

New Trends in Promoting the Role and Significance of Collective Bargaining

Role of Collective Bargaining in an Era of Increasing Digitalisation of Work

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Introduction

Changes in the job market, caused by what economists call *Industry 4.0*, or rather by the impact of trends in globalisation and digitalisation of work, necessarily bring new trends in the manner in which the performance of dependant work is ensured. Thus, changes are experienced in terms of employee recruitment, working conditions, health and safety, remuneration, or balancing work and home life. Simply put, digitalisation of work is reflected in the entire complex of, among other things, the working conditions of employees and the regulation of their industrial relations to employers. Digitalisation of work brings forth challenges not only in regard to the performance of dependent work, but also for the legal environment (in) which the performance is standardised and amended. It is imperative that the legal system, or rather the labour law as a set of labour regulations of legal relations which emerge and are actualised when dependant work is performed, respond to these modern challenges.

Regulation of the working conditions of employees, establishment of fundamental legal rules, minimum protection standards, etc. primarily occur through labour legislation. However, the legislative process and reflection on social requirements it affects assumes a relatively complex and time-consuming procedure, one which is additionally influenced by political ambitions and may not always quickly and directly respond to social or economic demands. Although law-making is to remain the primary manner in which working conditions are regulated in the digitalisation era, employee representatives have many opportunities to influence the nature of the working environment and conditions. Social dialogue and collective bargaining are an ideal tool for reflecting changes.

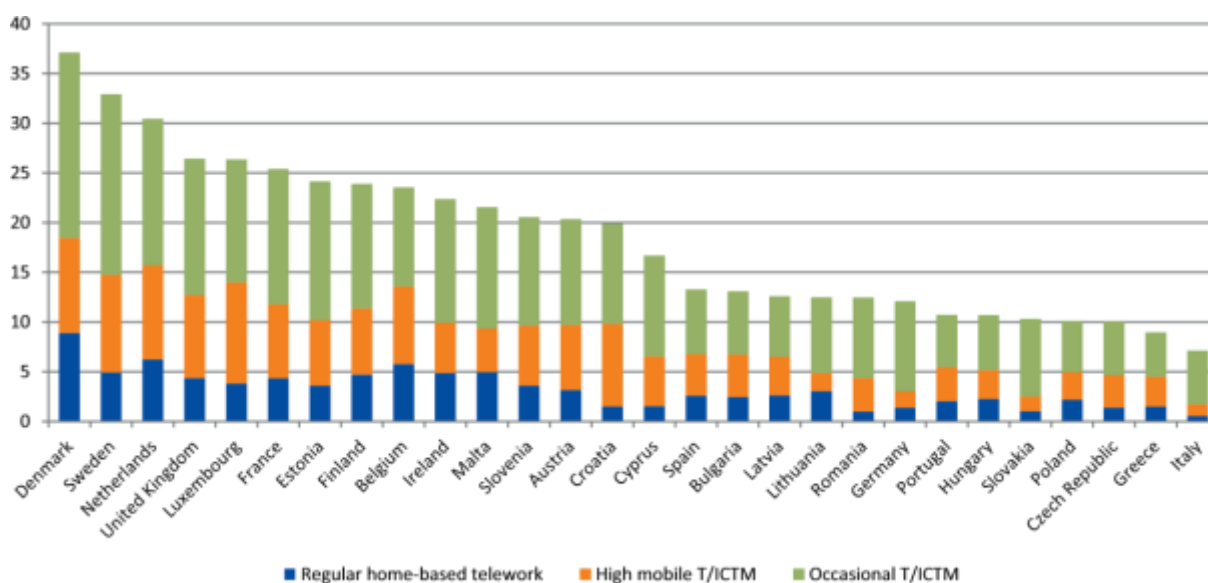
If we are to discuss new trends in collective bargaining, then right from the beginning we can highlight how significant it is to engage in a quality social dialogue and collective bargaining in order to ensure and guarantee a suitable working environment of employees where both the working and social demands of employees, aimed at balancing their home and professional lives, are respected.

Employee representatives who influence the formation of working conditions as per the national legal system (such as, primarily, trade unions in the Czech Republic) face a changing environment, just like individual employees and in effect employers do. Trade unions must confront all new trends and requirements. A consistent social dialogue, quality collective bargaining, and conclusion of collective agreements is the ideal manner for trade unions to successfully deal with these developments and protect employees (as well as their rights) in the era of work digitalisation. With the aid of collective agreements, cooperation between social partners can lead to a regulation of many issues which occur as a consequence of digitalisation, be it effects and changes in working hours, remuneration, occupational safety, balancing home and work life, or emerging mental and psychological hazards. Digitalisation and the introduction of new types of employment, job automation, etc. are being addressed, among others, by the International Labour Organisation. As its findings show, modern forms of work and the use of new modern communication technologies on one hand bring a lot of benefits in regard to, for example, balancing home and work life, but at the same time it blurs the boundary between professional and personal life.¹

The chart below clearly shows the proportion of work performed with digital communication and remotely throughout the European Union, sorted by individual states and the level of *telework* (regular home office; telework from different places, not from a single workplace-home; occasional telework). The Czech Republic is not a country where this type of work is prevalent or where digitalisation is essential in the sense described above. But inspiration can be drawn from other states where the proportion of work done outside the employer's workplaces—and where work flexibilisation occurs—is increasing due to digitalisation.

¹ ILO. Executive summary. Working anytime, anywhere: The effects on the world of work. [online]. *ilo.org* [cit. 2020-28-09]. Available on: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_544151.pdf

Chart: Percentage of employees engaging in telework T/ICTM in the EU28, by category and state



Source: EWCS 2015.

Naturally, the introduction of innovative technologies and the impact of digitalisation is not evident only in a single change to working conditions—telework, possibly work done with the aid of telecommunication technologies—but also in a whole range of other aspects, such as the introduction of modern work assistants into production, assistant automation, sophisticated programmes, and last but not least organisational changes or the introduction of sophisticated control mechanisms.

From the society-wide perspective and in relation to labour law, it can be inferred which fields will be affected by the implementation of digitalisation.

This text reflects on the issue of ***new trends in the promotion of the role and significance of collective bargaining*** in the era of digitalisation and as a consequence of economic-social changes caused by Industry 4.0. In the era of digitalisation and automation, collective bargaining must be in touch with the newest trends. Being aware of the potential impact of the fourth industrial revolution is necessary if relevant demands are to be identified and placed on the employer over the course of collective bargaining. New trends, however, can help strengthen the significance of collective bargaining and enshrine its role in the Czech society. Nevertheless, stable and long-

standing trends and aims of social dialogue cannot be omitted. The newness of trends and direction of social dialogue as a tool for defending mostly the interests of employees (industrial and social) lies primarily in the accentuation of possible new spheres of interest, or rather not so much new spheres of interest as ones which will gain prominence due to the passage of time and a changing perception of work by employees. What remains important is insistence on fundamental requirements which are an integral part of the entire history of the union movement (such as a focus on the membership base and its growth, remuneration terms, or social fund).

Social dialogue and social protection of employees—an existing and new trend

Regulation of working conditions (or generally, conditions of dependant work performance) falls under the category of so-called social relations. Labour law, including collective law, constitutes a part of the entire social law which aims to provide social protection to natural persons in the job market. Having collective agreements and the outcomes of negotiations between social partners reflect the challenges associated with changes in the labour market, ones caused by globalisation and the fourth industrial revolution, is one of the main goals and opportunities of the modern union movement. In regard to collective agreements, trade unions should strive to guarantee the social protection of employees, e.g. by taking advantage of these challenges in order to secure maximum possible benefits for employees.

Social (including labour) protection of the standing of employees must be a cornerstone of the activities in which trade unions engage. Consequences of digitalisation and its impact, or rather efforts to effectively utilise the challenges associated with digitalisation and to minimise the related risks and hazards, are a basic item on the agenda of national union offices and trade unions themselves. The agenda of the Bohemian-Moravian Confederation of Trade Unions (ČMKOS) greatly emphasises that the influence and impact of digitalisation need to be accented. ČMKOS explicitly undertakes to respond to challenges and effects of new economic changes associated with the development of digitalisation and information technologies in relation to the fourth industrial revolution. Unions cannot overlook possible negative consequences this new agenda may have for the job market, working conditions, and sustainability of social systems, and

therefore will demand that the government adopt adequate strategies to minimise this negative impact.¹²

At the same time, there is a support for re-orienting the Czech economy to fully support the employment of highly qualified labour, based on lifelong education, aiming to develop science and technology and extensively applying modern technologies and digitalisation so that the Czech Republic gradually gains economic and social equality with the most developed EU states.³ This goal strives to benefit the society as a whole, not only employees. The ČMKOS programme takes into consideration the impact of digitalisation and the introduction of new innovative approaches into economic goals, or rather goals related to the improvement of living standards. The efforts of ČMKOS aim to make economic outcomes fully serve human needs and societal goals so that they ensure a long-term growth of living standards, based on a fair division of produced values. ČMKOS intends to respond to challenges and the impact of new economic changes, related to the development of digitalisation and information technologies under the umbrella of Industry 4.0⁴

The efforts of social partners to ensure social standards must stress all levels of social dialogue, where the national level appears, holistically, vital. Participation of social partners in the stipulation of legal norms (legal guarantees) at the top level, typically by means of tripartite negotiations, should be strongly supported. Accentuation of a national social dialogue and the impact of globalisation can result not only in the amendment to legal regulations, but also in a conclusion of framework agreements, or rather higher-class collective agreements which, on the tripartite basis, enshrine a joint commitment and goals of employee representatives, employer representatives, and the government to achieve specific results (such as a stronger support for education). This can also lead to the conclusion of a gentleman's/framework agreement which binds social partners to discuss basic set issues and the impact of globalisation, and at the same

¹ ČMKOS programme 2018—2020. [online]. cmkos.cz [cit. 2020-25-09]. Available on: https://ipodpora.odborny.info/dms/soubory/index?file=Program%20CMKOS%202018-2022_20200323114105.pdf s.
²

³ Ibid, p. 7.

⁴ Ibid, p. 8.

time presents an option to resolve key issues related to developments in the job market, methods of work, and employment. Norway can be seen as an example where negotiations were initiated with the aim of concluding a framework agreement on the consequences of new technologies—*new technology agreement*.⁵ The agreement brings forth a prospect and promise of collaboration on various issues and across affected sectors. Conclusion of these agreements on the national level (possible, naturally, also on the central-international level) must concern the initiation of debates on the above-mentioned aspects of working conditions where digitalisation will be clearly evident. These are primarily conditions of healthy work which poses no threat to human life; working hours; monitoring; intensifying the activities of human resources departments etc.

The impact of digitalisation does not manifest itself in a vacuum and in separate territories, within the economy of a single national state; quite to the contrary. They can be and are cross-border in nature. Thus, important aspects of social dialogue include answers and responses to the issue of how new challenges should be confronted on an international scale. As a matter of necessity, trade unions need to become aware (and they are aware) that the impact of digitalisation and new trends manifest themselves globally and in a cosmopolitan manner. In the context of the social partners of the Czech Republic, the efforts, for instance, of the Bohemian-Moravian Confederation of Trade Unions can be mentioned, as well as its awareness of the issue as the ČMKOS programme implies the organisation's recognition that the impact of economic globalisation and the challenges faced by the European Union and Czech Republic and other Member States, in relation to the growing pressure to be competitive and flexible, increase labour costs, digitalise, and automate, will keep affecting the overall position of Czech, European, and global unions.

That is why it is necessary to promote international solidarity when challenges are encountered. Internationally, unions must confront possible further attempts at weakening union rights, turn

⁵ EPSU, How Trade Unions Can Use Collective Bargaining to Uphold and Improve Working Conditions in the Context of the Digital Transformation of Public Services. Report on the conference. Berlin, 2018. p 5.

employees and unions from different countries against one another, and offload additional costs of economic reforms and crises onto them.⁶

Impact of digitalisation—challenges and opportunities for social dialogue

Digitalisation and its impact on the job market, or the introduction of new innovative methods and means of work, will have consequences for the job market and the working conditions of employees. In terms of new trends and challenges in collective bargaining, it is important to try and identify possible negative effects of digitalisation as well as, in order to develop social dialogue, its positive aspects which can further underpin collective bargaining.

Digitalisation manifests in different ways. This may concern both the form of performance and organisation of work, just like working conditions in general and their changes, made due to an introduction of new technologies. Thus, the tenet *know your enemy* takes on a special meaning for social partners, chiefly for employee representatives. Digitalisation is primarily associated with negative consequences for the overall employment (i.e. many employees have concerns about being made redundant and about jobs being phased out). If these negative consequences are to be accounted for, it is appropriate to realise how much and where in the job market the effect of digitalisation will be the most apparent, and where new opportunities may open for employee representatives to respond, and thus mitigate the negative impact.

Focusing on the relationship between the job market and the impact of globalisation, it is appropriate to consider which categories of occupation are primarily threatened, or rather to think about whether all occupations and job market segments are affected to the same degree, or if there are some apparent differences. Pinpointing occupations under threat is the first challenge which needs to be confronted to conceptually resolve these negative effects.

⁶ ČMKOS programme for 2018–2020, op. cit. p. 10.

Chart: A “jobs at risk” estimate of occupations threatened by the digital revolution⁷

Authors	Criteria	Results
Frey and Osborne (2017)	Probability of the occupation being replaced by machines $\geq 70\%$	USA: 47% of jobs highly susceptible to substitution (2013)
Bowles (2014)	Frey and Osborne methodology. Probability of the occupation being replaced by machines $\geq 70\%$	EU = 54% at “high risk” of substitution, ranging from 47% in Sweden to 62% in Romania
Arntz, Gregory, Zierahn (2016)	Probability of the job being replaced by machines $\geq 70\%$	USA: 9% of jobs at risk of substitution. OECD: 9% (ranging from 6% in Korea to 12% in Germany)
Nedelkoska and Quintini (2018)	Probability of the job being replaced by machines $\geq 70\%$	USA: 10% of jobs at risk of substitution. OECD: 14% (ranging from 6% in Norway to 33% in Slovakia)
McKinsey Global Institute (2017)	Thresholds for the technical automation potential of individual occupations ;	Threshold of 70%: 26% of occupations ; Threshold of 30%: 60% of occupations
Employment Advisory Council, COE	Automation index based on the characteristics of work described by 10% of French jobs at high risk employees ≥ 0.7	

⁷ LLORENTE MUNO-DE BUSTILLO, Rafael. *Digitalization and social dialogue: Challenges, opportunities and responses*. [online]. [quoted 2020-25-09]. Available on: https://www.researchgate.net/publication/339948338_Digitalization_and_social_dialogue_challenges_opportunities_and_responses/stats p. 4.

(2017)

Dengler and	Occupations where the proportion 15% of all German workers are at high of substitutable tasks $\geq 70\%$ risk
Matthes (2018)	

The attached chart clearly shows criteria used by individual authors to establish an estimated rate of risk in regard to a phasing-out/loss of jobs where the primary characteristic is an assessment of probability of an occupation's (performance of an activity by a person–employee) and job's replacement by mechanical or digital means. The total rate of probability is ca 70%. Moreover, it is clear that in such countries as the USA, the potential is around 47% (jobs with a high probability of replacement). In the European Union, the high-risk probability is ca at 54%, though there are large differences between individual Member States, ranging in tens of percent—e.g. 47% of jobs in Sweden or 62% in Romania. These findings may not be identical but still have an important information value, namely that digitalisation and the introduction of modern technologies can affect most occupations, many of which have a high probability/possibility of experiencing a replacement of the human factor by machines, etc. However, it is necessary to point out that these numbers cannot be automatically read as a conclusion that current digitalisation trends will decidedly result in the phasing-out of these jobs—we need to differentiate between jobs where correlation can be inherently considered, and jobs which realistically experience changes, i.e. automation cannot be automatically understood as a job loss.⁸

Generally, it is assumed that digitalisation will affect mostly those jobs where there is currently no assumption of highly challenging mental activities; these are mostly simple manual-automated activities. On the other hand, it is presumed that the need for education will grow and more sophisticated job descriptions will appear. In this respect, a challenge arises for trade unions and social dialogue. On the industrial and regional level especially, there is now space for an active approach on the part of employee representatives, namely in connection with estimating which occupations will experience a decreased or increased demand, or where new occupations will

⁸ Ibid, p. 5

form—subjects and schools of education. As industrial and regional social dialogue is closely connected to its recipients and subjects, awareness of regional and industrial needs is expected, subsequently affecting the quality of achieved outcomes. From the perspective of trade unions and social partners, *education* and the adaptation of employees' skills to the changing requirements of the job market are another challenges posed in regard to the resolution of the issue of digitalisation and job market, and to the setting of modern trends in collective bargaining.

Content of collective agreements—participating in the introduction of new technologies

Introduction of new technologies necessarily entails consequences for the working conditions of employees. If trade unions principally act as employee representatives when they negotiate minimum standards which would go beyond the minimum legal norms, or rather when they aim to improve social standards, then modern collective agreements should contain stipulations which deeply regulate the employer's obligation to negotiate, or rather increase the trade union's participation in the introduction of new technologies and procedures. Although this issue is utterly current and vital, these stipulations are essentially absent from collective agreements in the Czech Republic. Their inclusion into collective agreements can thus be viewed as a challenge and a modern trend. Naturally, participation can be included in the general right to information and consulting, as guaranteed by the Labour Code; on the other hand, a quality collective agreement should contain a detailed stipulation.

Digitalisation and its effects, just like introduced *new technologies*, are hard to define as terms. Once more, there is an opportunity for employee representatives to join the developments in the workplace. Collective agreements can include a commitment on the part of the employer, saying that

“When introducing new technologies, the employer undertakes to engage in activities aimed at the fulfilment of their duty to inform and consult. The employer also undertakes to use these new technologies to the benefit of all employees, regardless of the type and nature of their business relationship (employment and contract-based legal relationships.)”

Abstract definitions of measures on immediate consequences can be further amended, e.g.

“New technologies are understood to mean any innovations which affect the work and working conditions of employees, such as technical apparatuses, machinery, control, or procedural and work systems.”

Collective agreements, agreements between social partners, or framework agreements are undoubtedly a basic instrument which can ultimately secure the social standards of employees and optimum working conditions. It is up to employee representatives to become aware of this opportunity and be able to explain/enforce their interests with social partners. The content of these agreements⁹, or rather special stipulations contained in them, can give employees more security and essentially facilitate trust in the union movement, thus strengthening the position of trade unions, as well as the significance of collective bargaining and social dialogue.

Norway, Italy, or Belgium are just a couple of countries where social dialogue accentuates new trends and where social partners actively help formulate solutions to the consequences of digitalisation via the above-mentioned types of agreements. The Italian example shows that one of the latest agreements between social partners on the national level (concluded between the Italian government, employee representatives, and employer representatives) aims to establish a special entity (joint commission) for innovation whose job it would be to consider solutions to issues related to intelligent forms of work, balancing home and work life, or employees experiencing a burnout (might be resolved by e.g. the right to disconnect)¹⁰. Framework agreements between social partners on new technologies and solutions to their impact are not unknown in Northern countries, either. There (Norway), social partners undertake to resolve these effects by regulating working hours, remuneration, or emphasising education. The framework agreement also introduces basic principles, rules, goals, and ultimately modern trends in social dialogue. A good coverage in terms of both opportunities and threats requires cooperation between social partners, regardless of economic sectors and the level of social

⁹ For more details on the possible formulation of such agreements see chapter “How an agreement-CA provision can look like (template)”

¹⁰ GRIECO, Nicoletta. The Italian experience in the light of collective bargaining and the project of the European Sectorial Social Dialogue Committee for Central Administrations. Available on: <https://www.epsu.org/sites/default/files/article/files/Presentation-Grieco.pdf>

dialogue. From the perspective of employee representatives, it is necessary to insist on the implementation of employee participation, primarily on a consistent provision of information and actual solution to situations by discussing them with an employee representative.

Measures should not be adopted unilaterally, but after their consultation and careful deliberation by social partners. At any rate, promotion of social dialogue and partnership needs to be one of the modern trends in collective bargaining and social dialogue. Similar to other member states, trade unions in the Czech Republic can too insist on the establishment of a group, e.g. an advisory group to the tripartite organisation which will deal with the consequences of digitalisation. Moreover, regular collective agreements can negotiate a commitment (in the section on obligations) which imposes a duty on the employer to consistently inform employees and dutifully consult intentions to introduce new technologies with the trade union (primarily if there is an expectation of a significant impact on the rights of employees, working conditions, and employment).

