18] Higher level agreements deposited with the Ministry of Labor and Social Affairs since 1 January 2007, available online at: https://www.mpsv.cz/web/cz/kolektivni-smlouvy-vyssiho-stupne-ulozene-na-mpsv-od-1.1.2007.

[19] The Czech Statistical Office keeps the record of the Classification of Economic Activities (CZ-NACE), available online at: https://www.czso.cz/csu/czso/klasifikace_ekonomickych_cinnosti_cz_nace.

[20] A higher level agreement concluded between the Association of Aerospace Manufacturers, z.s. and the Trade Union KOVO, MLSA Communication no. in the Collection of Laws 317/2020, available online at: https://www.mpsv.cz/documents/20142/225499/KSVS+letectví_KOVO.pdf/908b94f1-00e2-1ef0-f98a-5985c9ea3ab4.

[21] Cf. Sec. 12 letter d) KS ALKV x KOVO.

In other parts, however, the KS ALKV x KOVO does not deal with the regulation of modern forms of employment at all.

5.7.1.2 Transport Union of the Czech Republic - Road Management Section VS. Trade Union of Transport, Road Management and Car Repair of Bohemia and Moravia – Section of Road Management Section

Another analyzed collective agreement of a higher level is the agreement between the Transport Union of the Czech Republic - Road Management Section as an organization of employers and the Trade Union of Transport, Road Management and Car Repair of Bohemia and Moravia - Road Management Section as a trade union, for the year 2020 (in the following as the "KS SDČR x OSD").[22]

This higher level agreement entails employers who are members of the Transport Union of the Czech Republic - Road Management Section and, at the same time, have the legal form of a joint-stock company or a limited liability company.

From the point of view of the regulation of working hours, it is typical for the road transport sector that, in addition to the Labor Code, it is also governed by Government Regulation No. 589/2006 Coll., laying down a derogation of the working time and rest periods of employees in the field of transport.

Working hours in KS SDČR x OSD are regulated in part C.1. and, at first impression, it bears the hallmarks of flexible working hours. However, this regulation is based on the specific nature of road transport activities and there is no question of its flexibility in terms of the choice of part of working time by the employee. On the contrary, it is a very strict regulation based on European law,[23] from the Labor Code, as well as from the aforementioned Government Decree No. 589/2006 Coll.

Other provisions concerning the enabling of modern forms of employment in the KS SDČR x OSD are not found.

[22] Collective agreement of a higher degree concluded between the Transport Union of the Czech Republic - Road Management Section as an organization of employers and the Trade Union of Transport, Road Management and Car Repair of Bohemia and Moravia - Road Management Section as a trade union, MLSA Communication No. in the Collection of Laws 2/2020. Available at: https://www.mpsv.cz/documents/ 20142/975485/2019-246511-KSVS+2020+-+Svaz+dopravy+%28pro+a.s.+a+s.r.o.%29.pdf/bb1719f3-9479-cb2e-f3b7-dbe3f86e8404.

[23] Cf. E.g. Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organization of the working time of persons performing mobile road transport activities, or Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 on certain aspects of road transport working time arrangements.

5.7.1.3 Union of Banks and Insurance Companies x Trade Union for Banking and Insurance

A higher-level collective agreement concluded between the Union of Banks and Insurance Companies as an organization of employers and the Trade Union of Banking and Insurance for the period from December 1, 2018, to December 31, 2021 (in the following as the "KS SBP x OSPPP") was further analyzed).[24]

The KS SBP x OSPPP stipulated the possibility to use modern forms of employment in Article 2.2. letter (n) where the employers, covered by the collective agreement, declare that: *„they have an interest in increasing the scope of using flexible forms of work of their employees."*[25]

More specifically, however, the KS SBP x OSPPP does not stipulate the methods and conditions of flexible forms of work, and thus leaves them to be regulated in individual plant collective agreements.

5.7.2 Adjustment of new forms of employment in plant agreements

Due to the legal requirement for the availability of a collective agreement to all employees, employers fulfill such obligation by publishing the currently effective collective agreement on the company's website and the agreement is thus also available to the general public.