Active approach on the part of employee representatives, as well as protection of employees when new technologies are being introduced, can be enshrined by social dialogue on the national level. In terms of international regulations and regulations aimed at ensuring fair working conditions and the protection of employees, the national level of social dialogue can result in the conclusion of an agreement, or rather in the inclusion of a general rule on the process of introducing new technologies (implementation of authorisation, purpose of the tripartite organisation's existence). General rules should concern all employers, with no obstacles posed to the inclusion of new specifics. A minimum national standard is only a starting point and a minimum level of industrial and social protection of employees who may be affected. Although the topic of digitalisation may appear relatively new, its manifestations in the labour law and industrial relations can be compared to and included into the general view of technological progress. From a historical perspective, the issue under study constitutes a basic part of social dialogue. Countries with an advanced social dialogue (i.e. legal-social-economic environment where employee representatives participate in the formulation of social standards) include, due to general regulations of the consequences brought about by the introduction of technological innovations, for example Belgium which has a highly developed system of national social dialogue

and collective bargaining, thus constituting one of the few EU countries (alongside e.g. Norway) with a national policy (agreement) of handling technologies and their effect on the job market.¹¹ The Belgian national collective agreement, aimed at new technologies in labour law, dates as far back as 1983. It originated due to a deal between social partners and has a universal personal scope (is binding to all employers, with limits based only on the number of employees—at least 50). If an employer intends to invest into and introduce new technologies, and should these measures have a considerable and severe impact on employees, organisation of work, or working conditions in general, then the employer is bound to cooperate with the trade union. Thus, there is no absolute ban on handling one's business. The employer retains their right of disposal; the only difference is that due to social dialogue, changes will not have as many powerful negative consequences. The Belgian collective agreement can be an inspiration to social partners in the Czech Republic. Taking into account the national scale, it is conceivable that a framework agreement could be concluded on the tripartite level. Such agreement should establish basic parameters in order to be sufficiently specific, but also allow for a broad application (i.e. it should not be too limiting). The content of an agreement concluded on the national level¹² should include stipulations which introduce rules with a sufficient clarity while taking into account the size of the employer's entity, in connection with the general framework of consultations and the provision of information, etc.

If the employer decides to invest and introduce new technologies and if their intended approach should significantly affect employment, organisation of work, or the general working conditions of employees, the employer is obliged to cooperate with the trade union. Specifically, they have a duty to

- provide a written notification to the trade union of the intended changes, nature of the innovations and the technological changes being introduced, and of the circumstances (reasons) which led to this introduction and justify an implementation of new

¹¹ ALBERTIJN, Michel. HANCKE, Bob. WIJGAERTS, Dany. Technology agreements and industrial relations in Belgium. In *New technology, work and employment. year 5, no. 1.* 1990. p. 19.

¹² For more options on lower levels see chapter "How an agreement-CA provision can look like (template)"

technologies. They are also obliged to give information on the social impact of these changes. Moreover, a consultation (debate) should be held with the relevant trade union on expected consequences;

- written information must detail the nature of the innovations being introduced, as well as the economic, financial, and technical (technological) factors which justify the employer's decision and substantiate the form and nature both of the new measures, and the social impact and timing of these changes. While engaging in negotiations with the trade union and providing written information, the employer must state which serious (operational) reasons led them to their decisions and positively motivate their implementation. The data needs not be provided in writing only if their provision (the scope of information) could severely damage the company's interests. In that case, a formal verbal consultation suffices.

In connection with national terms, national regulation of employee participation, and the significance of employee participation, the employer is obliged to provide information to employee representatives. On the other hand, it is necessary to respect the significance of the provided information in respect to the protection of the employer's legitimate interests. For that reason, employee representatives should maintain confidentiality on the facts they learn, or rather must handle them only in the scope needed. Consultations and discussions take place along the common national line—by cooperating with social partners.

When formulating the employer's obligation to inform affected employees and their representatives, there should ideally be stipulations on deadlines when information is to be provided and negotiations held so that employee representatives have an opportunity to make statements and suggestions. For example, there can be a rule stating that

- the employer is obliged to inform employee representatives one month before the intended introduction of technologies and innovations at the latest.

The framework rule's scope must give the employer a certain freedom in regard to organisational authority. The employer cannot be bound by rigorous bans. Therefore, it is necessary to establish a utility limit, based on the number of employees (the right to information and consulting being

based on there being at least 10 employees, the right to form a trade union on there being at least 3 employees, or the contemporary European rules for identifying small/large business, e.g. 50 employees¹³).

The process of defining the range of situations where information should be provided and negotiations held should be in line with the employer's specific circumstances and concluded in e.g. a collective agreement or an industrial framework agreement. However, based on international experience (such as Belgium), it can be considered appropriate to say what *significantly affect* means.

A fact which significantly affect employment, organisation of work, and other working conditions is one where a measure concerns at least 50% or at least 10 employees who fall under a specific occupational category (defined by the type of work or workplace). If the employer does not employ at least 100 workers from a specific category, the total sum rule applies (i.e. the total number of employees is used as a basis).

If the employer's obligation is to be fulfilled in advance before the introduction, or more specifically before this introduction of new technologies and procedures takes effect, a point in time must be determined which is binding for this obligation, or rather from which the deadline (by which the introduction should be discussed) can be retroactively calculated.

The moment of the innovations' introduction can be noticeable visually (visible changes) or when changes to organisation or working conditions occur. The employer is also obliged to notify the trade union of the date of introduction by sending it a decision on these organisational changes.

The scope of a framework agreement depends on the introduction of new technologies. If the employer simply innovates (updates) the current condition and does not significantly affect the rights of employees, then the obligations which were negotiated in the agreement do not apply. On the other hand, the employer is still obliged to inform employee representatives and consult

¹³ What is an SME? - Small and medium sized enterprises (SME) - Enterprise and Industry. [online]. *ec.europa.eu*. [cit. 2020-27-09]. Available on: http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf
p. 14

them as a result of the application of general rules on employee participation.¹⁴ It must also be stated who qualifies as an affected employee.

Whether the introduction concerns something “new” must be determined by assessing what was introduced into the business in the past and what is being introduced as a result of the implementation of innovations. Affected employees are those employees who are directly impacted by the introduction of innovations, be it by a demand to change or improve their qualifications (and thus to undergo a training), or by a change of working conditions (e.g. of the manner of performance or place of work), or those who must undergo organisational changes in terms of the make-up and size of the employee staff (i.e. for example those impacted by lay-offs). It does not matter if employees are to be impacted by these changes positively (e.g. when working hours are shortened without a reduction in pay), or negatively (e.g. when they need to improve their qualifications).

The employer is obliged to consult employee representatives on

- expected prospects and impact in regard to employment, employees, distribution of labour, job structure, or intentions to adopt social measures (e.g. social policy acquisition);
- organisation of work and changes to working conditions;
- connections to occupational safety and health;
- qualifications needed upon the introduction (no longer needed) of changes and options of deepening and acquiring qualifications (requalification) by affected employees.

The primary aim of framework agreements is to enshrine general rules and promote a deepening of social dialogue. However, they can also contain stipulations which are more protective or even punitive in nature (subsequently, though, national legislation must transfer or link these sanctions with legal regulations so that they are enforceable).

¹⁴ For more on effectivity and scope see e.g. European Commissions. Commission staff working document “Fitness check” on EU law in the area of information and consulting of Workers. [online]. *ec.europa.eu*. [cit. 2020-27-09]. Available on: <http://ec.europa.eu/social/BlobServlet?docId=10415&langId=en> p. 6

If the employer does not respect the framework agreement and does not act in harmony with its wording, they are not entitled to terminate the employment of employees for reasons brought about by an introduction of innovative changes (i.e. does not apply to other reasons and situations). The employer is obliged to prove there is no connection to innovative changes. If employment is terminated as a consequence of innovative changes, employees are entitled to a one-time redundancy payment.¹⁵

A general social dialogue framework on the general level assumes that binding rules will be added on the industrial and business level. From the perspective of the position of trade unions and employee representatives, however, it is essential that there be some framework agreement as its presence formulates a unified goal on the national level, allowing to point activities in the stated direction on lower levels of social dialogue and collective bargaining.

Employee representatives' participation in the bettering of working conditions after digitalisation

In the post-digitalisation era, social dialogue provides space for social partners to reflect on modern changes to working conditions. When considering the options and diversity of the job market and workplace, it is essential for trade unions to detail their opportunities for engaging in activities and to accentuate possible new trends and goals in relation to representing the interests of employees. It is clear that social dialogue greatly helps resolve the consequences of digital transformation. In countries where there is a high-quality social dialogue, a collaboration between social partners is a basic manner of confronting these consequences effectively. Social partners play a significant role in the process of setting rules and goals. They are significant e.g. when identifying areas which should primarily experience requalification, retraining, and a higher level of education and ability to handle new technologies, with the aim of not losing their position and significance on the job market and in society.¹⁶

¹⁵ See e.g. Belgian National Collective Labour Agreement on new Technology. Available on: <https://www.itfglobal.org/sites/default/files/node/page/files/belgian-national-collective-labour-agreement-onnew-technology.pdf>

¹⁶ OECD. *Going Digital in Sweden_OECD Reviews of Digital Transformation*. [online]. *oecd.org* [cit. 2020-28-09]. Available on: <https://www.oecd.org/sweden/going-digital-in-sweden.pdf>

Digitalisation has an undeniable impact on hiring and the content of employment relationships across sectors (be it the manufacturing or public sector which focuses mostly on administration). In France, for example, it is estimated that 3–8 percent of public sector employees (i.e. ca 40,000 to 110,000 employees) will soon face the consequences of digitalisation of work (applies mostly to administrative-technical occupations). A similar impact is also assumed to occur in the United Kingdom. In the public sectors, representatives of administration employees expect that digitalisation will have negative consequences for more than 230,000 out of 1,4 million employees—members (The Unite multi-sector union), where lay-offs due to digitalisation are expected by 2035. A similar trend was noticed in the Netherlands. These are no mere speculations, but well-founded visions of the future. In the Netherlands, consequences of digitalisation have had appreciably impacted the employment of workers in posts which do not require a high educational attainment and competences. It is inferred that digitalisation had an immediate impact on 1500 employees (approximately a tenth of the total number) providing legal services (under the umbrella of administrative and public activities).

Digitalisation entails tendencies to restructure. In terms of modern trends and challenges, trade unions and social partners must aim to provide social protection to employees in case of a termination of employment, and strive to prevent the negative consequences of lay-off and job loss. Restructuring and staff reduction occur in times of austerity. Some government initiatives (such as in France according to president Macron) aim to streamline public administration. In France, there are plans to reduce administrative staff by up to 120,000 employees by 2022; in the United Kingdom, the number of public officials was reduced by hundreds of thousands due to digitalisation and persisting austerity measures.¹⁷

Social partners should focus on finding positive consequences of digitalisation, especially in regard to job creation and possible modifications to existing working conditions. Digitalisation is also full of potential—employees and the job market can benefit from digital changes in the sense that,

¹⁷ EPSU, Using collective bargaining to improve working conditions in the digital transformation of public services. [online]. *International Labour Organization* [cit. 2020-28-08]. Available on: <https://www.epsu.org/article/reportseminar-how-trade-unions-can-use-collective-bargaining-improve-working>

for instance, the most frequent and standardised working processes are automated. When creating digital jobs, there is also an option for new forms of work to emerge. The key aspect lies in the approach a trade union (employee representatives) takes to the issue of its contribution to positive outcomes, namely by regulating the process of job loss and creation, and in its influence on new job descriptions and in provision of a training required for an effective performance.¹⁸

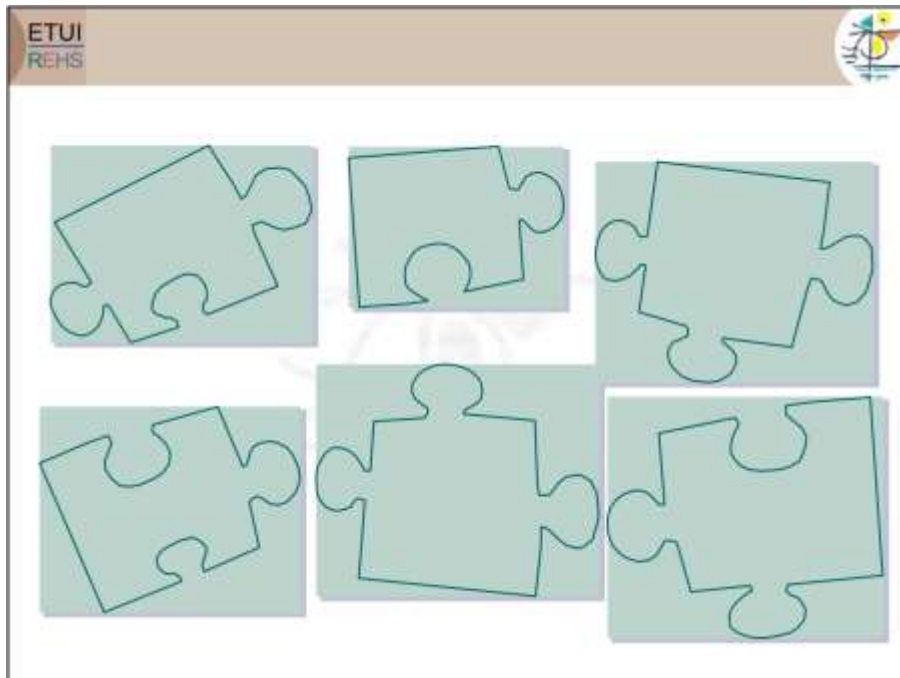
It is necessary to keep track of trends in collective bargaining, especially in regard to the content of collective agreements. Digitalisation brings many challenges. Changes to working conditions, to forms of performance of work, to the circle of regular employees, etc. by design invoke a need of changes to how social dialogue and collective bargaining is approached. Trade unions must strive to get as much as possible out of the new challenges in terms of employee benefits and protection of employee rights. Social dialogue thus becomes a central theme in the reflection and active coverage of said changes and challenges.

As a form of employee participation in the operation of a business, social dialogue significantly increases the inclusion of employees into business matters. It is an as-of-yet incomplete jigsaw puzzle of approaches (incomplete as new challenges and responses to them constantly arise, e.g. in the form of a proposed introduction of a social policy or framework agreement as mentioned below), participation, and options, facilitating a quality social reconciliation and optimum working conditions.

Figure: Inclusion of employees, shown as a jigsaw puzzle¹⁹

¹⁸ Ibid

¹⁹ JAGODZINSKI, Romuald. KLUGE, Norbert. STOLLT, Michael. Worker interest representation in Europe—Towards a better understanding of the pieces of a still unfinished jigsaw. [online]. *worker-participation.eu* [cit. 2020-28-08]. Available on: <https://www.worker-participation.eu/content/download/2086/16081/file/Jagodzinski-Kluge-StolltJigsaw-Manchester-final.pdf>



Trade unions have a right to information and consulting, guaranteed by labour regulations of various levels, such as the Directive 2002/14/EC of the European Parliament and of the Council²⁰. Among other things, the directive stipulates a minimum scope of the right to information and consulting. Primarily, the right includes

- a) information on the latest, and most likely development of the activities a business or enterprise engages in, and on said business' economic situation;
- b) information and consulting about the situation, structure, and likely development of employment in a business or enterprise, and intended preliminary measures, especially if these threaten employment;
- c) information and consulting about decisions which will likely lead to significant changes in contractual relations or the organisation of work.

²⁰ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. [online]. *Eur-Lex*. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=cellar%3Af2bc5eea-9cc4-4f56-889d-3cc4c5ee5927#> (hereinafter referred to as "Directive 2002/14/EC")

National legal systems can and do specify and expand the right to information and consulting. On the general level, the Czech Labour Code guarantees a trade union the right to information, consultation, and a joint decision-making power in some respects. With respect to progressive effects of digitalisation, awarded rights can be suitably used within the trade union complex with the intention of adequately tackling upcoming changes and challenges. The right to information and consulting is primarily related to the person of each individual employee on which the scope of rights enjoyed by the trade union subsequently depends and, due to the awarding of a special position to the trade union, expands—as specified in Sections 279 and 280 of the Labour Code, where the employer is obliged to inform employee representatives (and by extension employees themselves) on:

- a) the employer's economic and financial situation and its likely development;
- b) the employer's activities, likely development, their consequences for the environment, and the employer's ecological measures;
- c) the employer's legal status and its changes, internal organisation, and any person authorised to act on the employer's behalf in connection with labour relations, on the employer's prevalent activities with an Economic Classification code, and on implemented changes to the employer's activities;
- d) basic issues of working conditions and changes to them;
- e) matters which fall under the scope set for the obligation to negotiate (see further below);
- f) measures the employer adopts to ensure equal treatment of employees of all genders, and to prevent discrimination;
- g) supply of open-ended jobs which are suitable as a follow-up occupational placement for workers employed by the employer for a fixed term;
- h) occupational safety and health in the scope set by Sections 101 to 106 of the Labour Code and by Section 108 of the Labour Code, and by the special law on additional terms of occupational safety and health;

- i) matters in the scope set by stipulations on the establishment of a European Works Council, or based on another agreed-upon procedure for information and consulting on the international level, in the scope set by Section 297, Article 5 of the Labour Code.

These obligations are imposed on all employers where employee representatives are active, except for obligations listed under letters a) and b), and only if the employer in question employs fewer than 10 workers.

If an employer sustains their activities by means of agency workers, then additional obligations can be taken into consideration, namely to provide information to temporary agency workers on open vacancies.

The employer is obliged to **consult**, e.g. in situations concerning:

- a) the employer's likely economic development;
- b) the employer's intended structural changes, rationalisation or organisational measures, measures affecting employment, and especially measures associated with mass lay-offs as per Section 62 of the Labour Code;
- c) the latest number and structure of employees, likely development of employment, basic issues of working conditions and changes to them;
- d) transfer as per Sections 338 to 342 of the Labour Code;
- j) occupational safety and health in the scope set by Sections 101 to 106 of the Labour Code, and by the special law on additional terms of occupational safety and health;
- e) matters in the scope set by stipulations on the establishment of a European Works Council, or based on another agreed-upon procedure for information and consulting on the international level, in the scope set by Section 297, Article 5 of the Labour Code.

Similar to the obligation to provide information, the duty to consult applies to essentially all employers, excepting the duties imposed by letters a) to c) if the employer employs fewer than 10 workers.

Legislation associates the largest scope of legally regulated rights enjoyed by employee representatives with the **participation of employees in the resolution of issues related to occupational safety and health.**

The employer cannot refuse to negotiate with the trade union or with an OSH representative in regard to issues of control and introduction of new technologies, or to a resolution of their consequences for occupational safety and health. In respect to the issue of safe working conditions, the employer has a few legally foreseen duties to employee representatives, such as a duty to

- a) ensure and allow participation in negotiations on occupational safety and health, or provide information on such negotiations;
- b) hear out information, objections, and proposals for occupational safety and health measures, primarily proposals to eliminate risks or limit effects of risks which cannot be eliminated;
- c) discuss:
 - important measures on occupational health and safety;
 - risk assessment, adoption and implementation of measures to reduce the effect of risks, work in controlled areas, and categorisation of work as per the Act on Protection of Public Health;
 - organisation of training in legal and other occupational safety and health regulations;
 - the appointment of a professional natural person to prevent risks as per the act on additional terms of occupational safety and health.

Moreover, the employer is obliged to inform the trade union and OSH representatives on:

- a) employees appointed to organise first aid, ensure that medical professionals, fire fighters, and the Police of the Czech Republic are sent for, and organise the evacuation of employees;
- b) the options and provision of labour-medical services;
- c) the appointment of a professional natural person to prevent risks as per the act on additional terms of occupational safety and health;
- d) other matters which can significantly affect occupational safety and health.²¹

As we can see, the Czech Labour Code gives trade unions a broad scope of authorisation and access to information which can subsequently be used in social dialogue and collective bargaining to defend the rights of employees and represent their interests. The employer's intentions to introduce new technologies or engage in a higher-level automation of work should be consulted with the trade union. Also, regulations obligate employers to provide information in a sufficient scope and timely manner. Information must be provided in an appropriate time, manner, form, and content to allow employee representatives to adequately evaluate it and possibly prepare a consultation on said data.²²

The Labour Code and international regulations guarantee that trade unions are entitled to collaboration in a general scope. The performance of these entitlements is up to the trade unions themselves. To make the right to information and consultation more effective and prevent possible negative effects of digitalisation and new trends in employment, trade unions should *pro futuro* focus on enshrining more detailed rights e.g. in a collective agreement so that the employer knows which issues are to be discussed with the union, and that the employer needs to respect the view of the employee representatives.

²¹ HORECKÝ, Jan. Zástupci zaměstnanců—odborová organizace. *fulsoft.cz* [online]. 24. 10. 2018 [cit. 2020-27-09]. Available on: <https://www.fulsoft.cz/33/zastupci-zamestnancu-odborova-organizace-uniqueidmRRWSbk196FNf8jVUh4EjYgSqiyes8b2jcqnoJn14T3dCx33mAsJA/>

²² Including Article 3, Item 3, Directive 2002/14/EC.

A right to information and consultation is a basic attribute of employee representatives. The range of options, methods, entities, and forms which facilitate the implementation of the right to employee participation is diverse. Across Europe, the consequences of digitalisation and effects of innovation can be reflected in negotiations between social partners, initiated on account of either contractual stipulations (such as a framework agreement), or the law (e.g. Directive 2002/14/EC). Situations where social dialogue can be initiated are endless. Social dialogue can essentially occur under any circumstances as one of its basic rules says that a consultation can be held anytime and on anything.²³ On the other hand, there are international and national legal regulations which explicitly assume employee participation and social dialogue initiation—in foreseen situations. In the interest of harmonisation, there are almost 40 directives on the European level which obligate Member States to cooperate with employee representatives in regard to implementation. A table below details the respective areas. It must be noted that the meaning of directives and the right to participation they enshrine help confront the challenges related to digitalisation and to the introduction of new technologies. Relevant trade unions can use these directives and the right to information and consultation, or, respecting the specificity of the employer's activities, by means of a collective agreement amend the scope of commitments and issues which require social dialogue. The figure below shows 37 basic parts of the EU's legal framework on the basis of which social dialogue is to be held on the business level. It shows a connection between international and national social dialogue, as well as areas where social dialogue finds its primary application (especially the set of rights which fall under employment law—labour law in general, followed by the protection of employees' health in relation to safe working conditions which do not threaten the health).

²³ HORECKÝ, Jan. Vybrané zásady a principy v právu kolektivního vyjednávání. In: HAMULÁK, Ondrej a kol. Principy a zásady v právu - teorie a praxe. Sborník z konference Olomoucké debaty mladých právníků 2010. Prague: Leges, 2010. p. 228–229

²⁴ JAGODZINSKI, Romuald. KLUGE, Norbert. STOLLT, Michael. Worker interest representation in Europe—Towards a better understanding of the pieces of a still unfinished jigsaw. [online]. *worker-participation.eu* [cit. 2020-28-08]. Available on: <https://www.worker-participation.eu/content/download/2086/16081/file/Jagodzinski-Kluge-StolltJigsaw-Manchester-final.pdf>



As implied by the figure above, employee representatives have a rather wide range of options to access information on changes intended by the employer and on working conditions. Thus, employee representatives still face the challenge to find a way to adequately avail themselves of the right to information and consulting, and to use it in order to meet the challenge of digitalisation.

No doubt, collective agreements (as binding rules of conduct) are an ideal tool to guarantee and implement the right to participation and confront the pitfalls of the digital era²⁵. A collective agreement can enshrine the rules of cooperation in the prevention of elimination of risks related to effects of the introduction of new technologies. Naturally, a framework agreement or a higher-level collective agreement can be concluded with the employer, in this case especially on the national or industrial level, implying the trade union's right to cooperation (and the corresponding obligation on the part of the employer). The contract or collective agreement should contain stipulations to help identify (define) situations where the consequences of an introduction of new technologies can be foreseen, as well as procedures which should be implemented, or entities (such as committees) which are primarily authorised (established) to resolve the issues of the effects of digitalisation.

Modern technologies, digitalisation, and new trends are not defined or specified by any law. Thus, in the interest of being user-friendly, it is necessary to define them. These are the conditions which affect the working environment, employment, working hours, etc. A definition of these phenomena should be included in the agreement.

How an agreement-CA provision can look like (template)

An agreement between social partners, be it a framework agreement concluded on the national level, or on the industrial or the basic business level, should primarily define its focus and authority. Innovations which affect working conditions and the work of employees in relation to technical, control, and material changes, or changes associated with a new organisation of work,

²⁵ The digital programme of the European Commission: Preliminary ETUC assessment. [online]. *etuc.org* [cit. 2020-27-09]. Available on: <https://www.etuc.org/en/document/digital-programme-european-commission-preliminary-etucassessment>

can be seen as new technologies and effects of their introduction. Manifestations and influences which point to an introduction of innovations and which are affected by these innovations, can be defined in a collective agreement. Demonstrative enumeration is ideal.

Effects indicating that innovations are being introduced, obligating the employer to cooperate with the trade union, concern (demonstrative list) for example:

- overall employment (number of employees, regardless of the type of their essential labour-law relationship);
- equal treatment
- safe working conditions which pose no hazard to health;
- working hours
- terms of remuneration
- education, qualifications, and training (gaining new competences);
- changes to the job description, type of work, and the description of activities related to specific jobs and roles in the organisation;
- personal use and handling of technological conveniences, and of communication technologies in the workplace;
- social policy (retirement policy, provision of practical experience and apprentice training);
- monitoring and surveillance;
- management of performance, and of work organisation.

A collective or framework agreement should also contain a list of basic rules to govern the introduction of novelties, new trends, and new technologies. Introduction should not be unrestrained and left entirely up to the employer. Relying on enshrined rules, trade unions should be not only a diligent social partner and representative of employees, but also a reasonable counterweight to the otherwise broad scope of the employer's right of disposal²⁶ which allows them to handle both the business itself, and employees or the organisation of work. The

²⁶ More details in e.g. HORECKÝ, Jan. Dispoziční pravomoc zaměstnavatele. 1st edition. Prague: Wolters Kluwer ČR, a. s., 2019. p. 5.

employer's basic commitments must include efforts to introduce and use new technologies to improve the working conditions of employees (i.e. not act solely in the interest of economic profit). The contribution of the introduced technologies should be felt by all employees (regardless of their type and nature, e.g. employment vs. precarious forms of work).²⁷

Rules governing a potential introduction of new technologies can be listed in the agreement transparently, along with the commitment of both social partners to cooperate.

In order to use new technologies in a beneficial manner, the employer and trade union agree to introduce and observe the rules listed below:

- introduction of new technologies will occur only after a thorough consultation with the trade union, focusing on its effects / with consent of the relevant trade union which represents the employer's employees;
- the employer undertakes to reinvest the resources saved by the introduction of new technologies and use them to improve the working conditions and education of employees (monetary and non-monetary set of working conditions; benefits);
- *deeper and new qualifications and skills will be accompanied by an improved remuneration* (e.g. the necessity of new qualifications and the subsequent performance of a more exacting work is to be accompanied by a higher wage and remuneration for performed work).

To facilitate the observation of general rules, it is agreed that substantial technological innovations can be introduced only if:

- there is no radical impact on the number of employees/existing jobs are protected;
- basic industrial relations with workers who engage in precarious forms of employment are not intensified (the number of workers who perform work on the basis of a contract which stipulates that work is to be performed outside the bounds of employment);

²⁷ UNITE the Union. Work Voice Pay—Draft new technology agreement. [online]. [cit. 2020-27-09]. Available on: <https://unitetheunion.org/media/1236/draft-new-technology-agreement-october-2016.pdf> p.6

- introduced innovations do not favour one group of employees at the expense of another (other employees);
- introduction will observe the rule of the equal treatment of all employees, and strictly respect the ban on discrimination;
- in the context of introduced changes, employees are guaranteed thorough education, as well as deeper and improved qualifications;
- employees are entitled to receive compensation for having to perform more exacting work which requires new skills;
- introduction of control and surveillance mechanisms will be in line with legal regulations, will not unnecessarily affect the employees' privacy and legitimate interests, and will always be done on the basis of consent;
- clear rules of the personal handling of new technologies will always be established (manuals; rules of use);
- there will be no negative influences and effects in the context of the employees' occupational safety and health.

Rules and principles enshrined in the agreement are to result in a reasonable, sensitive, and fair introduction of new technologies and innovations.

The principles, policies, and rules mentioned above have a universal effect. Any introduction of new technologies may potentially result only in a shortening of employees' working hours to maintain current wage conditions (i.e. no wage reduction is permissible), or in a support for and creation of new jobs and opportunities.

These basic rules create a framework for further negotiations. They will always be respected, used, and interpreted to result in a maximum security of employment and quality working environment.

The employer undertakes to observe these principles and rules when introducing new technologies, where

- they will respect increased protection of jobs. If the need and opportunity arises to introduce new technologies, the introduction will not occur at the expense of current jobs and employees. No employee should be unduly affected, directly or indirectly—reasons to lay employees off and terminate their employment—as a result of the introduction;
- if restructuring and organisational changes need to be accompanied by a staff reduction, the employer undertakes to activate a so-called social policy and social choice to select the employee to be laid off. *Social choice* is understood to mean taking the employees' social status into account so that their lives are not excessively affected.

The assumption of the previous protective stipulation's application which combines a termination of employment due to an introduction of new technologies with a social choice (i.e. taking into consideration the social position and status of the employee being laid off) lies in a previously established, or a collective-agreement-mandated social policy. A social policy and social choice aim to minimise the negative effects of job loss, with trade unions directly participating in their introduction and implementation. Rules for establishing a social policy and social choice can be found in the German legal environment. Social choice (*Socialauswahl*)²⁸ is understood to mean a limitation imposed on the employer's right of disposal when it comes to selecting an employee who is to be laid off as a result of, for instance, changes in organisation. The employer is obliged to consider the social aspects of the employment's termination. In the agreement's proposed wording, a trade union as an employee representative would comment on the social aspect of the termination of the employee's employment.²⁹ As per social choice, the employee whose firing will have the least effect is to be the one laid off. All comparable employees at the place of business are subject to consideration. The term *comparable* denotes employees who work identical jobs. In case of redundancy, employees working jobs for which the employee who faces the danger of being laid off is qualified in terms of skills and competences, are also to be considered.

²⁸ BUSCHMANN, Andreas. Socialauswahl. [online]. [cit. 2020-27-09]. Available on: <https://www.anderfuhrbuschmann.de/arbeitsrecht/sozialauswahl-kuendigung/>

²⁹ See Section 61, Paragraph 1, Act No. 262/2006 Coll., Labour Code.

Over the course of this selection, various factors are considered, primarily the social circumstances of all comparable employees. The most important criteria include age, continuous length of employment, or a number of those who are dependent on the respective employee.³⁰³¹ Other aspects concern the financial situation and health status of the employer and their closest relatives, and their likely opportunities and usability on the job market.³² Criteria for evaluating justifiability have a Czech parallel in the process of looking for a legitimate reason to terminate the employment of a union official.³²

The degree to which the social choice rule can be successfully implemented in collective agreements or in amendments to the Labour Code, is a matter of the negotiating power of employee representatives.

In connection with social choice and in the context of the rules of equal treatment and propriety, a rule may be applied (and principle expanded) to stipulate that an introduction of new technologies should not have a negative effect on a single group of employees while another group benefits at their expense. The employer's intentions should be implemented to the benefit of the entire business, not only of a select group of employees.

Digitalisation and new technologies bring a demand for skills and knowledge which frequently differ from those employees had when they first entered into their basic labour-law relation. Therefore, essential principles include the employer's obligation to give affected employees an option to acquire necessary skills and knowledge in advance so that they are not taken by surprise by the changes.

³⁰ BAG 18. Januar 1990—2 AZR 357/893, BAG 18. Januar 1990—2 AZR 357/8957/89. [online]. *dejure.org* [cit. 2020-09]. Available on: <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BAG&Datum=18.01.1990&Aktenzeichen=2%20AZR%20357/89>

³² Sozialauswahl—social criteria for redundancy. [online]. *erofond.europa.eu* [cit. 2020-27-09]. Available on: <https://www.eurofound.europa.eu/efemiredictionary/social-criteria-for-redundancy> ³² Judgement of the Supreme Court of the Czech Republic as of the 26th August, 2020, file no. 21 Cdo 443/2019.

The employer undertakes to implement or provide a sufficient amount of training and educational activities to all employees so that they are prepared for changes. The provision of training will be flexible enough to facilitate attendance of all affected employees and to reflect all content and material demands for change. All new positions and jobs which will be created as a result of an introduction of new technologies will be primarily offered to employees (including training opportunities) who would otherwise be negatively affected by the change.

Any employee who returns to work after a maternity or parental leave, a long period of sickness, or extended vacation is entitled to undergo all necessary educational activities and training which may be necessary for their continued performance of work.

The process of acquiring new competences or deepening one's qualifications results in an improved ability of employees to find employment on the job market. Considering the improved qualifications and increased job requirements, trade unions should promote a higher remuneration of employees, i.e. implement rules and principles which stipulate that an ability to work new jobs should reflect positively on the employee's economic incomes.

Employees who take part in trainings and educational activities are entitled to a compensation equal to the sum of average earnings for the entire period of the training activities in question. If new skills and knowledge require improved qualifications, the employee's wage will be proportionately raised to reflect the increasingly exacting nature of performed work, as well as the greater responsibility for it.

Introduction of new technologies often makes work easier for employees. On the other hand, modern technologies (such as computers, phones, etc.) can become a temptation and opportunity for employees to engage in procrastination or misuse said technologies for personal use. In relation to the introduction of these new means, the employer should detail and specify which types of behaviour and handling of working means is tolerated and which is not. Although the Labour Code and Czech judicature generally do not allow employees to handle the employer's property wilfully, trade unions should ensure that agreements further specify the rules of using new (especially) communication and production technologies (to prevent negative consequences,

e.g. termination of employment as a result of a breach of duty-misuse of the employer's property).

The employer undertakes to formulate clear rules for a possible personal use of new technologies and introduced working means by employees. Any restrictions and limits on the use of data, materials, and working means, as well as on printing, etc. must be specified in detail and plainly explained to all employees.

As per the basic rules of labour law, agreements between social partners should also stress the employer's common statutory duties, such as a duty to ensure fairness and equal treatment in relation to the impact of introduced means on employees (selection of place, tools, etc.).

The employer undertakes to ensure that the incorporation of new technologies will not be discriminatory in nature or result in unequal treatment. The employer will observe the Labour Code and other legal regulations.³³ All changes, be they made to working hours and its organisation, to remuneration, evaluation of work, or participation in training activities, must ensure equal treatment.

Any new technology must be introduced fairly, equally, and in line with the law. Solutions are adopted to promote equality, prevention, and elimination of discrimination based on gender, marital status, pregnancy, race, skin colour, nationality, handicap, sexual orientation, age, gender identity, religion or faith, analysing effects and monitoring equality. In regard to this commitment, the employer also acknowledges and promotes the role played by trade union representatives, union equality courses, and a joint equality committee.

Digitalisation and innovation pose a vital challenge to collective bargaining and present a huge opportunity to demonstrate the significance of social dialogue and of the existence of trade unions. When introducing new technologies, trade unions should also aim to maintain a minimum

³³ Act No. 435/2004, Coll., on employment, Act No. 198/2009 Coll., on equal treatment and on the legal means of protection against discrimination and on amendment to some laws (the Anti-Discrimination Act).

(recent) standard of working conditions, primarily working hours and remuneration and creation of new opportunities for employees.

The employer undertakes to create new job opportunities for current employees who would be negatively affected by the introduction of new innovations. A blanket reduction in working hours, with no impact (reduction) on the amount of the employee's wages, is preferred to staff reduction.

The employer also undertakes to reinvest the resources saved by the introduction of modern trends into employees, their education, and suitable changes of working conditions.

The stipulations mentioned above (based on real examples from Scandinavian countries, Belgium, or USA)³⁴ can serve as a basis for a special agreement where social partners regulate the impact of an introduction of innovative methods and means into the production process. Naturally, they can be supplemented and amended in any manner.

Status of unions, provisions for the social protection of employees

As already stated and implied by the concept of decent work, modern trends include, albeit historically, actions carried out in the field of the social protection of employees. Social partners play a key role in designing systems of social protection, namely by engaging in social dialogue or concluding collective and tariff agreements based on collective bargaining. The regimes being formed frequently apply to specific economic industries, reflecting the structure of industrial dialogue. In other cases, there are initiatives with an inter-industrial dimension. In both cases, initiatives of social partners no longer take into account only the social protection benefits which are associated with a particular agreement, and instead adopt a broader perspective of ensuring transitions and entire professional careers.

³⁴ See e.g. Collective Bargaining Agreement: New Technology or Automation Clause by Practical Law Labor & Employment [online]. Available on: [https://uk.practicallaw.thomsonreuters.com/Cosi/SignOn?redirectTo=%2fw-0162069%3foriginContext%3dknowHow%26transitionType%3dKnowHowItem%26contextData%3d\(sc.RelatedInfo\)%26ScopedPageUrl%3dHome%252fPracticalLawGlobal%26firstPage%3dtrue](https://uk.practicallaw.thomsonreuters.com/Cosi/SignOn?redirectTo=%2fw-0162069%3foriginContext%3dknowHow%26transitionType%3dKnowHowItem%26contextData%3d(sc.RelatedInfo)%26ScopedPageUrl%3dHome%252fPracticalLawGlobal%26firstPage%3dtrue)

For example, a range of joint approaches has been used to resolve issues associated with the extension of social protection to workers employed in the media, arts, and entertainment, mostly as a result of social dialogue. Some unions offer social protection to those of their members who are freelance workers. In some countries, special systems were developed to provide coverage to workers employed in the media, arts, and entertainment—such as the German Artists' Social Security Fund which covers freelance and independent artists and writers, or the provision of unemployment benefits to occasional entertainment workers in France.

In France, performing artists who work in the short-term (intermittently, *du spectacle*) have ever since 1969 enjoyed the benefit of a refutable presumption of employment, enshrined in the French labour code. This stipulation applies to performing artists and technicians who regularly work in the short term. The Guichet Unique du Spectacle Occasionnel (GUSO) mechanism is designed to facilitate the protection of short-term workers in France, as well as their enjoyment of this position. This mechanism, as well as the vocational training fund it supports, are a result of a strong social dialogue between employers and employees in the name of intermittent spectacle.

The Swedish “Teateralliansen” (along with the similar “dansalliansen” for dancers) is a special structure for the purposes of increasing the social protection of independent parties.

Another example, there are two-party funds which offer social protection to agency workers. These funds are financed from employer donations and managed by a two-party model. The funds are inter-industrial and allow agency workers to avail themselves of their protection regardless of the industry in which they fulfil their tasks, or between two tasks. There are many examples of social partners having an effect on the social sphere.

The position of trade unions and employee representatives in social dialogue, held to resolve the effects of innovative tendencies and trends, is related to their previous activities and opportunities for activity. At any rate, social dialogue plays a very important role. Introduction of modern technologies has an effect on the job market. Assuming a tendency to restructure and make organisational changes on the part of the employer which will frequently result in a termination of employment, then social protection of employees is very significant, be it provided

by complimentary legal consulting or a so-called social policy and conditions under which employees will be compensated, or rather the negative effects of termination minimised (e.g. social policy, special redundancy payment, psychological aid, etc.). The employer's stronger focus on capital (i.e. their cessation of emphasising the human factor, opting to replace human labour instead) can also be viewed as digitalisation's basic impact on the job market.

Social dialogue will need to be held on various levels. If the issue concerns a stronger focus on capital (replacing labour with capital), implementation can be expected on the national level as the matter is mostly macroeconomic in nature. Nevertheless, there is also an opportunity to engage in social dialogue on the industrial and business level. Digitalisation brings changes which can cause restructuring, both factual and personal (among employees). Introduction of technologies which are more technologically demanding, though practically more comfortable in terms of operation, can directly affect the make-up of the employee staff.

On the national, industrial, and business level, social dialogue plays an important part, especially in regard to reducing potential negative effects resulting from technical changes. Outcomes of bargaining, which guarantee training and education to employees, can help save jobs. Development of competencies, based on collective agreement stipulations, and requalification (or recycling) of employees make it easier for them to leave fields where there is a low demand for labour and instead move into ones characterised by a higher demand. Provision of vocational preparation can be viewed as a traditional part of social dialogue.

The lowest level of social dialogue—business level—is important for e.g. resolving effects where the employer strives to become more flexible. Trade union should protect the interests of employees in the sense that pressure can be exerted to abandon precarious forms of employment and return to traditional ones. Business collective agreements can include detailed hiring rules. It is possible to refer to legal regulations which primarily assume standard employment, not its precarious forms. Trade unions also have control measures at their disposal and should be aware of them. Under the umbrella of social dialogue, this control, when executed, can identify and subsequently remove many threats, typically shortcomings in relation to the implementation of employment. Regarding precarious forms of employment, work performed without an

employment contract, or rather the Czech so-called Schwartzsystem—false self-employment—comes to the foreground. In cooperation with the employer, trade unions should aim to fight illegal employment and accommodate one another. Discussions on the same topic can naturally be expected to also occur on a higher, national level. Increased societal demand can be a considerable impulse for legislators—therefore, it is required that possible changes and their meaning keep being debated on the national level. Discussions can be held on the obsolescence of current legal regulations, or on the need for amendments. Thus, it is necessary to hold discussions on the highest level about whether demands are realistic or not, or rather if e.g. a new specific category of employees should be created as is the case in Spain or Italy. Collective bargaining or another types of social dialogue could also be expanded to include a new business model—platform—which is currently characterised by a low presence in employer associations and a low degree of affiliation. These are systems of digital work platforms—so-called platform employees (definition goes beyond the standard notion of employees as it concerns essentially anyone who obtains financial resources via internet services, and when relationships are implemented completely remotely and digitally).³⁵ In this sense, ILO Global Commission on the Future of Work (2019) recommends that “an international governance system for digital labour platforms should be established to require platforms (and their clients) to respect certain minimum rights and protections.” A typical characteristic of platform workers, they are generally active in the informal economy. They essentially do not participate in social dialogue, not even via protective labour-law legislation.³⁶ The role of employee’s representatives and the position of social dialogue are related to perceived aspects and effects of changes. Taking into account the nature of the employer’s activities and the level where social dialogue is held, trade unions should focus on generally defined areas (be it effects on working conditions, organisation of work, education, social protection, etc.).

³⁵ BRANCATI, Urzì. New evidence on platform workers in Europe. Results from the second COLLEEM survey, EUR 29958 EN, Publications Office of the European Union, Luxembourg, 2020, p. 3.

³⁶ Ibid, p. 39.

Social dialogue and its role in resolving the effects of digitalisation can be viewed from the perspective of affected working conditions and areas.

Figure: Potential role of social dialogue in relation to resolving the issue of changes and opportunities in the job market under the umbrella of digital revolution³⁷

Potential effect	Possible tools	
	Above business level	Business level
Changes in the overall employment requirement	Social dialogue on the national level Social dialogue on the international (EU) level => Social pact Effective demand and social policy management	Early retirement Reduced working hours
	Reduced working hours	
Changes in the employment and job structure	Training and requalification courses Projects to promote the acquisition of job market competences Higher-level (national/EU) social dialogue =>	Education and long-term/lifelong learning policy Earlier retirement

³⁷ LLORENTE MUNO-DE BUSTILLO, Rafael. Digitalization and social dialogue: Challenges, opportunities and responses, op. cit. p. 11.