Similarly, trade union organizations that operate at the undertaking sometimes publish company collective agreements.

5.7.2.1 Company collective agreement of České dráhy, a.s.

The company collective agreement was concluded between České dráhy, a.s. (Czech Railways), as an employer, and the following trade unions: the Association of Railway Workers, the Federation of Train Drivers of the Czech Republic, the Federation of Train Crew, the Union of Railway Workers, the Federation of Wheeltappers, the Federation of Railway Workers of the Czech Republic, the Train Drivers Guild of the Czech Republic, Confederation of Union of Service and Transport of the Czech Republic, Trade Union of Employees of Network Industries, the Democratic Union of Trade Unionist and the Trade Union of

[24] A higher-level collective agreement concluded between the Association of Banks and Insurance Companies as an employers' organization and the Trade Union of Finance and Insurance Workers, MLSA Communication No. in the Collection of Laws 41/2019, available online at: https://www.mpsv.cz/documents/20142/225499/2018-236899_-_KSVS_-_Svaz_bank_a_pojistoven.pdf/90a2b449-c17c-1d06-c4e6-d881119a0e37, ve znění dodatku - Číslo Sdělení MPSV ve Sbírce zákonů 317/2020. Dostupné na: https://www.mpsv.cz/documents/20142/225499/Dodatek+1+peněžnictví+a+pojišťovnictví.pdf/e61312ad-054c-4258-6bb7-00833e6eab23.

[25] Cf. KS SBP x OSPPP, Article 2.2. letter n).

Responsible Employees of the State, z.s. (in the following as the "PKS ČD"), for the year 2020.[26]

PKS ČD does not explicitly regulate modern forms of employment. However, Article 28 of Annex No. 2 of the PKS ČD regulates the provision of remuneration to employees for flexibility, while, at the same time, specifying that flexibility means *"the employee's willingness to perform work under conditions other than those rigorously agreed"*.[27] In particular, it entails employees who are willing to perform work for a mutually agreed period of time at a place other than their starting place or an agreed regular workplace.

Another case of flexibility is then the *"willingness of the employee to accept the start and performance of work beyond the planned shift schedule"*.[28]

Thus, even here, it is not possible to talk about flexibility of working hours in the sense that the employee would partially choose working hours, but rather about flexibility for the purposes and needs of the employer.

PKS ČD does not regulate other institutes that could be described as new or alternative methods of employment.

5.7.2.2 Plant agreement of Skanska, a.s.

Another analyzed plant agreement is an agreement concluded by Skanska, a.s., Skanska Transbeton s.r.o., Lom Klecany s.r.o., Skanska Facility s.r.o., Skanska Asfalt s.r.o., as an employer, with the following trade unions: ZO OS STAVBA ČR at Skanska Pozemní-Stavby Čechy, ZO OS STAVBA ČR at Skanska-Technologické Závody, ZO OS Stavba ČR at Skanska DS, ZO OS Stavba ČR at Skanska Reality, ZO OS Stavba ČR at Skanska-Servis, ZO OS Stavba ČR at Skanska as Uh., ZO OS STAVBA ČR LOM, Klecany s.r.o., OS Stavba ČR-Coordinating Trade Union Body at Skanska, a.s., TRADE UNION OF RAILWAYS - ZO OSŽ SKANSKA Ž.S. a.s., ., TRADE UNION ASSICIATION OF RAILWAY WORKERS FROM RAILWAY CONSTRUCTION PRAGUE ELMONT. DIVISION, for the period 2020–2024 (in the following as the "PKS Skanska").[29]

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[26] Company collective agreement of České dráhy a.s. for 2020 is available online at: http://oszdepopraha.cz/sites/default/files/pks-cd-2020_0.pdf.
[27] Cf. Article 28, Annex No. 2 of the PKS ČD.
[28] Cf. Article 28, Annex No. 2 of the PKS ČD.
[29] Company collective agreement of Skanska a.s. for 2020-2024 is available online at: https://zoskanska.cz/_files/200000205-7248672489/Kolektivni_smlouva_2020-2024.pdf.