	Social pacts (e.g. wage-related)	
New skills and the aging of old skills	Training and requalification courses	Education and long-term/lifelong learning policy
New/renewed relationships	<p>Higher-level (national/EU/global) social dialogue</p> <p>Industrial collective agreements</p> <p>Creation and development of collective bargaining in new business models</p>	<p>Business collective agreements (e.g. limits on new forms of work)</p> <p>Developing the culture of collective bargaining in new business models</p>
New OSH matters	<p>Highest-level (national/EU/global) social dialogue</p> <p>Industrial collective agreements</p>	Business collective agreements

From the perspective of trends and challenges and due to the effects of digitalisation and technological development, the position of trade unions and other employee representatives in social dialogue cannot be viewed only as a tool for achieving a better labour-law and social security of employees. When looking for trends and impacts of changes on collective bargaining and social dialogue, from the view of the study it is necessary to perceive consequences along with the very point of social dialogue.

Digitalisation brings new challenges and changes not only in terms of the content of collective bargaining (i.e. the topic of negotiations), but also of subject and formal aspects. If trade unions consist of employee associations, and if their strength is based on the size of their membership, then introduction of new forms of employment will affect social dialogue—and primarily the trade union's position. Precarious forms and platform work, especially, are based on having distance from a regular workplace, or rather from the regular performance of work in the social environment of employed staff.³⁸ This results in a social separation, often leading to a reduced union membership.

Realistically, there are three possible effects of digitalisation (digital revolution); however, they can be viewed as new trends and challenges for social dialogue and employee representatives.³⁹

1. Future of the erosion of social dialogue (negative);
 - a. caused by changes and growth of industries which have historically been characterised by a low degree of union organising;
 - b. development of forms of employment which assume and facilitate implementation of individual interests (leaning towards individual negotiations/communication with the employer);

³⁸ Platform employment is characterised by a high degree of individualisation and a low degree of union organising, see e.g. BRANCATI, op. cit. p. 3

³⁹ LLORENTE MUNO-DE BUSTILLO, Rafael. *Digitalization and social dialogue: Challenges, opportunities and responses*. Op. cit. p. 27.

- c. rigidity and a lack of flexibility on the part of the trade union, and inability of employee representatives to respond to current challenges.
2. Another alternative counts on modernisation as a chief drive, motto, and also
3. awareness of opportunities brought by new technologies. Union modernisation can be viewed as a benefit of digitalisation.
4. A third alternative is based on union democratisation as digitalisation gives union members the option to participate in negotiations remotely. The already mentioned unwillingness to organise, however, will remain a negative.

All stated and proposed scenarios of effects of digital changes are possible. The ultimate reality is up to the quality of social dialogue, and to union members themselves.

Trends—common goals

Digitalisation and introduction of new technologies manifest in similar manners, regardless of national borders. Issues faced by individual national job markets are similar, just as proposed solutions and ways to use changing trends to benefit employees (but in effect all social partners) to a maximum degree. We cannot say that new trends bring only negatives; quite to the contrary. It is necessary to notice positive effects, to grasp and use them to one's advantage.

Regarding adjustment to new trends, social partners (especially employee representatives) in any country where new technologies and procedures are introduced in view of digitalisation, and where gradual, though somewhat rapid changes occur, have similar goals.

Goals can be primarily inferred from noticeable effects and manifestations of changes, brought about by digital revolution. It is generally possible to determine areas where these effects can be apparent, as well as factors which can open up a space to develop social dialogue. Thus, we can compile a list of starting points:

- right to information and consulting; conclusion of collective agreements. In this regard, there is an option to respond to real, appreciable consequences of changes (such as changes in working hours or wage reduction, etc.);

- OHS—importance of the work and safety factor, the human factor, and the hard core of labour law;
- working hours and balancing work and home life. The most perceptible danger typically associated with changes in working hours lies in the use of special tools—digital aids, e.g. mobile phones, essentially non-stop. A right to disconnect becomes crucial in this regard;⁴⁰
- surveillance and monitoring—use of modern technologies gives the employer more control. Installation of modern devices can consequently lead to breaches of the personal freedom of employees. Trade unions should play an important role in this respect—rights in terms of control and prevention of infractions against employee rights. Collective agreements can regulate specific rights, or rather social dialogue can determine which occupations require an introduction of surveillance and control mechanisms. At the same time, international legal provisions, e.g. GDPR, must be respected.⁴¹
- equality, equal treatment, ban on discrimination—discrimination and unequal treatment are not permissible with respect to the implementation of digital activities, primarily in cases where work can be done from home or another workplace;
- outsourcing and related dangers—concerns of job replacement and moving work out of the employer's bounds;
- loss of personal contact—social dialogue, or rather social partners engaging in social dialogue, should look for ways to provide employees with enough social contact. Consequently, the work schedule, for one thing, should be adjusted to facilitate social interaction;

⁴⁰ NAVARRO, César. New digital rights: employees' right to disconnect. [online]. *International Labour Organization* [cit. 2020-27-09]. Available on: <https://www.internationallawoffice.com/Newsletters/EmploymentImmigration/Spain/CMS-Albiana-Surez-de-Lezo/New-digital-rights-employees-right-to-disconnect>

⁴¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). [online]. *eur-lex. europa.eu* [cit. 2020-27-09]. Available on: <https://eurlex.europa.eu/legal-content/CS/TXT/?uri=celex%3A32016R0679>

- participation in international activities—participation in a national and European social dialogue.

As a result of digital revolution, social dialogue underwent certain changes, though not radical ones. Social partners still can discuss the working conditions of employees in collective agreements (such as wages, working hours, benefits), as a part of regular communication, etc. Though it is suitable to accentuate certain specifics and new options brought forth by digitalisation.

Speaking from a broader point of view, goals of social dialogue can be set while showing respect to the opinions of employees in terms of what they are most afraid of regarding the effects of digitalisation. A problem can be identified and subsequently resolved. Destruction of jobs and increase in precarious work is considered to be the largest risk.

Figure: Frequently mentioned risks!⁴²

RISKS	AT	BE	CZ	DK	FI	FR	DE	IT	PL	ES
Destruction of jobs, new forms of ‘Digital Taylorism’ and increase of precarious work	52	58	40	28	49	42	57	44	50	56
Working-time extension—increase of ‘anytime, anywhere’ work	40	20	13	28	34	19	30	18	23	37
Weakening of workers’ representation, erosion of collective action and bargaining coverage	24	35	60	28	34	17	28	35	35	35
Increased competition between workers to reduce costs, e.g. by online-platform work	25	23	7	17	6	31	16	32	21	18
Work intensification, dependence of ‘data masters’ and surveillance	25	17	13	33	14	31	36	21	29	13
Increased inequality between workers	9	11	0	11	29	14	5	24	13	16
Erosion of tax base and social insurance financing	15	10	0	11	6	8	3	15	2	8

Apart from determining the largest risks, it is possible (according to employee representatives) to also encounter a lot of positive expectations. Thus, fears of job loss represent the greatest

⁴² Digitalisation and workers participation: What trade unions, company level workers and online platform. [online]. *International Labour Organization* [cit. 2020-27-09]. Available on: <https://www.etic.org/sites/default/files/publication/file/2018-09/Voss%20Report%20EN2.pdf> p. 15

concerns on one hand while there are opportunities on the other—creation of new jobs being the most significant one.⁴³

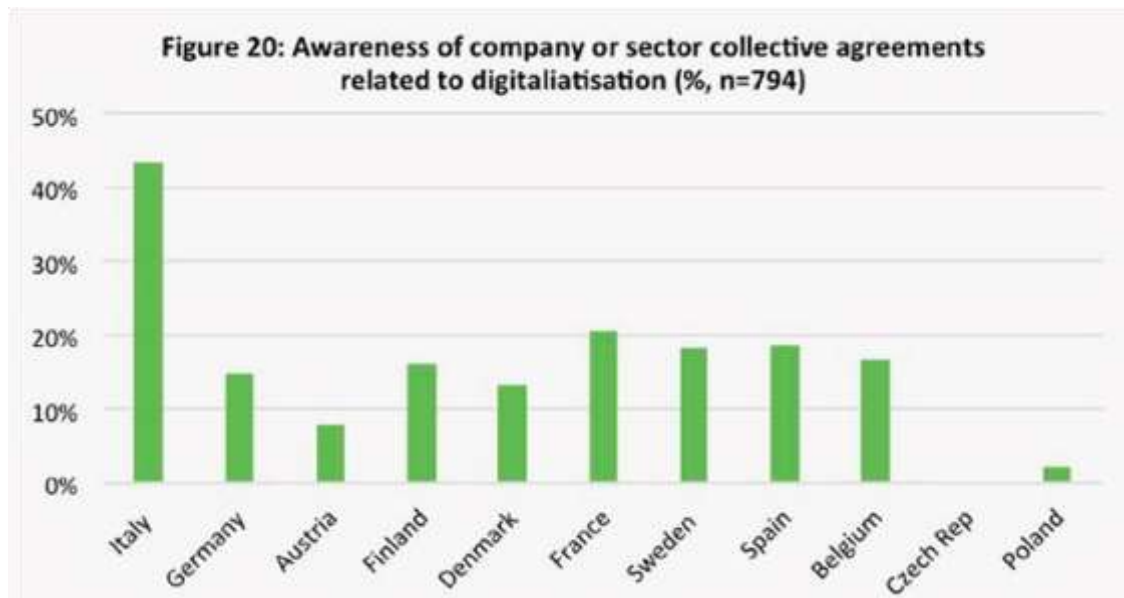
OPPORTUNITIES	AT	BE	CZ	DK	FI	FR	DE	IT	PL	ES
Creation of new jobs (computer engineers, scientists, network experts, etc.)	44	38	40	22	43	56	41	47	38	50
Working time reduction and more work autonomy	49	35	53	33	31	17	31	44	33	32
New forms of collaboration and cooperation between workers & machines	35	26	0	22	23	22	21	24	31	28
Better ergonomics due to support in performing heavy, dangerous and complex work	31	29	20	39	23	33	44	26	23	19
Smart/intelligent factories—jobs that have been offshored to low pay countries will come back	11	14	7	39	40	14	13	15	17	26
New opportunities for women, more gender equality	10	9	13	0	3	0	5	18	10	12
New forms of making money in the sharing economy	7	11	13	0	3	11	7	6	17	9

Regarding particular issues which are not solely business-oriented, we can mention e.g. new trends in collective bargaining from the content point of view. In social dialogue, attention must primarily be paid to the issue of working hours, right to disconnect, regulation of work performed at other places besides the employer's place of business (i.e. home office), provision of occupational safety and health, and last but not least education and development of competences of employees.

Collective bargaining about conditions in a digitalisation-affected job market can pose a challenge to trade unions in and of itself, not to mention the subsequent process of familiarising employees with the agreement's content. As shown by the following figure, the outcomes of digitalisation are not always taken into account and recorded in collective agreements. There also may be no awareness of the collective agreement.⁴⁴

⁴³ Ibid, p. 15

⁴⁴ Ibid, p. 20.



The process of engaging in social dialogue is not limited in any way. A few basic recommendations can help push through one's interests and make social dialogue more effective. In connection with digitalisation or resolution to other issues, social dialogue and collective bargaining can ideally be concluded by entering into a collective agreement. Collective bargaining and social dialogue should be the main tools (and used as such) when it comes to efforts to conclude a framework agreement on digitalisation and its consequences.

The agreement should primarily accentuate occupational safety and health, as well as safe working conditions. Consequences of changes can be resolved by:

- developing a model for a functioning social dialogue and collective bargaining, taking into account the needs of social partners when it comes to building capacities on all levels to utilise the positive aspects of changes and at the same time prevent negative effects;
- ensuring that digitalisation is easily recognisable (its effects, e.g. camera surveillance of employees) as a form of restructuring which can have a significant impact;
- jointly creating an overview of the effects of digitalisation, and establishing a group to address and evaluate new comments;
- defining the procedure for transfer monitoring;
- exchanging good practice with international organisations;

- evaluating and analysing the impact, as well as the opportunities to integrate results.

Trade union activities should manifest not only in simple negotiations, but also in the conclusion of a collective or other agreement on digitalisation and its impact.

Modern trends—ensuring decent work

Modern trends in collective bargaining across developed world, and primarily within the European Economic Area are associated with changing tendencies not only from the perspective of changes to the subject of production, but also in relation to modern approaches to human resources. Social partners and trade unions (leading employee representatives) must participate in the creation of a harmonic working environment and help find solutions to establish and maintain the concept of *respectable and decent work* (known globally as *decent work agenda*). Historically, *decent work* falls under the competence of social partners, mostly employee representatives. Due to its focus, the policy has been an integral part of all social partner activities for over one hundred years. The implementation and fulfilment of this agenda is a continuous process, both in regard to the changing elements of the job market, and to socioeconomic changes. The agenda's significance is clearly supported by its main guarantor, the International Labour Organisation. ILO has been dealing with the issue of *decent work* as a specifically and explicitly defined area since the start of the millennium (centrally ever since the 2008 crisis) and views it as a means of resolving the issues of economic instability and the job market. Although not mentioned terminologically, the decent work agenda has been the basis of ILO's activities for the past hundred years, ever since the organisation's founding. One of the first public statements to explicitly mention the decent work agenda was a report by the ILO director Juan Somavía, delivered on the 87th International Labour Conference in 1999. In the future, ILO policy was expected to focus on decent work as a basic requirement of our current times, in confrontation with the political situation and business intentions on a global scale. According to the general director, our shared future depended on how well ILO and its members would be able to confront

contemporary social requirements of the job market, all in relation to the concept of the decent work challenge.⁴⁵

Since then, decent work has become an explicit aim and means of facilitating a fair job market and of ensuring a future sustainable development. Especially in regard to the introduction of working standards in less developed countries (although the *decent work for all* agenda is universally applicable), decent work tends to be mentioned as probably the strongest concept and most effective tool the international community has at its disposal, having created it over the years and using to open up unusually accommodating political opportunities that can offer useful, adequate, and mostly effective answers to the current trend of globalisation.⁴⁶

When implementing the decent work agenda, the International Labour Organisation sets basic identification elements for the activities—work—to be evaluated. Not all types of work can be viewed as decent and respectable. The concept of decent work also cannot be understood to mean only that a person is entitled to work, i.e. any work, but that they are entitled to work which will allow them to lead a regular life in society and meet their regular needs.

Basically, the decent work agenda is based on the belief that work should be a source of human dignity, familial stability, peace, and democracy, and that the implementation of the concept of decent work rests on four basic pillars:

1. Efforts to create enough job opportunities and jobs, as well as develop the environment for engaging in business activities;
2. Working rights guarantees (respecting the rights of employees)
3. Improving social protection; and
4. Promoting social dialogue.⁴⁷

⁴⁵ SOMAVIA, Juan. *Report of the Director-General: Decent Work*. International Labour Office Geneva. Available on: <https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>

⁴⁶ REPORT I (A)/ILC 96-2007. Director - General introduction to the International Labour Conference. *Decent work for sustainable development*. International Labour Office: Geneva, p. 2.

⁴⁷ GALVAS, Milan a kol. *Pracovní právo*. Brno: Masarykova univerzita, 2012, p. 63.

In the modern context, the decent work project, or decent work as such needs to be viewed as a means of achieving economic and social growth, including sustainable development. Decent work has a clear, apparent impact. It will result in a removal of global social inequalities where it is clear that decent work, if guaranteed to all, decreases inequality and improves resiliency and persistency. Social dialogue and tripartitism can be used in the context of decent work to reach political aims and decisions which reflect society-wide moods and demands. Overall, it is clear that policies set by means of social dialogue assist people and larger communities in facing the impact of climate change on the society, and also help set economy so that it is inclined to practices which are in line with the tenet of sustainable development (economy). Also, decent work has a positive effect on efforts to maintain social consensus. A positive perception of one's own working conditions and the overall satisfaction of employees, as well as a sense of preserved dignity, hope, and an increasingly intense notion of social fairness, all brought about by the implementation of the decent work agenda, no doubt also facilitate the creation and maintenance of an environment which can be said to be characterised by social consensus (i.e. an environment which essentially does not experience class conflict).⁴⁸

The decent work concept (in its explicit expression) is a modern, but at the same time constant trend in social dialogue. Social partners, regardless of the vertical social dialogue level, are fundamental actors, drivers, and players in regard to the facilitation of decent working conditions. Considering the relatively specific requirements of performing works affected by digitalisation and Industry 4.0, social dialogue has been gaining prominence.

In fact, digitalisation and changes in the job market can be viewed as challenges which trade unions can use both to their own, and employees' benefit (and as a consequence, to the benefit of the entire job market). From the perspective of the International Labour Organisation and its members, the decent work concept can be perceived as a programme which helps facilitate a constant and sustainable development, peace, and prosperity—for employers, employees, and

⁴⁸ RYDER, Guy. Decent work and the 2030 Programme for sustainable development. [online]. *International Labour Organization* [cit. 2020-27-09]. Available on: http://cite.gov.pt/pt/destaques/complementosDestqs2/Decent_work.pdf, p. 2

society as a whole.⁴⁹ Modern trends in the job market, subsequently included into the central goals of social dialogue and collective bargaining on the national level, are supposed to result in a guaranteed support for fundamental employment standards and rights, namely and by necessity gender policy (creating more opportunities for women to find employment on the job market) broader options of acquiring decent work and decent income for man and women across the entire spectrum of the job market (i.e. the rule of equal remuneration), support and stronger social coverage of employees and others, and social security guarantee for all. Last but not least, promotion of tripartite negotiations and social dialogue on all levels, as well as their strengthening, is a central pillar of the decent work agenda.⁵⁰

It is up to trade unions (and as the case may be other employee representatives) to seize this opportunity, and to seize it successfully.

As a basic pillar and means of achieving sustainable development, the decent work policy is enshrined in the item-goal 8 of the Sustainable Development Agenda, saying literally that a *constant, inclusive, and sustainable economic growth, as well as a full and productive employment and decent work for all are to be promoted*.⁵¹ In view of the decent work aspect, this goal is to be accomplished by fulfilling incremental tasks, such as promotion of development policies (i.e. policies which promote productive activities, creation of decent jobs, entrepreneurship, creativity and innovation, founding and growth of micro-businesses, small and medium-sized businesses, among other things by making financial services available); focus on employment so that there is a full productive employment by 2030, not to mention guaranteed decent work for men and women, including the young and handicapped; and finally a guarantee of fair remuneration for performed work; as of this year, the percentage of young people who are not a part of the education process (not in education or employment) and do not work should be significantly

⁴⁹ ILO, Mission and impact of the ILO. [online]. *International Labour Organization* [cit. 2020-28-08]. Available on: <https://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>

⁵⁰ Ibid.

⁵¹ UNITED NATIONS. Transforming our World: The 2030 Programme for sustainable development. [online]. *sustainabledevelopment.un.org* [cit. 2020-28-08]. Available on: <https://sustainabledevelopment.un.org/content/documents/21252030%20Programme%20for%20Sustainable%20Development%20web.pdf>. p. 23

decreased; adoption of measures which will lead to the elimination of all forms of forced labour, modern slavery, and human trafficking, to the banning and removal of the worst types of child labour, including the hiring and use of child soldiers, and by 2025 to the removal of child labour in all its forms; protection of labour rights, and promotion of safe and stable working conditions for all workers, including migrant workers—especially women and people doing dangerous jobs; or a development and implementation of a global strategy for employing the young, done by 2020, and execution of the Global jobs Pact of the International Labour Organisation.⁵² Employee representatives and lower-level social partners should be able to recognise their scope of authority in many of the above-mentioned goals—namely chief trends in the effecting of a decent work environment, and thus basically in improving and strengthening employee representatives and making the social dialogue as such more effective.