PKS Skanska does not contain any regulation concerning new forms of employment, only in Article 6 it allows uneven distribution of working hours in the sense of the working hours account according to Sec. 86 of the Labor Code.

However, in the case of the working hours account, it is not possible to speak of flexible working time in the true sense of the word, as it is an advantage for the employer rather than a benefit for the employee. This institute allows the employer to schedule the work to the employee according to his operational needs.

"When applying the working hours account, the employer shall keep a working hours account and a payroll account for each employee. In the working hours account, the employer reports the specified weekly working time (i.e. how many hours the employee shall work according to the extent of his contract), the working time schedule (schedule into shifts, including the beginning and end of shifts) and the actual working hours worked. The wage account records the wage, to which the employee is entitled pursuant to the employment contract (achieved wage), and the fixed wage, which is the wage that the employer pays to the employee in the account, regardless of the time of work performance." (Hůrka, 2006).

5.7.2.3 Plant agreement ŠKODA AUTO a.s.

The last analyzed collective agreement is the plant agreement concluded by ŠKODA AUTO a.s., as the employer, and the trade unions KOVO MB Unions, KOVO KV Unions and KOVO VR Unions, for the years 2018–2022 (in the following as the "PKS ŠKODA AUTO").[30]

PKS ŠKODA AUTO regulates in Chapter B. Article 10 the issue of temporary agency employment, which for the purposes of the contract means *"employment relationship in which an employee has concluded an employment contract with an employment agency, which temporarily assigns him to work for a contractually determined period under the supervision and guidance of a user, ŠKODA AUTO"*.[31]

According to PKS ŠKODA AUTO, the employment of an agency worker should not occur at the expense of regular employees and the proportion of agency employees may not exceed 30% of the total number of staff in any period of six consecutive months.[32]

[30] Company collective agreement of Škoda auto a.s. for 2018-2022 is available online at: https://www.kupnisila.cz/wp-content/uploads/2020/06/kolektivni-smlouva-skoda-auto-2020-2021-2022.pdf.
[31] PKS ŠKODA AUTO, Chapter B, Article 10.1.
[32] Cf. PKS ŠKODA AUTO, Chapter B, Article 10.2. and 10.3.

Another institute regulating PKS is flexible working hours, which the employer allows for employees in a one-shift regime with a permanent morning shift.[33] *"In this case, the employee chooses the beginning or end of working hours on individual days within the following periods of optional working hours (...). A period of time in which the employee shall be at the workplace (basic working hours) is inserted between the two periods of optional working hours."*[34]

ŠKODA AUTO does not explicitly regulate and allow other modern forms of employment.

5.7.3 Findings from the analysis of collective agreements

The analyzed collective agreements of a higher level do not regulate the issue of new, modern forms of employment either at all, or they are mentioned only very marginally. Thus, higher level agreements contain, for example, an employer's general declaration that he will support flexible working hours.[35]

There are several reasons why higher level agreements do not regulate to a greater extent and specificity new forms of employment.

First of all, **this is an area for which the regulation in a higher level agreement is not entirely appropriate, as it largely depends on the possibilities and operating conditions of individual employer**. It is therefore difficult to lay down uniform rules binding all employers from a particular sector.

From this point of view, it is therefore far more appropriate for the regulation of flexible working hours and other modern forms of employment to be regulated rather in the plant collective agreement or within the framework of individual employment contracts negotiated with individual employees.

Another reason is the fact that **higher level agreements are mostly concluded in sectors of the economy where new forms of employment are generally slower to implement**, or their introduction and application is not possible at all, for reasons based on the nature of the employer's activities. If we talk about areas such as transport or light or heavy industry, some new forms of employment may be applied here either with difficulties or not at all.

Another issue that hinders the greater spread of modern forms of employment is the fact that some of the modern forms of employment also **do not have sufficient support in the legislation**, or they are included very gradually.