Currently, decent work is a fundamental joint interest and link between the social partner activities conducted on the national level under the ILO umbrella, or closely related to ILO. Establishing conditions for decent work is the main goal of the intense cooperation between ILO and social partners, employers, trade unions, governments, and other entities.⁵³ It is a global agenda, as well as a modern goal for the 21st century and digitalisation-and-industry-4.0-affected job market where individual manifestations of work digitalisation and new technologies affect not only Goal 8 of the Agenda, but also blend into the other 16 sub-agendas.⁵⁴

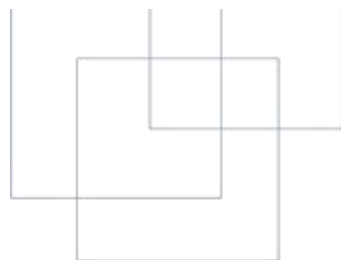
Figure: Decent and respectable work agenda 2030—for sustainable development.⁵⁵

⁵² Tasks which fulfil Goal 8 of the sustainable development agenda detailed in 8. Podporovat trvalý, inkluzivní a udržitelný hospodářský růst, plnou a produktivní zaměstnanost a důstojnou práci pro všechny. [online]. *osn.cz* [cit. 2019-01-03]. Available on: <http://www.osn.cz/sdg-8-podporovat-trvaly-inkluzivni-a-udrzitelny-hospodarsky-rust-plnou-aproduktivni-zamestnanost-a-dustojnou-praci-pro-vsechny/>

⁵³ RYDER, Guy in Sustainable Development Goals—2030 development programme: Major breakthrough for world of work. Available on: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_388407/lang--en/index.htm

⁵⁴ UNITED NATIONS. Employment, decent work for all and social protection. [online]. *sustainabledevelopment.un.org* [cit. 2020-28-08]. Available on: <https://sustainabledevelopment.un.org/topics/employment>

⁵⁵ ILO. Decent work and the 2030 Programme for sustainable development. [online]. *ilo.org* [cit. 2020-28-08]. Available on: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilolisbon/documents/event/wcms_667247.pdf



International
Labour
Organization



Promoting traditional employment (vs. self-employed person)

Modern economy and higher inclination towards the tertiary sector, individualisation of work (provision of performance), as well as the basic idea of absolutization of individuals—natural persons—and worsening of the quality of economic-social relationships, bring *new forms and trends* to the job market. Frequently, what comes into the foreground is not provision of performance of work based on the employee-employer relationship, rather provision of services

by businessmen and the self-employed. Situations are encountered where specific activities can be procured by contracting their provider as an employee (by means of a basic labour-law relationship, a works contract, or a contract on the provision of services and performance without the assignation of a relevant employee of the employer, but the businessman/self-employed person). Trade unions should aim to ensure that work keeps being provided by means of traditional employment and legally recognised basic labour-law relations, and that employees—natural persons are protected from a forced transition in their relationship, based on a commercial or civil contract, with the employer. It is necessary to prevent any increase in the amount of the so-called false self-employed.

The trend of replacing traditional forms of performing dependent work with a provision of services is based on the concept of liberalising labour law and the job market. In the Czech or international context, the very idea of liberalisation cannot be seen as a negative phenomenon or trend which occurred only in the last few years of development, bring as it does opportunities to respond to turbulent changes in the economy and society. Without a gradual liberalisation, a rigid system of dependent work regulation would not meet the requirements and opportunities of dependent work performance in future years. On the other hand, from the perspective of the paternalistic role of the state (in its capacity as a legislator) and the labour-law's protective function, it is and will be necessary to keep in mind a degree of employee security. By necessity, modern creation of labour regulations and of a legal environment which regulates the job market must be based not only on liberalising tendencies (which also touch upon collective labour law)⁵⁶, but also on *security* as applied to employees. Thus, the *flexicurity*⁵⁷ principle is one of the chief rules of the labour law, affecting not only individual labour-law relationships, but also influencing the position of employee representatives and their actions under the umbrella of social dialogue and collective labour law. Regarding *new trends*, employee representatives—primarily trade unions—must cooperate with the employer over the course of social dialogue to find answers to

⁵⁶ GALVAS, Milan a kol. Liberalizace pracovního práva a její nástroje v současném období. Brno: Masarykova universita, 2011. p. 157.

⁵⁷ More details in Flexibilní pracovní trh a flexibilní pracovní prostředí. [online]. 2019 [cit. 2019-27-02]. Available on: <https://www.uzs.cz/soubory/01%20-%20Manu%C3%A1l%20pro%20zam%C4%9Bstnavatele.pdf>

issue of securing optimum working conditions for employees, regardless of the nature of the labour-law relationship. Using collective agreements, the employer can guarantee working conditions which respect flexicurity and its four basic tenets.

- Flexible and fair contractual stipulations;
- Complex strategy for lifelong education;
- Effective implementation of an active employment policy;
- Modern protective social systems (social security system).⁵⁸

Although all four tenets can be viewed rather broadly, they can be applied to a business social dialogue. For example, a collective agreement can stipulate employees' right to an indisposition leave, extended leave to care for a family member, or introduce a social policy (introduction of modern social security aids), establish a positive approach to hiring the handicapped and create suitable jobs (this is where digitalisation can help and have a positive impact), establish a system for training and educating employees, for deepening their qualifications, perhaps provide an opportunity to immediately reflect changes in the job market by participating in training provided by the employer, stipulate flexible working hours as fair contractual stipulation, etc.

Influencing the process of formulating labour law especially (as a part of social dialogue) while taking into account all aspects of the job market and needs of the economy or employees, is an important part of what trade unions and social partners at large do. Labour law regulates relationships in regard to the performance of dependent work (relationships between the employer and employees, relationships to trade unions, the government, etc.). Labour-law regulations should aim to protect the employees' health (*the health factor*⁵⁹ as a basic element of labour law's hard core--OSH), and indirectly the society (employer) against unnecessary costs of resolving negative situations. Labour law can and does regulate a wide range of working conditions—working hours, remuneration, ban on discrimination and unequal treatment, etc. In

⁵⁸ Council of the European Union. Report of the mission for flexicurity. REV 1 (en) 17047/1/08. [online]. 2008 [cit. 2020-27-09]. Available on: <http://ec.europa.eu/social/BlobServlet?docId=1515&langId=en>

⁵⁹ HORECKÝ, Jan, Jakub HALÍŘ, Michal SMEJKAL, Jaroslav STRÁNSKÝ, Jana HAVLOVÁ, Vojtěch KADLUBIEC, Milan GALVAS a Petr MACHÁLEK. Zdraví a práce. 1. vyd. Brno: Masarykova univerzita, 2018. p. 9 and following.

relation to digitalisation, flexibility, impact of the fourth industrial revolution, and other factors, employee representatives can look for trends and modern goals in all respects of regulation to inform their activities.

When resolving the issue of modern trends in the job market and their impact on collective bargaining, it is necessary to primarily realise that answering such questions is not and cannot be simple. Although modern trends in employment usually correspond with technical and technological upgrades and are based on them, the social dimension of the performance of work cannot be omitted. Similarly, it is essential to perceive differences in the performance of work itself while searching for answers, not only in regard to differences in technical circumstances, but also in the type of work, nature of work, place of work, individual employee groups, and employees themselves.

Answers to the question “From the perspective of social dialogue and representation of employees when looking for optimum working conditions and balancing home and work life, what modern trends as applied to the job market are there, what are their effects, and how can they be used?” are influenced, just like social dialogue itself⁶⁰, by several basic factors and frameworks, such as a legal framework (in the form of the existing legal regulation which standardises working conditions and the conditions of collective bargaining; just like a possible reasoning in the line of *de lege ferenda*, an answer to modern requirements of performing work, inspired by foreign legal approaches), economic framework (determined not only by general aspects of the economic market, but also by the financial circumstances of the employer and employees, e.g. by situations where it is necessary to relocate for work), geographic circumstances (taking into account e.g. employment or entrepreneurial opportunities in the particular region), and to a large degree also social and societal circumstances. Regarding modern trends, social partner activities on the national and business level should be connected with the policy of international social dialogue. Naturally, individual aims will differ in particulars; in the general scope, however, they are identical. In connection with global trends, social partners should focus on implementing the

⁶⁰ More details in HRABCOVÁ, Dana. *Sociální dialog: vyjednávání v teorii a praxi*. Brno: Masarykova univerzita, 2008. p. x

decent work concept⁶¹ (see below) even under the influence of digitalisation, a concept which is an integral part of the agenda of our world's transformation—the 2030 Agenda for Sustainable development. This agenda is characterised by three basic dimensions of sustainable development which are mutually balanced and simultaneously represent an economic, environmental, and social dimension.⁶² As is clear and can be inferred from the term *social dialogue* or by studying the subordinate guarantee of working conditions, the social dimension of regulating the performance of dependent work, and perhaps of the direction of social partner activities, is a central parameter in implementing social dialogue as a whole and in creating a harmonic society. Terms of performing dependant work fall under social law. As a complex, legal norms and the outcomes of social dialogue negotiations (i.e. typically legal regulations in their basic form, and as a result of the minimax rule also working conditions of employees, improved by the content of concluded collective agreements) form a homogenous whole which guarantees social protection for employees and natural persons in the job market.

When looking at new trends which promote collective bargaining, it is necessary to respect all specifics of the changing job market, but also of the factors mentioned above. In the environment created by the potential impact of the fourth industrial revolution, we need to first clarify what *fourth industrial revolution* is factually understood to mean and what can be perceived as its impact. Collective bargaining trends which can be seen as *new* arise from and are modulated on the basis, by means of, and as a consequence of the job market in the fourth industrial revolution. The term itself, however, has no legal definition. It does not denote any specific regulations, legal norms, or ordinances. In terms of content, it designates the current trend of *digitalisation*, related automation of production, and accompanying changes in the job market⁶³. Digitalisation of work and Industry 4.0 are based on the premise (apart from increased automation of work) of a higher

⁶¹ HORECKÝ, Jan. 100 let od vzniku Mezinárodní organizace práce - důstojná práce. 1. vyd. Prague: SONDY s.r.o., 2019. p. 5.

⁶² See Resolution adopted by the General Assembly on 25 September 2015. A/RES/70/1—Transforming our world: the 2030 Programme for Sustainable Development. [online]. *un.org* [cit. 2019-27-02]. Available on: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

⁶³ HOLANOVÁ, Tereza. Nová průmyslová revoluce. Nezaspěte nástup Práce 4.0 *Aktuálně.cz* [online]. 2015-07-29 [cit. 2020-09-20].

degree of including remote activities, done via the internet. Thus, new models of performing work activities via internet are and will be introduced. Consequently, effects of digitalisation are observed in the new socioeconomic behaviour of people and the society as a whole⁶⁴, including the job market. On the industry level, digitalisation reduces the amount of human activity where human manual labour is gradually replaced by automation (e.g. by replacing the process of manually entering production codes and data with electronic systems, such as barcode scanners) on all conceivable levels. Naturally, as stated above, effects of digitalisation themselves are by necessity influenced by a variety of factors, primarily by the nature of work where the human performance is to be automated, etc. Although digitalisation and the fourth industrial revolution affect all entities in the job market, the intensity with which they do so differs. When looking for challenges posed to collective bargaining in the digital era, it is essential to consider the environment where digitalisation occurs. Different effects can be encountered e.g. in the in-house organisation of work in the transport sector (introduction of automated assembly lines, robots, or digitally communicating machines in order to transport commodities, tools, and goods; machines capable of coordinating their movements, etc.) as opposed to administration (introduction and deepening of methods of remote online communication, using *in-time* communication programmes, etc.).

Modern trends cannot be abstracted from the existing ones. From the perspective of digitalisation, modern trends can be viewed not only as new forms and methods of communication (ways of engaging in social dialogue and collective bargaining), but also new goals and requirements of employee representatives, shaped by current changes in the job market and by the needs of employees. The possibility of representing employees by an immaterial trade union instead of a physical entity is one clear instance of new trends in collective bargaining (seen purely formalistically). Efforts to move employee representation to a higher level—i.e. to prioritise and apply oneself more intensely to securing working conditions by means of higher-level collective agreements—is also a new trend which can influence social dialogue outcomes.

⁶⁴ MAŘÍK, Vladimír a kol. *Národní iniciativa Průmysl 4.0* [online]. 2015. Available on: <http://www.ppp4.cz/prezentace/documents/pdf/prumysl-4-0-brozurka.pdf>

The direction of activities carried out by employee representatives and brought about as a result of demands posed by employees in the context of changes and effects of national labour-law regulations need to be categorised as new trends in collective bargaining and social dialogue. Reflection on the current requirements of employees and employers for a quick solution to potential conflict situations (during the performance of dependent work) also qualifies as a new trend which can strengthen collective bargaining and the status of social dialogue, as well as the overall perception of representation of employee interests. Thus, the content of concluded collective agreements changes over time. Considering the loosening of working conditions regarding the employees' obligation to be physically present at the workplace, or taking into account effects of digitalisation and flexible performance of workers—more frequent use of working processes and tools which facilitate telework—a focus on working hours and factually worked (often “recorded”) hours ceases to be a basic attribute of collective labour-law relationships.

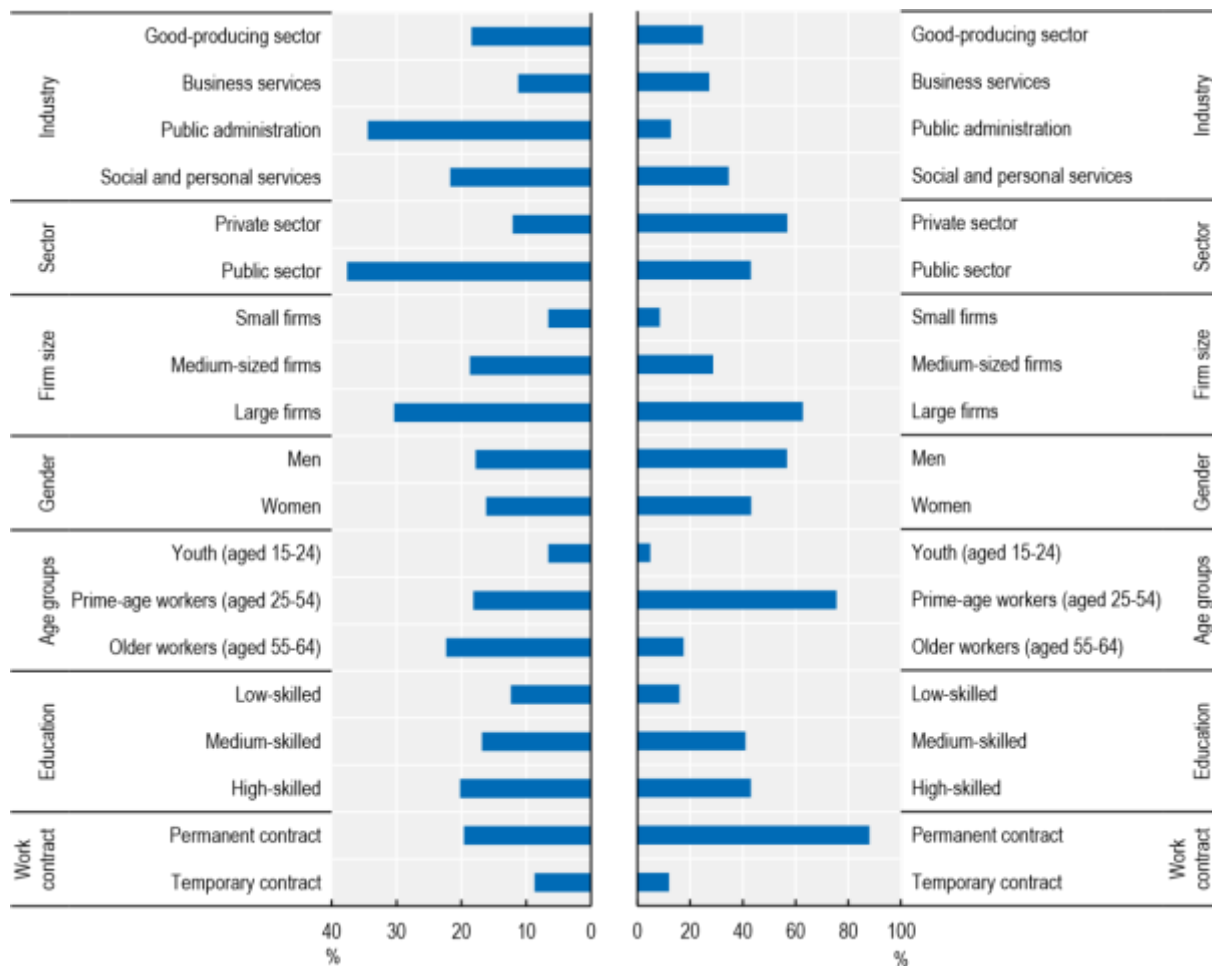
Trade union density—mandate for collective bargaining

The interest of employees in being represented is an essential factor which affects the outcomes and possibilities of social dialogue. This concerns mostly conditions at the employer's, primarily the strength of the union movement so that it is possible to use other mandates besides the legal one during potential communication and social dialogue (e.g. in accordance with the Czech legal regulations as per stipulations of Section 286 of the Labour Code, and identification on the basis of prevailing regulations). On the global scale, union membership has exhibited a downward tendency. Efforts to make social dialogue more attractive and recruiting new members can be viewed as a challenge related to digitalisation.

Figure: Union organising⁶⁵

Trade union membership is not mandatory. However, benefits secured by a trade union can be enjoyed by all which is then reflected by union membership. The degree and level of trade union

⁶⁵ OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, 2019. p. 30



membership differs depending on the occupation and type of work performed by employees.

From the perspective of new goals and modern trends, social dialogue can be expected to experience an activation of trade unions, among others in relation to the use of modern technologies.

Figure: Union membership⁶⁶

		contract type		establishment type					broad economic sector		
		open ended	fixed-term	less than 10	10 to 24	25 to 99	100 to 499	500+	industry and constr.	private services	public services
AT	31	31	20	17	24	34	49	55	37	22	38

⁶⁶ Employment and social development in Eurpae. Annual Review 2018, op. cit. p. 173.

BE	51	51	47	62	45	52	47	48	61	43	50
CZ	7	8	4	2	6	6	8	20	7	5	11
DE	19	20	12	7	14	19	23	26	21	12	24
DK	80	83	68	69	77	84	82	85	82	73	86
EE	8	8	10	5	7	7	13	20	7	5	12
ES	19	25	6	7	24	24	27	34	21	16	27
FI	76	77	71	73	74	77	78	81	78	64	84
FR	11	13	2	5	6	8	21	17	13	10	12
UK	28	30	24	11	17	29	30	44	22	17	42
HU	6	7	1	2	6	5	11	19	3	4	12
IE	33	39	34	18	25	37	60	48	35	22	46
LT	8	8	4	2	2	13	14	10	3	2	17
NL	23	25	15	19	26	25	21	28	22	17	29
PL	12	16	4	2	6	13	13	27	10	7	21
PT	12	14	6	8	7	17	21	12	3	6	30
SE	73	77	49	66	72	76	75	74	77	65	77
SI	30	36	3	7	11	37	38	45	28	20	43
BG	13	15	5	6	14	17	17	25	13	8	18
CY	44	43	68	31	40	59	69	38	59	37	51
SK	12	12	14	7	13	11	11	33	9	8	21
HR	27	31	11	16	21	32	31	49	31	15	17

IT	24	26	21	9	16	34	34	37	18	16	39
LV	15	16	14	9	13	18	28	35	n/a	n/a	n/a
EL	10	13	5	5	12	16	17	16	11	10	6
LU	46	49	17	29	39	56	52	51	n/a	n/a	n/a
RO	29	31	21	8	29	37	36	45	n/a	n/a	n/a

The chart shows in which sectors employee representatives should apply themselves more intensely. Employees working on the basis of an employment contract and a permanent employment exhibit a higher percentage of participation in union organising, whereas employees with a fixed-term employment are characterised by a lower membership. It is also apparent that a lower degree of union organising is typical for smaller businesses and the public sector. At any rate, union organising poses a great challenge, especially in respect to the changing nature of work, increasing individualisation, and use of means provided by digital revolution (see e.g. platform workers).

Right to disconnect

With modern means of communication and as a result of digital revolution, many jobs experience a blurring of lines between the private (home) life and working hours, or rather the time when an employee is ready and willing to perform work as per their employment contract and the time they should be spending by engaging in leisure activities. Considering the rising amount of encroachment and intrusion of fictitious working hours into the time where working hours are not scheduled, employees need a guarantee to a so-called right to disconnect.

The right to disconnect means a right of employees to not be reached by any means (e-mail, phone) regarding the issue of work, and to have no obligation to be. It is a right of employees to

disconnect from work, to not receive or have to respond to any work-related e-mails, phone calls, or messages outside the framework of regularly scheduled working hours.⁶⁷

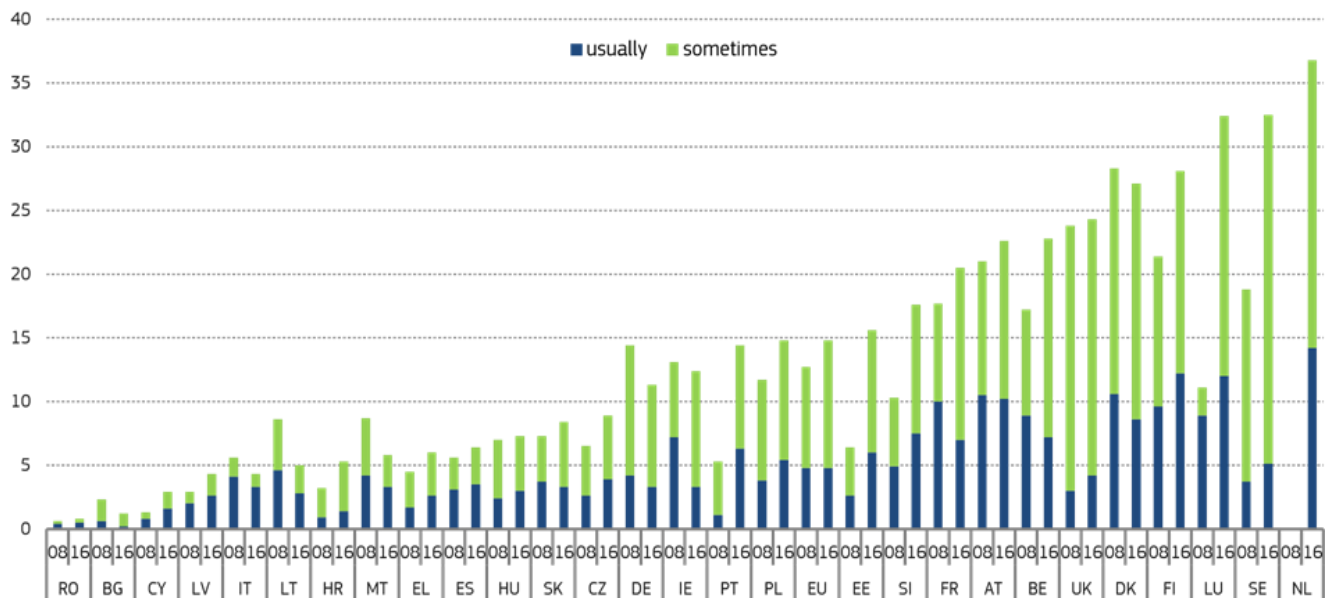
The right to disconnect gains prominence if an employee has flexible working hours and is not limited by a duty to be physically present at their employer's workplace. Typically, the right also applies to those who work from home.

As employee representatives, trade unions should discuss the right to disconnect as a part of social dialogue and enshrine it in collective agreements.

Home office and modifying working hours (right to disconnect)

Working from home—*home office* is becoming a common part of scheduled working hours.

Figure: Employees working from home⁶⁸



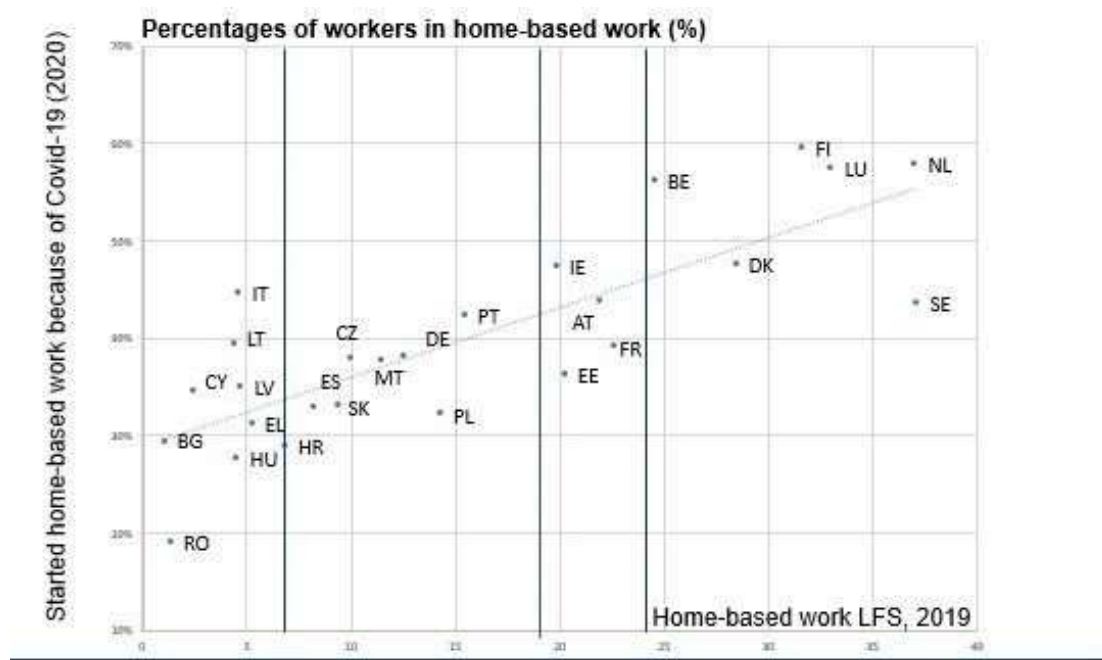
⁶⁷ UNI Global, The Right to disconnect. [online]. Available on: https://uniglobalunion.org/sites/default/files/imce/right_to_disconnect-en.pdf

⁶⁸ European Commission, Employment and social development in Europe. Annual Review 2018. *Social dialogue for a changing world of work*. [online]. Available on: <http://ec.europa.eu/social/esde2018> p. 159

Telework (*home office*) is not only a common type of working, but also appears in relation to various situations which would otherwise be seen as obstacles to work. The same goes for the current Covid-19 pandemic as it made home office a common method of working.

Modern technologies quite typically allow employees to work from home or another place besides the employer's regular workplace. Trade unions now have the opportunity to negotiate the circumstances under which this type of work takes place. Primarily, collective agreements can contain the employer's commitment to guarantee employees e.g. two days of home office a week on their request. This entitlement or request can be made dependent on certain facts, e.g. a need to take care for a family member or a partner's parental leave. Collective agreements should also contain stipulations on settling potential costs incurred by employees as a result of performing work in this manner, etc.

Figure: Home office due to Covid-19 (2020) vs. regular home office (2019)⁶⁹



⁶⁹ European Parliament. The right to disconnect [online]. *europarl.europa.eu* cit. [2020-25-09]. Available on: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI\(2020\)642847_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI(2020)642847_EN.pdf)

In connection with their activities as social dialogue partners, trade unions and the employer can use collective agreements to negotiate the terms and benefits of telework, or on the industrial level conclude e.g. a framework agreement (declaration) on telework. They can also respond ad hoc to current situations (e.g. regarding Covid-19).

Declaring terms of telework

Preamble

The Covid-19 pandemic crisis forced most of our employees to work remotely, thus proving the validity of our prior requests for the employer to support this type of work to the highest possible degree.

This experience showed us that telework brings appreciable mutual benefits—increased flexibility in respect to balancing home and work duties, lower stress, time saved on commuting, better motivation and work satisfaction, and undoubtedly higher productivity.

Over the last few months we have shown that telework is a feasible long-term solution and can be a source of huge cost savings. To a large degree, this manner of work is about changes in the company culture and is fully in line with our concept of digitalisation. In the future, we expect to be providing our quality services not only at places of business, but mostly via virtual channels, and thus a physical presence of employees at the workplace will no longer be necessary.

It is vital for employees to participate in the creation of a new company culture.

Social dialogue, collective bargaining, and maximum inclusion of employees are the key to forming responsible processes of restructuring and to creating a new company culture.

Telework will significantly affect the working conditions of all employees, as well as their social contacts, and will result in an increased pressure to acquire new skills. Thus, it is essential to abide by the right of employees to information, consulting, and participation in the process of creating a new company culture.

Employees are currently experiencing one of the historically most critical periods ever, and thus need to have, before any strategic decision is made:

- a timely access to meaningful and comprehensive current information on the likely impact of the Covid-19 crisis on the company's economic performance, on jobs, and working conditions;

- enough time and resources to conduct an in-depth analysis of the provided information, relying on economic / financial experts so that they can work on the alternatives to lay-offs, terminations, and any other measures which could negatively affect their interests;
- a real opportunity to discuss these alternatives with those who wield decision-making powers, including the top management and board members who will have to respond to these proposed alternatives and justify their final decision.

Prerequisites for telework

Telework must always be chosen by employees freely, based on their personal and family situation and on the employer's requests and terms.

Telework must result in a working solution that is the best for employees and best combines the employer's requirement for a supreme performance and the employees' conditions for its provision.

With no duly negotiated rules, the side effects of telework can be just as dangerous as a viral infection. For that reason, the employer and employees will determine all necessary rules.

For the employer, telework can be a significant source of cost savings. This, however, cannot occur at the expense of employees and most importantly, the **employees themselves should at least partially benefit from a redistribution of these savings.**

What must be guaranteed

- **The employer will continuously educate employees and managers about the meaning of telework, ways of organising the workday, of resting, managing subordinates, etc.;**
- **The employer will take the delicate circumstances of vulnerable employees into account**—meaning weaker health or personal / family needs. Different personal, family, or health situations cannot result in a professional disadvantage. The employer will not disadvantage teleworkers on account of their age, gender, or workplace;
- Mobility aspects are just as important: telework can be a tool for **saving time, costs, and resources wasted by daily commuting**, not to mention its **positive influence on pollution**;
- The employer will establish the new position of a telework manager who will be responsible for creating and implementing a new company culture in regard to telework and for observing negotiated rules and will develop this area in the long term;
- The employer undertakes to provide **necessary and suitable work tools**, technology, and IT solutions to those of their employees who engage in telework. The employer should bear at least a part of the costs of work performed outside their workplace;
- Information and communication on **rights and obligations should be clear and easily accessible**;
- Employees acknowledge that the longer telework is, the more important it is to have the option of monitoring the time and manner in which they work specifically.

Employee monitoring must be clearly defined, transparent, and controlled, and its outcomes can be used only for those specific purposes for which they were obtained. The monitoring of teleworkers is in the employer's and employees' shared interest, and thus its implementation and observance of negotiated terms must be managed jointly.

The employer undertakes to NEVER breach their employees' right to privacy.

Right to disconnect

Covid-19 has disrupted our lives and changed the manner in which we perform work, blurring the line between work and our free time.

Employees wish to keep working remotely as it saves their time and finances otherwise spent on commuting, allows them to balance their home and work life, and brings substantial savings to the employer and society as a whole.

Therefore, it is necessary to define a right to disconnect, i.e. time when employees are not obliged to respond to phone calls, e-mails, or messages. Employees need to have a guarantee that they will not be punished for availing themselves of this entitlement. Naturally, the right to disconnect is related to the scheduling of "regular" working hours and hours when employees need to be available for contact.

The longer the telework, the more important the right to disconnect with the aim of securing employees' right to rest, privacy, balance between work and home life, and health.

Similar agreements can be also negotiated in other cases. However, it is vital that there be social dialogue, reasonable conduct, and enshrining of necessary rules.

Legal representation and enforceability

Modern trends in performing dependent work by means of a series of flexible labour-law relationships brings a depersonalisation of the employer-employee relationship. Despite this depersonalisation of labour-law relationships (caused by the employees' independence and frequently social separation/detachment from the work team which essentially has no option to be established in the first place as employees work and communicate by means of networks and remote connection, or from other places than the employer's regular workplace, thus not

personally interacting with other employees), collective bargaining is gaining significance in regard to the interests of employees, or to the representation of an individual employee by an employee representative e.g. during a settlement of potential disputes with the employer, or to the enforcing of employees' right to information⁷⁰.

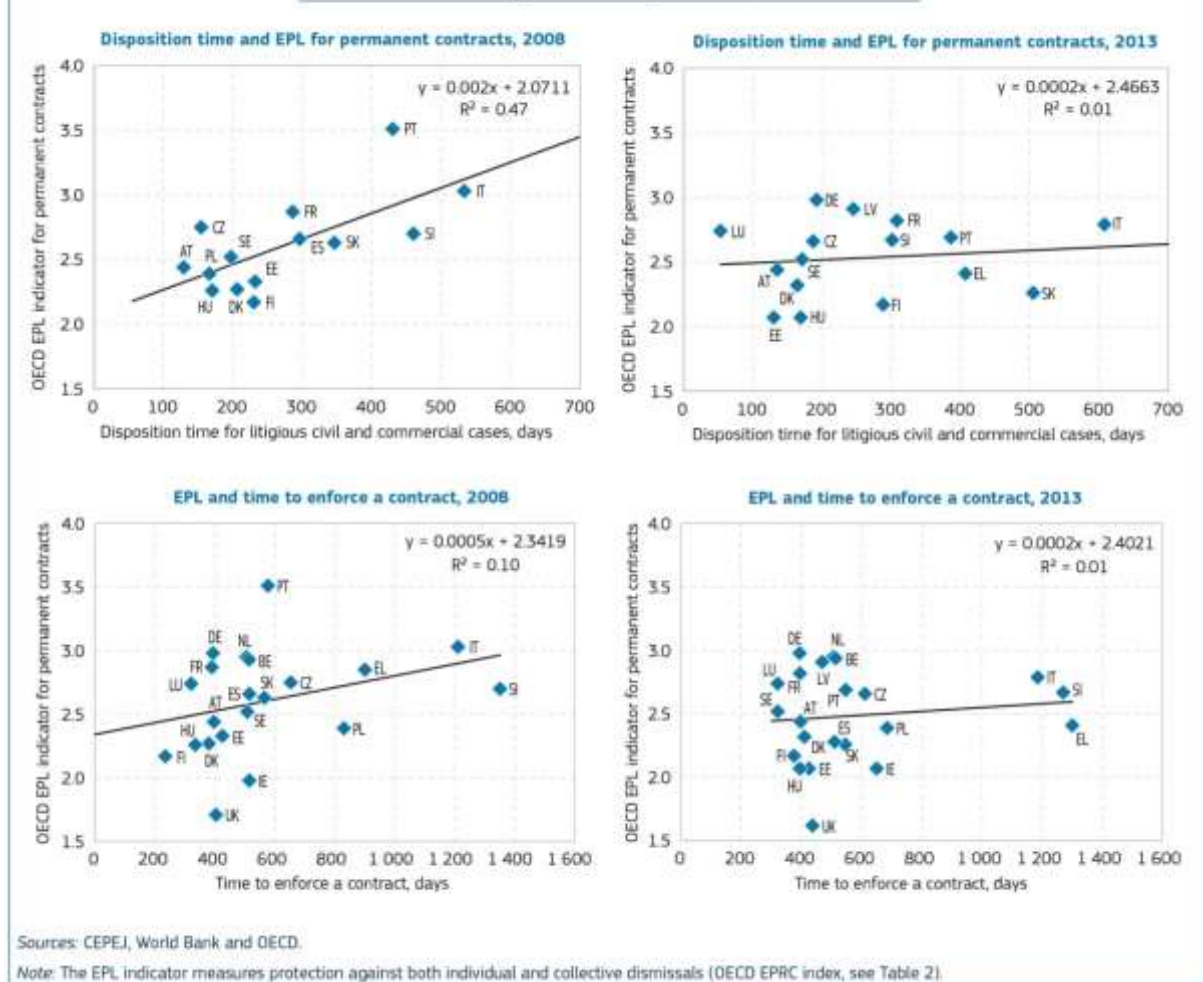
Under the umbrella of social dialogue, trade unions can make efforts to improve the work environment and the employer-employee relationship, among other things by mitigating and mediating potential disputes. New forms of work (especially flexible and precarious forms of employment) are accompanied by a reduced social protection of employees. Trade unions can play an important role when conflict situations, occurring as a result of such a low social standard, need to be resolved. Similarly, the above-mentioned right to information and consulting, based on a number of international documents, should be rigorously exercised in the future.

Legal norms, as well as the outcomes of collective bargaining, are a binding regulation on the framework of working, of the job market, the position of the employer and employees, and mutual circumstances of social partners. In the era affected by digitalisation and the fourth industrial revolution, a stronger enforceability of laws needs to remain a trend. Any legal norm which is not legally sanctioned is merely a recommendation with no force. From the perspective of a rigorous defence of the legitimate interests of employees, the length of time spent on enforcing one's rights by legal action is a significant element. It is clear in the international context that trends in collective bargaining and social dialogue include not only a legal representation by trade unions, but mostly the importance of unions and employee representatives as a dispute mediator, or rather an entity which can prevent disputes from arising or settle them amicably if they do arise. As shown by the included chart⁷¹, the duration of lawsuits, expressed in time (days), is rather variable.

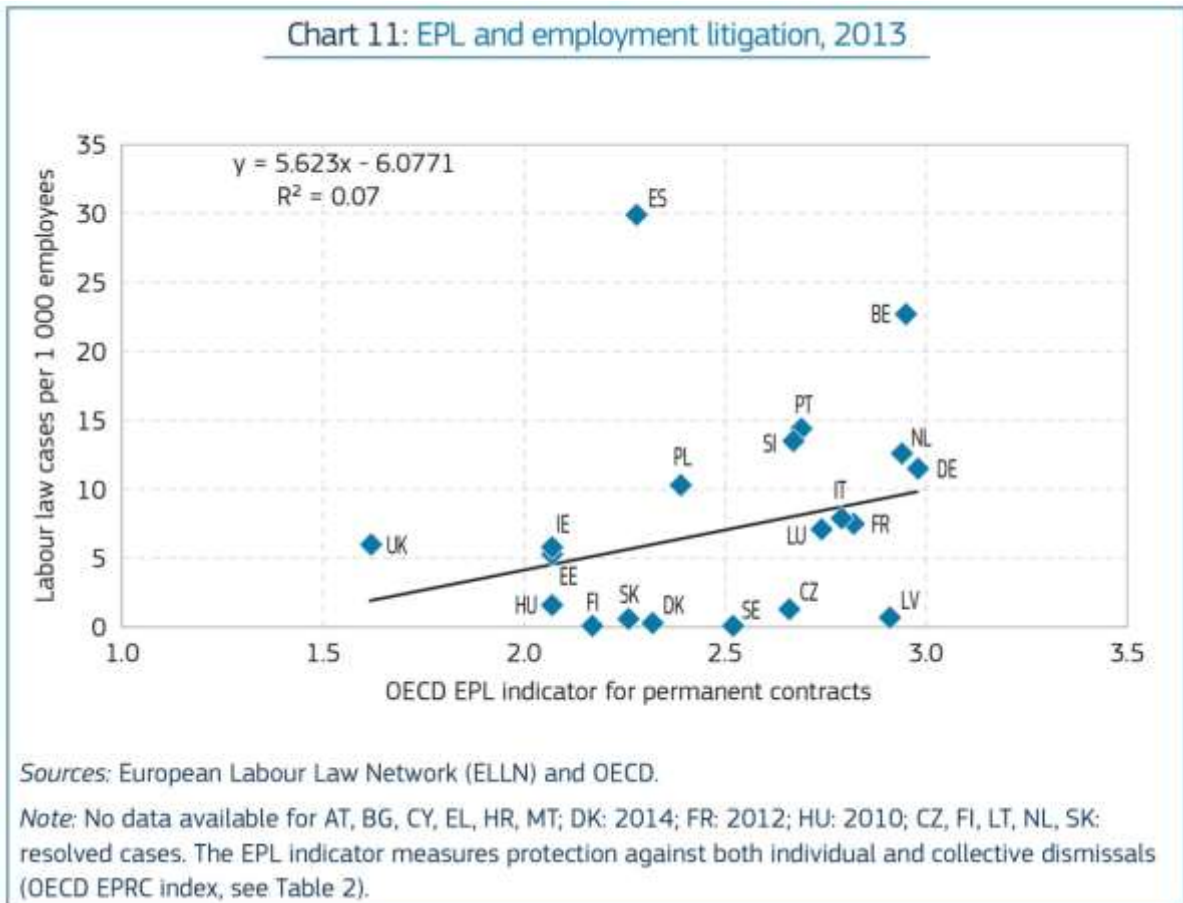
⁷⁰ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. Available on: <https://eurlex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002L0014>

⁷¹ European Commission. Employment and Social Development in Europe 2015. Luxembourg: Publications Office of the European Union, 2016. p. 98.

Chart 10: EPL and civil justice efficiency indicators, 2008 and 2013



On the other hand, international comparisons show that when compared to e.g. Spain, the proportion of labour disputes resolved by legal action in the Czech Republic is not particularly excessive. However, studies do not focus (see the chart below) on whether this is caused by a conflict-free work environment, or a quality social dialogue and representation of employees' interests (mediation of possible disputes before they escalate).



Education and training

Digitalisation and the fourth industrial revolution introduce a number of new issues to the job market and employment sphere. Primarily, it is necessary to answer issues regarding visions of the future and what the job market will look like in a few years (as a result of technological and social changes). Discussions on the structure of employment and work are being foregrounded, especially where the development of different occupations is concerned. Regardless of whether the job market is affected by such factors as increasingly strenuous work, polarisation, or any other factor, there are serious implications and consequences for the future of work, and consequently of social dialogue. Social partners should help create not only national, but also regional policies aimed at education and the education system (e.g. required cooperation in the area of apprentice training or in the creation of responsible demand for certain occupations and the related education system).