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[33] Cf. PKS ŠKODA AUTO, Chapter C, Article 2.3.
[34] PKS ŠKODA AUTO, Chapter C, Article 2.3.1. and Article 2.3.2.
[35] Cf. eg KS SBP x OSPPP, Article 2.2. letter n)

For example, the legal regulation of the so-called shared workplace did not enter the Labor Code until the amendment made by Act No. 285/2020 Coll., amending the Act No. 262/2006 Coll., the Labor Code, as amended, and some other related acts, specifically entering into the new Sec. 317a, whereby this amendment will take effect in the relevant part on January 1, 2021. It is therefore logical that the analyzed higher level agreements, which are effective in the period of 2020, cannot yet reflect the new legislation.

As far as plant agreements are concerned, they are more comprehensive and specific in terms of the rights and obligations of the parties than higher level agreements. Nevertheless, **the analyzed plant agreements regulate new forms of employment in a very general way, or do not regulate them at all**.

The reasons why modern forms of employment are not regulated in sufficient details in corporate contracts, or are not regulated at all, are partly the same as in the case of higher level agreements, which have been explained above.

This is mainly due to the fact that **company collective agreements are a typical tool for sectors where new forms of employment are difficult to apply** or not applicable at all in practice (employment in the field of transport, light and heavy industry, etc.).

Another reason for the absence of regulation of modern forms of employment in plant agreements is the fact that these new forms of working hours usually do not yet have a firm ground in legislation (e.g. the issue of shared economy or shared workplace).

If collective agreements regulate new forms of employment, then they mostly allow these special schemes to be negotiated in reasonable cases with specific employees and, therefore, do not introduce the solution for all employees or for a specific group of employees.

Modern forms of employment are typically negotiated with a specific employee on an ad hoc basis, according to the needs of both the employer and the employee.

Collective agreements therefore provide only certain general rules to which the employers and employees should adhere when negotiating individual rules or exemptions.

Summary

Collective labor law contains legal norms that regulate legal relationships arising from the so-called collective bargaining. Collective bargaining leads primarily to the conclusion of a collective agreement. There are two basic types of collective agreements, namely higher level agreements and plant agreements. The procedural requirement of the collective bargaining and the legal regulation of the collective agreement are regulated by the Labor Code and the Collective Bargaining Act.

The subjects of collective bargaining are employers and representatives of employers, on the other hand, representatives of employees, which include trade unions, works councils, and representatives for occupational safety and health protection.

The employer has a number of obligations in relation to the representatives of employees, including, in particular, the obligation to acquaint these representatives with the selected information, inform them about it, or discuss it with them. For certain negotiations, the employer needs prior consent of the trade union; for some issues, it is necessary to conclude an agreement with the trade union.

As for the content of a collective agreement, it is divided into a normative part, obligatory part and proclamatory part. If the mandatory requirements required in particular by the Labor Code and the Collective Bargaining Act are met, the content of the collective agreement is arbitrary, however, it must not be in conflict with legal regulations.

The conclusion of a collective agreement has a precise procedure pursuant to the Collective Bargaining Act. If no agreement is reached, disputes arising from collective bargaining may be settled through a mediator or arbitrator. The last resort for settling disputes may be either a employees' strike or employer's lockout.

An analysis of selected higher level agreements and plant agreements was carried out to investigate how modern forms of employment are regulated, e.g. flexible jobs, home working, shared workplace, employment within a shared economy or agency work employment.

The analysis showed that in **collective agreements of higher level and in plant agreements, these new forms of employment are not regulated at all, or there are only general rules for their introduction or negotiation with a specific employee**.

This absence of modern forms of employment in collective agreements is mainly due to the fact that for some of these forms there is still no enshrinement in the legislation. Another reason is that in sectors where collective agreements are typically used, these types of working hours are introduced more slowly, or their implementation is difficult or absolutely impossible. Finally,

the last reason is that these forms of employment are usually negotiated on an individual basis with a specific employee according to the needs of both the employee and the employer.

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