The need for quality education is based on changes in the job market. However, it does not concern only quality, but also the knowledge and skills required by the job market (i.e. in

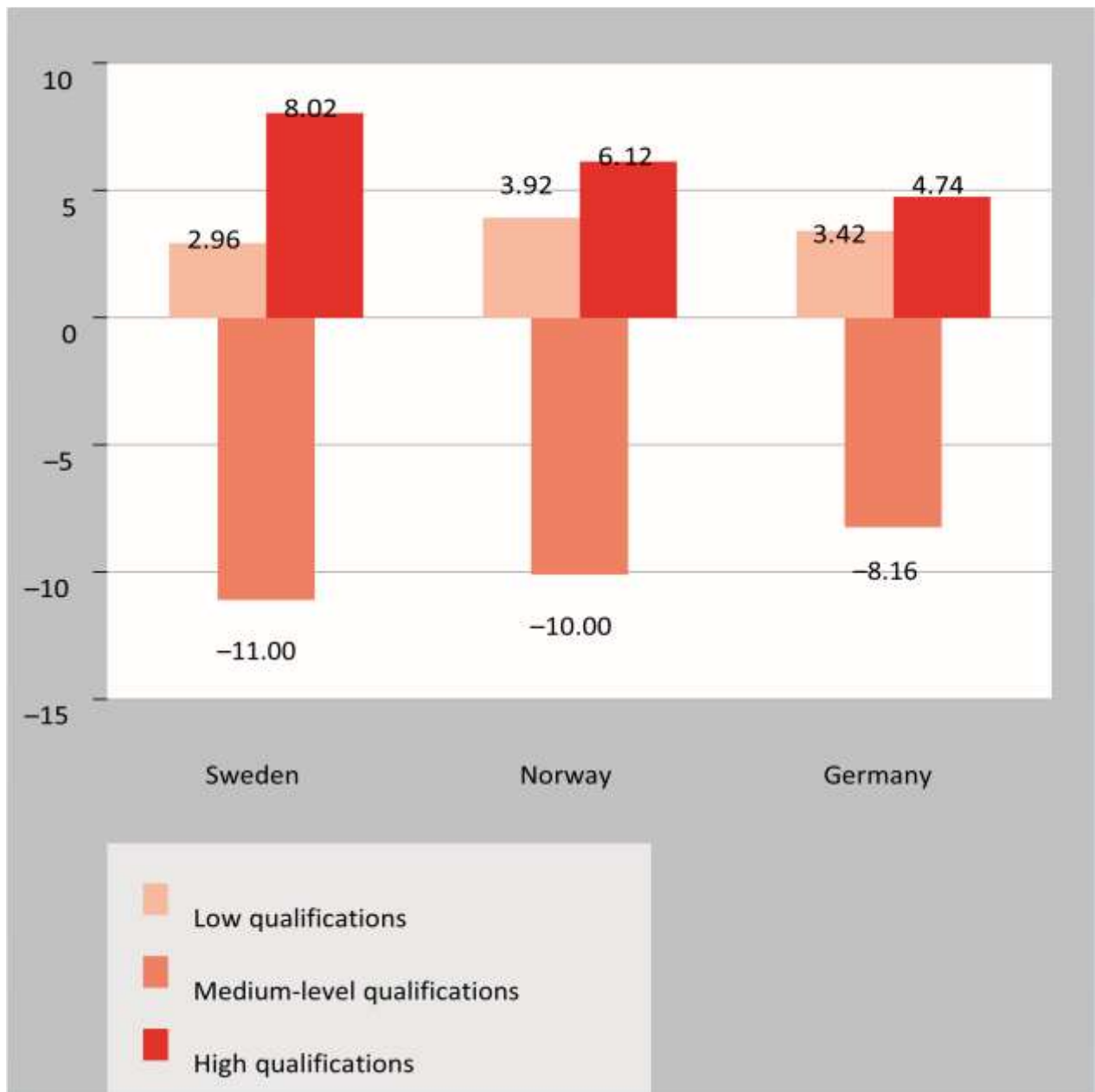
connection with establishing needs and challenges posed by digitalisation, it is necessary to focus on spreading erudition and skills related, mostly, to information technologies).

Globalisation and digitalisation are accompanied by increasing requirements both on the part of the employer and employees. Due to the application of a series of new innovative approaches and digital tools, the nature of work changes so much that swift action is required—deepening qualifications and acquisition of competences needed for work. Employers have to identify areas which call for a focus on enhancing skills and acquiring new competences.

The level of acquired qualifications is becoming a prerequisite for being hired. Jobs are beginning to require an increasingly higher level of competence. All European countries are characterised by rising numbers of qualified jobs, as all are affected by digitalisation and innovations.

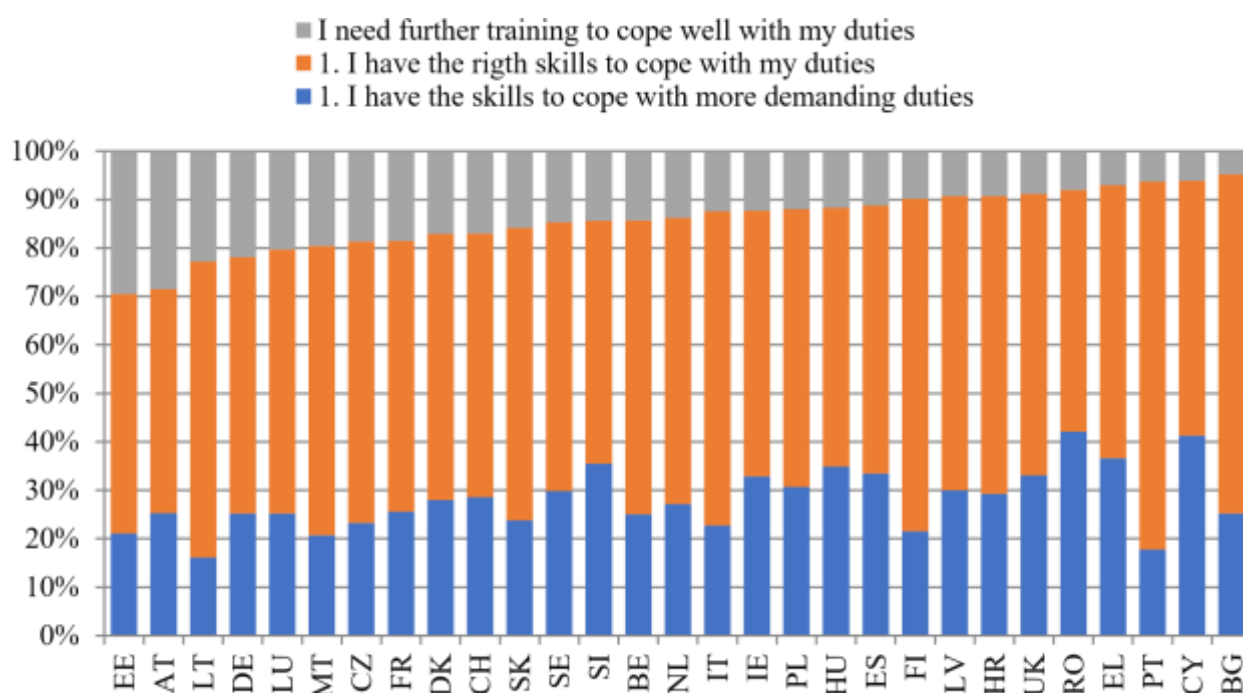
Figure: Changes in the percentage of employment by required qualifications from 1995 to 2015 (%)⁷²

⁷² SCHROEDER, Wolfgang. GREFF, Samuel., SCHREITER Benedikt. *Shaping Digitalisation*. FES Stockholm. 2017. p. 6.



Education is the focal point of efforts to keep up with job market requirements. It is also evident in the subjective evaluation of employees themselves. Comparing their idea of their obligations, competencies, and skills, it is clear that their skills correspond to the demands of their jobs. On the other hand, there is a substantial group of employees where there is a subjectively identified requirement for a development of competencies so that these employees can be (evaluated subjectively!) qualified to perform work in a more responsible manner.

Figure: Employees' subjective assessment of the gap between their skills and duties⁷²



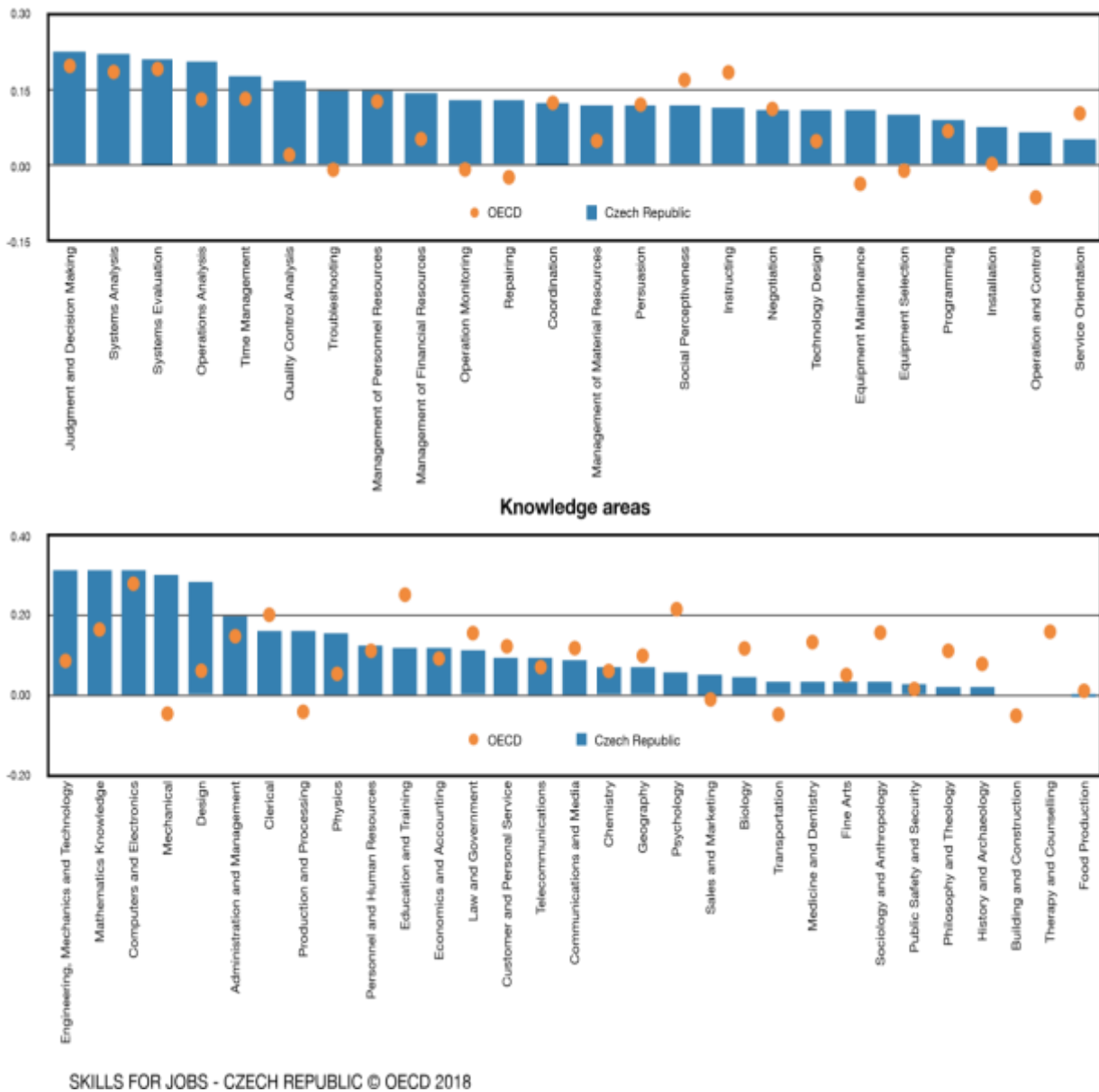
From the perspective of new trends, it can be said that the social dialogue goal to provide enough opportunities for employees to educate themselves, or to oblige employers to invest in their employees' education, must be viewed as a necessity and bare fact. On the global scale, however, it is relatively difficult to accurately define specific competences to be developed and deepened. As requirements are not exactly clear, investments into education will need to be made on a broad, general scale, accelerating the imparting of special skills as soon as the need arises. Considering the fact that we can expect employers to have an unfavourable opinion of investing and spending financial resources on a wide range of training activities with no specific or particular link, trade unions now have a great opportunity to work with the employer and develop social dialogue—obligations to provide employees with a specific education can be an integral part of collective agreements.

⁷² LLORENTE MUNO-DE BUSTILLO, Rafael. *Digitalization and social dialogue: Challenges, opportunities and responses*. [online]. [cit. 2020-25-09]. Available on: https://www.researchgate.net/publication/339948338_Digitalization_and_social_dialogue_challenges_opportunities_and_responses/stats p.7

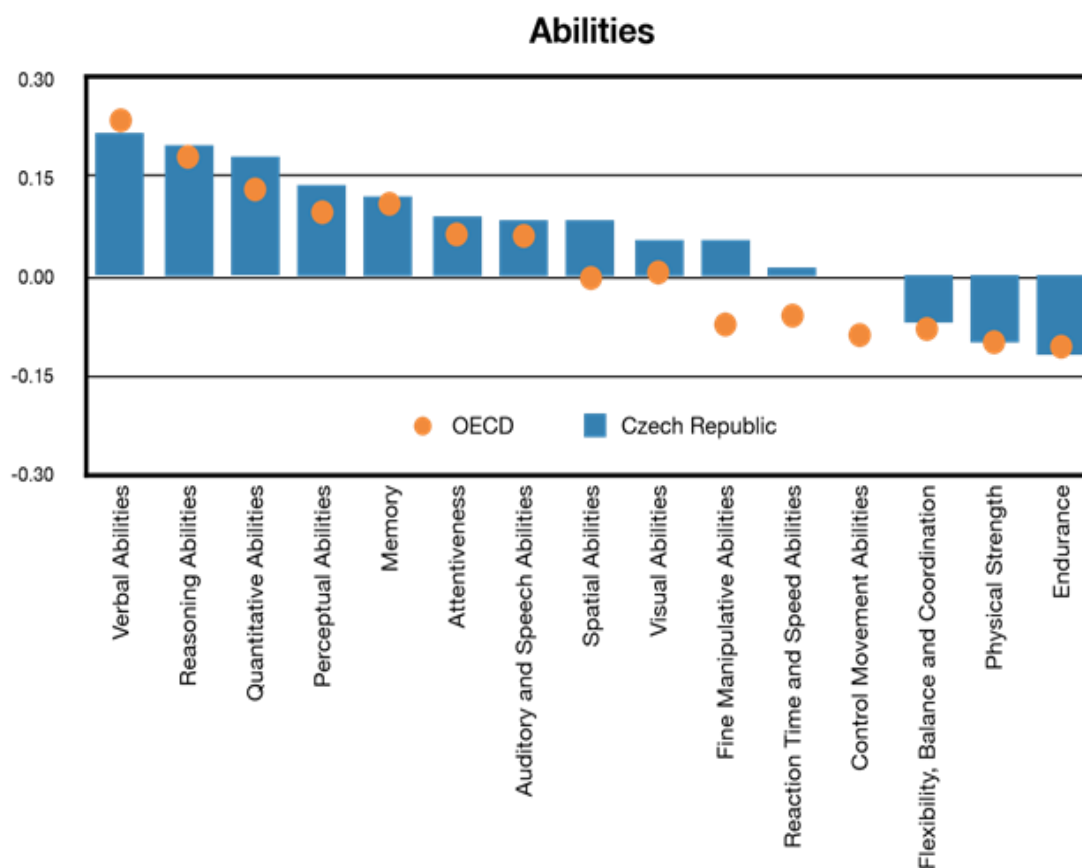
Over time, educational requirements change. It is necessary to rigorously monitor the trends which affect this. In the Czech Republic, the “skills for jobs” category experiences similar changes as the European market and other Member States. Considering the varying nature of different economies and prevailing economic activities, requirements for special skills also differ (as is shown by e.g. the OECD Skills for Jobs study)⁷³. When evaluating on what social partners should focus, it is essential to first link parameters, such as the characteristics of presumed jobs, economic areas (specialisation of particular occupations), or related skills of employees.

⁷³ OECD. Skills for Jobs. [online]. Available on: <https://www.oecdskillsforjobsdatabase.org/index.php#CZ/>

Figure: Skills for jobs, 2018, Czech Republic⁷⁴



⁷⁴ OECD. Skills for Jobs. – Czech republic. [online]. [cit. 2020-25-09]. Available on: https://www.oecdskillsforjobsdatabase.org/data/country_notes/Czech%20republic%20country%20note.pdf



Challenges can be seen not only in relation to the introduction of new technologies, but also within the existing system and regulation of educational programmes. The Czech Republic is characterised by a relatively high percentage of the so-called *mismatch*. This is a situation where the acquired qualifications do not match the job requirements, be it a case of overqualification (i.e. employees have higher qualifications than necessary), or underqualification. A mismatch between necessary qualifications with the requirements posed by activities performed by the employer is ca 83 % in favour of employees (i.e. overqualification). By means of social dialogue, trade unions can participate in the process of determining the optimum education to meet the needs of the job market. Therefore, this is a significant challenge for the union movement and potential content of collective agreements under negotiation—i.e. collective bargaining.

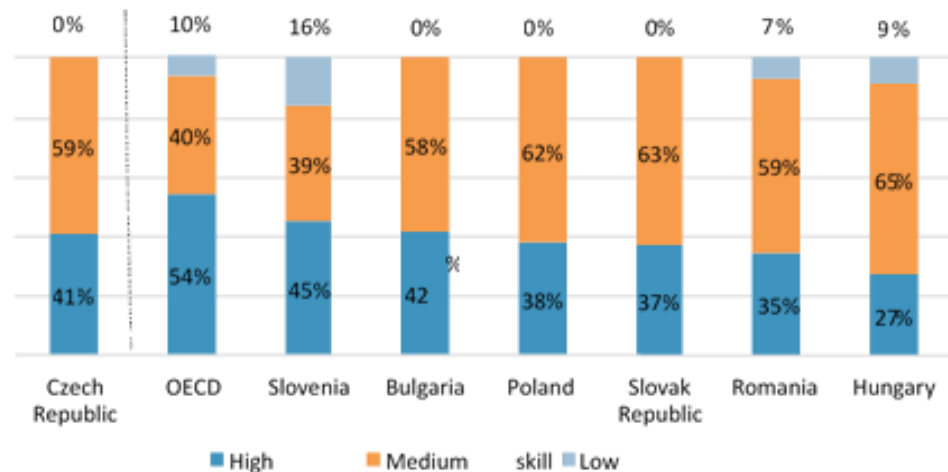
Figure: Proportion of necessary and acquired qualifications; ratio of mismatched qualification content⁷⁵

⁷⁵ Ibid



OECD data shows a comparison between the Czech Republic and the OECD average. The biggest deficiency in required qualifications (employees with required qualifications) is evident in the sectors which fall under the umbrella of scientific and technical fields, or areas focused on soft and communication skills. Conversely, administration, construction, and auxiliary services experience the largest surplus. Statistically, ca 6 out of 10 occupations struggle with a lack of qualified labour where there is a requirement of high-school educational attainment. Compared to OECD, a requirement for highly qualified labour and higher-level skills appears in 41% of cases (ca 10% below the OECD average (see the infographic below)).

Figure: Qualification requirements; sector indicators



Sector indicators

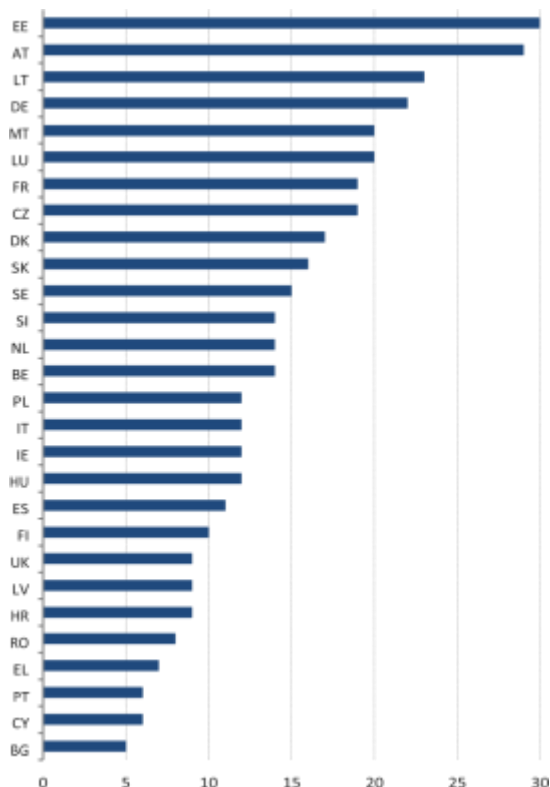


The strength of social dialogue and effectivity of social partnership grows along with an interest in the union movement and organising. Union membership, or the union member base of another employee representative, always creates a mandate for establishing, communicating, and maintaining social dialogue from the perspective of employee representatives.

Education, deepening one's qualifications, and other ways of acquiring new competences are one of the chief trends in modern social dialogue. The education agenda is perfectly in line with the impact of digitalisation where there is an assumption of growing qualification requirements or a new, larger scope of competences and skills. Digitalisation and globalisation have been steadily accompanied by increasingly higher demands both on employees and the employer. Technical skills should be gradually combined with "soft skills". The workplace could

effectively experience a combination with technology and the human factor where soft skills like team management and communication cannot as of yet be fully replaced by mechanical and technological means. In connection with the findings that a number of employees believe they need to improve their education in order to perform their work, social dialogue can aim to secure optimum educational activities.

Figure: Employees who believe they need deeper qualifications and training to perform their duties (2015)⁷⁶



Shortened and shorter working hours

As evident, modern trends in collective bargaining can be interpreted rather broadly and in many different variations of form and manifestation. Globally, attention on the job market has been historically paid to working conditions which in our modern times fall under the trend of balancing home and work life—regulating working hours. A natural person-employee who performs work for an employer cannot function in their family as its fully-fledged member during this time—not when they are working from home and definitely not at the employer’s workplace

⁷⁶ European Commission, Employment and social development in Europe. Annual Review 2018. *Social dialogue for a changing world of work*. [online]. Available on: <http://ec.europa.eu/social/esde2018> p. 157.

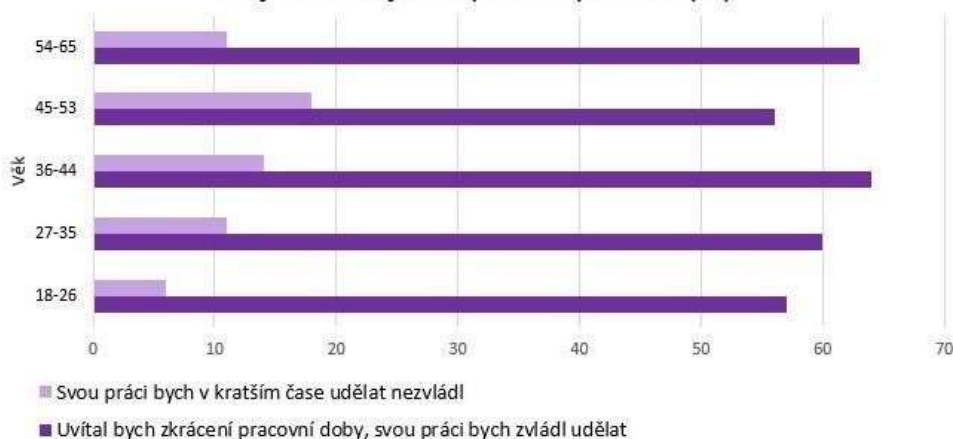
or at another place which is not their own household. Currently, having time for oneself, for one's family and hobbies is one of the basic requirements job applicants and employees make. Rules of determining working hours by means of social dialogue between social partners, and the subsequent enshrining of ways in which to manage an employee's time, time factually bought by the employer on the basis of contractual stipulations for a wage, salary, or reward, thus have historically been and will remain a basic content requirement of collective agreements.



Would Czechs welcome a reduction in working hours while maintaining their wages and volume of work?

- ☒ I'd welcome this, I'd be able to do my work more quickly
- ☐ I'd welcome this but am not sure if I'd be able to do my work in a shorter amount of time
- ☐ I wouldn't be able to do my work in a shorter amount of time

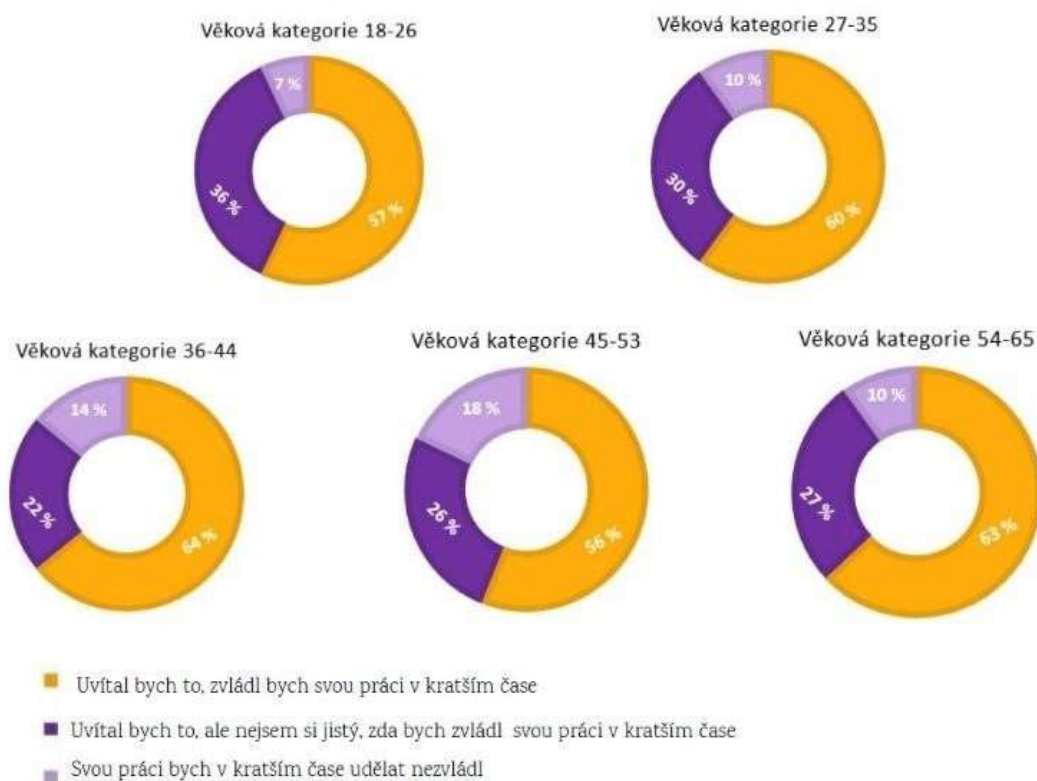
Uvítali by Češi zkrácení pracovní doby při zachování stejného objemu práce i peněz? (%)



Would Czechs welcome a reduction in working hours while maintaining their wages and volume of work? (%)

- I wouldn't be able to do my work in a shorter amount of time
- I'd welcome shorter working hours, I'd be able to do my work

Zájem zaměstnanců o zkrácení pracovní doby dle věku



Interest of employees in reduced working hours by age

The 18–26 age bracket

The 27–35 age bracket
 The 36–44 age bracket
 The 45–53 age bracket
 The 54–65 age bracket

- ☒ I'd welcome this, I'd be able to do my work more quickly
- ☐ I'd welcome this but am not sure if I'd be able to do my work in a shorter amount of time
- ☐ I wouldn't be able to do my work in a shorter amount of time

Source: Petra Sejplová, Grayling Czech Republic, 2019⁷⁷

Introduction of technological innovations and digitalisation impacts working hours. As shown in previous chapters, working hours constitute an area where trade unions should participate in the creation of adequate working conditions. Working hours are one of the chief trends and goals brought forth by the digitalisation revolution where any reduction in the extent of working hours should not adversely affect an employee's remuneration. Social dialogue should be a conflict-free way which leads to a regulation of work, its content and organisation, without negatively affecting specific employees.

Opportunities for reduction (as per Section 79 of the Labour Code, without affecting the wages of employees) can be a part of the regular content of collective agreements, as was the case before. The trend is to promote efforts to reduce working hours.

A comparison between the time worked by employees with and without a collective agreement shows that **employees with a collective agreement work fewer hours a month than employees without it**. The biggest difference in the number of hours worked per month was evident at the start of the crisis. Between 2013 and 2016, this difference decreased a little but in 2017 it experienced a slight increase again and reached the previous 2013 levels. Last year, it slightly decreased once more.

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018

⁷⁷ Available on: <https://www.w4t.cz/zkraceni-pracovni-doby-by-uvitala-vetsina-zamestnancu-82489/>

Collective agreement	147.5	147.4	146.7	146.2	146.4	145.3	145.4	144.0	143.0
No collective agreement	150.8	150.7	150.4	150.0	149.9	148.6	148.7	147.8	146.6
Differences (CA—No CA)	-3.3	-3.3	-3.7	-3.8	-3.5	-3.3	-3.3	-3.8	-3.6
Proportion (CA/No CA) (in %)	97.8	97.8	97.5	97.5	97.7	97.8	97.8	97.4	97.5

Source: Report on higher-level collective bargaining and collective bargaining conducted on the business level in 2019

Reduction in working hours (at least in one work mode) has long been negotiated in the overwhelming majority of BCAs and constitutes a significant success of collective bargaining.

Overview of the number of business collective agreements on the number of working hours:

Year	2014	2015	2016	2017	2018	2019
% BCA	93.8	93.8	93.8	92.7	92.4	91.7

Source: Report on higher-level collective bargaining and collective bargaining conducted on the business level in 2019

Average working hours (generally, with no distinction) **negotiated** in 2019 amounted to **38.1 hours a week**. Regarding average weekly working hours negotiated in individual work modes as per all evaluated BCAs, they totalled:

	Negotiated weekly working hours (hours per week)				
Year	Generally	One-shift operation	Two-shift operation	Three-shift operation	Nonstop operation
2014	38.1	39.5	38.2	37.4	37.2

2015	38.1	39.5	38.2	37.4	37.2
2016	38.0	39.6	38.3	37.4	37.3
2017	38.0	39.7	38.3	37.4	37.3
2018	38.0	39.7	38.3	37.4	37.3
2019	38.1	39.7	38.3	37.4	37.3

Source: Report on higher-level collective bargaining and collective bargaining conducted on the business level in 2019

Negotiating the terms of regulating working hours is a common part of collective agreements. The issue of working hours in collective agreements can be further handled in connection with the effects of digitalisation.

• **Reduction in working hours (generally) to 37.5 hours a week with no wage reduction**

This year, the average number of negotiated working hours, ranging **from 37.5 to 38 hours a week** (generally, without any distinction in work modes), has been negotiated in BCAs concluded under the authority of **7 trade unions** (as opposed to 6 trade unions in 2018).

Development in individual trade unions as per the IPP index		
Trade union	% BCA which stipulate the number of working hours in general	Average number
	without distinguishing between shift modes	weekly working hours hours /week

Year	2018	2019	Year-on-year development	2018	2019
Transportation	82.1	84.6	slight increase	38.8	38.8
Wood processing, forest and water management	80.9	75.4	decrease	38.0	37.8
Power engineering, chemical industry	79.7	76.1	decrease	37.7	37.7
Mining industry	77.8	83.3	increase	37.7	37.8
Metal working industry	65.5	64.6	slight decrease	37.8	37.8
Foodstuff	55.4	57.4	slight increase	38.1	37.9
Hospitality, hotels, tourism	-	-	-	-	-
Mailing, telecommunications, newspapers	-	-	-	-	-
Finance and insurance industry	64.3	64.3	no change	39.7	39.7
Business, logistics, and service workers	28.6	46.7	increase	38.8	39.3
Science and research	43.8	46.4	slight increase	40.0	40.0
Construction	42.2	43.8	slight increase	38.5	38.4
Textile, clothing, and leather industry workers	91.4	88.6	slight decrease	37.5	37.5
OS UNIOS	79.7	78.8	slight decrease	38.4	38.5

College union	33.3	30.0	decrease	39.6	39.6
Health- and social care	16.0	4.5	decrease	38.1	-
Civilian army personnel	75.0	80.0	increase	37.5	37.5
Aviation workers	75.0	50.0	decrease	38.3	-

Source: Report on higher-level collective bargaining and collective bargaining conducted on the business level in 2019

Goals for collective bargaining

The present text contains a variety of incentives, both from the perspective of trends in collective bargaining and social dialogue, and the aim of activities of social partners and primarily trade unions as employee representatives.

With respect to digitalisation and new technologies, among other things, a consistent and constant approach to the determination of goals and their gradual fulfilment, e.g. on an annual basis, should be a trend. Meaning, that in the interest of collective bargaining goals are set which are to be fulfilled as a part of collective bargaining before the conclusion of a collective agreement. The usual items which traditionally tend to be enshrined in CAs should be supplemented by other facts, those corresponding to the specific impact of digitalisation (e.g. agreement on the introduction of innovative solutions).

As shown, for example, by the goals set by the Bohemian-Moravian Confederation of Trade Unions (ČMKOS) for 2020, the aspect of digitalisation's effects is implicitly included. However, some of the goals can be specified and explicitly stipulated.

GOALS FOR COLLECTIVE BARGAINING

1. Regarding remuneration

The ČMKOS assembly recommends to engage in collective bargaining so that, depending on the overall economic situation and the economic situation in the relevant industry, business (company), **the nominal average wage in the business sphere increases at minimum by 6–7 percentage points in 2019** when compared to 2020;

Remuneration of employees in public services and administration—regarding the concluded agreement on pay increase in public services and administration and in relation to the process of drawing up the government budget for 2020, **negotiations will be held with the government on pay increase in 2020;**

Negotiate an inflation clause to provide for any significant increase in consumer prices;

In a BCA, **strive to negotiate a minimum wage which exceeds** the statutory limit so that it serves as protection against **working poverty;**

When negotiating wages, strive to arrange a **convergence of wages and elimination of differences between the Western and Eastern EU;**

Strive to **eliminate differences between the remuneration of men and women.**

2. Regarding employment

In the interest of maintaining, or rather increasing employment and preserving decent working conditions, continue to negotiate:

a reduction of working hours by at least **0.5 hour a day (37.5 hours a week)** with no pay reduction;

5 vacation weeks;

the employer's commitment to primarily **employ workers on the basis of an open-ended employment contract;**

the trade union's participation in decisions on using agency workers, hiring foreigners from third countries by the employer, and **negotiating equal terms for resident and agency workers** in regard to remuneration, working hours, and occupational safety;

the trade union's participation in the introduction of elements of Industry 4.0 and in the replacement of human labour with automated workplaces, and **in relation to digitalisation** negotiate stipulations so that the working and remuneration conditions of employees do not deteriorate;

upon the arrival of digitalisation increasingly emphasize the negotiation of terms of education, additional training, and requalification of employees in the interest of job retention;

terms of specific forms of work, i.e. part-time jobs, home office, job sharing, etc.;

an increase in the amount of severance pay to exceed the minimum sum prescribed by the Labour Code.

Furthermore, the ČMKOS assembly recommends to pay more attention to

the employment of the senior and handicapped;

the employment of the young;

strive to negotiate **lifelong employee education programmes for employees to systematically improve their knowledge and skills**, thus preventing lay-offs on account of insufficient qualifications or changes in required skills and qualifications.

3. Strive to maintain or introduce representation of employees in the supervisory board of a joint-stock company

by securing the employer's commitment to present such a proposal to the general meeting of the joint-stock company where employee representation is not implied by law, and demand that **employee representatives constitute at least one third**.

4. Regarding balancing work, private, and home life, and in respect to equal treatment keep negotiating

vacations whose length exceeds the framework set by the Labour Code, and **shorter working hours** with no pay reduction;

suitable **regulation of working hours** and provision of paid leave to employees in case there are personal obstacles to work on the part of employees, exceeding the framework prescribed by the Labour Code;

opportunity for **part-time work** if requested by employees with family obligations;

a **social fund** (or a similar fund/programme) and at the same time strive to make sure a part of expenses is designated for the promotion of balancing the work and home life of employees;

automatic adjustment of wages of employees on parental leave, and the employees' guaranteed assignment to perform the same job once they return from the leave.

5. Regarding supplementary pension insurance and supplementary pension savings

keep negotiating **subsidies to pension insurance**⁷⁸ and **supplementary pension savings**⁷⁹;

make sure that employers make a commitment in a BCA to **provide larger subsidies to those employees** who perform demanding and harmful work so that these workers have the option, if necessary, to **use so-called supplementary pension savings**.⁸⁰ Mostly, this concerns employees performing work which falls under the third and fourth risk category.

6. Regarding OSH

strictly make sure that **the quality of occupational safety and health is not reduced** and as a part of collective bargaining promote:

the creation of a **safe and healthy working environment and conditions** and a **reduction and removal of hazardous and strenuous work, including the removal of carcinogenous workplaces** with the aim of their complete elimination;

measures to **reduce stress and the overworking of employees** and to prevent these.

⁷⁸ Act No. 42/1994 Coll., on state-contributory supplementary pension insurance and amending certain acts

⁷⁹ Act No. 427/2011 Coll., on supplementary pension savings

⁸⁰ It is possible to go into a form of early retirement, financed from the individual's supplementary pension savings, up to 5 years before reaching the age of retirement.

Goals for higher-level collective bargaining in 2020

Considering the markedly different conditions under which individual trade unions engage in collective bargaining and conclude higher-level collective agreements, **the ČMKOS assembly recommends that higher-level collective bargaining focus mostly on concluding a higher-level collective agreement** which includes a **basic framework for employee remuneration, wage development in the relevant industry, and measures to maintain the existing jobs or create new ones;**

Furthermore (as per the ČMKOS Programme) **the ČMKOS assembly recommends to make sure that the higher-level collective agreement contains measures which will lead to:**

an increase of the average gross wage by at least 6–7 %;

the implementation of terms of a reduction in working hours with no pay reduction;

an expansion of control activities, or introduction of joint decision-making powers when it comes to the issue of employing foreigners and agency workers. The aim is to prevent **illegal employment** of both these employee groups, and simultaneously guarantee equal treatment in terms of remuneration, working hours, and occupational safety of all employees while they work for the company (business);

a deepening of the employees' education. The goal is to increase the amount of employees who are included in individual forms of education, and make it so that the education system contains specific programmes for senior employees to prevent their lay-offs;

an improvement of conditions for employing graduates and the handicapped who are the most affected by unemployment;

an improvement of pro-family environment at the employer's workplace. The goal is to facilitate a better protection of those who have obligations to their families and prevent their lay-offs, to introduce suitable working hours and forms of labour relations, provide time off work depending on the needs of these employees, facilitate a return of employees

after the conclusion of their parental leave, improve commuting from and to work, etc.; **an implementation of agreements between European social partners** and the European Framework of Action in regard to gender equality.

Final summary

The world of work is changing. It does so as a consequence of the increasingly faster social, but also technological development. Many of its aspects and respects are changing. The world of work is significantly impacted by digitalisation and the fourth industrial revolution. There are new elements and ways of performing work. Requirements for employee qualifications are changing. The world of work will never again look like it did ten year ago.

It is an inevitable fact that the world of work will change. This is accompanied by social and economic changes, but the geographic and demographic factors also play a part. These changes do not concern only individual labour law and the employer-employee relationship, but also influence social dialogue and collective bargaining. By engaging in social dialogue, trade unions have an important role in fulfilling the requirements and demands set by the European Pillar of Social Rights which emphasises the significance of social dialogue as a tool of “fighting” changes and new challenges.

In an era where the world of work experiences changes, social dialogue must tackle new trends and challenges, caused primarily by digitalisation and the fourth industrial revolution. New trends in social dialogue and collective bargaining primarily concern the scope and focus of collective bargaining. As the type and nature of performed work changes, shifting toward the individualisation of labour activities and foregrounding capital which prevails over labour due to digitalisation, trade unions are an important driving force and a protector of employees’ rights and interests.

Modern trends in collective bargaining concern and are based primarily in challenges and possible risks related to digitalisation and the fourth industrial revolution. Trade unions, social

partners, and the entire social dialogue process must conform to the current development. The issue of adjusting competences and skills does not apply only to employees, quite to the contrary. Under the umbrella of collective labour-law relationships and social dialogue, it also directly involves social partners,

social dialogue, and trade unions. Modern trends and procedures need to be viewed not as an obstacle, but as a challenge. The newer ones include an increasing inclination towards the digital platforms of collective bargaining and social dialogue. It is essentially up to trade unions themselves how they tackle this new trend. Introduction of modern communication technologies can be both a positive and a negative trend in social dialogue; negative in the sense that it represents e.g. a transformed personal scope and authority of social dialogue where new methods of working appear in unusual forms—namely platform workers. Platform work is often performed as a remotely provided service which includes the conclusion of an agreement, order assignment, and payment. Changes in the type and nature of work divert the employee's attention from the collective approach to work. He or she has no need to associate with others or to join a trade union.

Introduction of new technologies also affects the existing union movement. A shift towards digitalisation is accompanied by risks and benefits to trade unions as well. Moreover, increasing efficiency by digitalisation brings economic benefits. Trade unions must deal with this new trend-digitalisation. A new trend represents both a challenge, and a risk. On one hand, administration becomes faster and more effective. On the other, if employee representatives fail to take it into account, it can result in their ultimate demise. Both employees and union officials should familiarise themselves with modern technologies.

In terms of content, new opportunities and options occur in the area of social dialogue. Changes and new trends appear in the subjects presented by employee representatives (see platform workers), as well as in the working conditions which are affected by digitalisation and modern development. In the context of modern trends, social dialogue must pay more attention to the risks and challenges brought by digitalisation. The issue of working conditions when jobs are created and maintained is a constant point of interest of employee representatives. If, as shown by the charts in this text, the greatest concerns raised by digitalisation are related to a possible job reduction due to the replacement of human labour with automated machinery, then it is necessary to consider the creation of necessary new jobs where certain qualifications and skills are already assumed. Thus, education, deeper qualifications, employee training etc. are once again becoming a trend in collective bargaining. Trade unions should strive to ensure that there are enough options to acquire skills so that workplaces can be restructured (employees who are affected by job reduction either acquire

qualifications which will allow them to keep their jobs, or the employer will be able to assign them to new jobs).

Unions should also increasingly exercise the right to information and consulting offered by digitalisation.

Home office, or rather working from home is another modern trend in employment. Modern technologies allow unions to be in touch with employees even though they do not physically meet each other at the workplace (a negative on one hand, but if trade unions decide to view the option to communicate remotely as a challenge, it will turn into a benefit). By means of social dialogue, trade union should guarantee better working conditions to employees, as well as improved basic parameters, benefits, and compensations related to working from home.

Modern trends manifest differently. However, they cannot replace communication itself or an active approach to implementing participation rights. Additionally, changes can be experienced in the form (shift from personal contact to a remote, phone, or computer one).

Trends in labour law, although they may seem restrictive at first, need to be viewed positively as challenges. Any challenge that is reflected will always move social dialogue one step closer towards social consensus.

Sources:

ALBERTIJN, Michel. HANCKE, Bob. WIJGAERTS, Dany. Technology agreements and industrial relations in Belgium. In *New technology , work and employment*. roč. 5, číslo 1. 1990. s. 18 – 30. ISSN 1468-005X.

BAG 18. Januar 1990 – 2 AZR 357/893, BAG 18. Januar 1990 – 2 AZR 357/8957/89. [online]. *dejure.org* [cit. 2020-27-09]. Dostupné z:

<https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BAG&Datum=18.01.1990&Aktenzeichen=2%20AZR%20357/89>

Belgian National Collective Labour Agreement on new Technology. Dostupné z: <https://www.itfglobal.org/sites/default/files/node/page/files/belgian-national-collectivelabour-agreement-on-new-technology.pdf>

BRANCATI, Urzì. New evidence on platform workers in Europe. Results from the second COLLEEM survey, EUR 29958 EN, Publications Office of the European Union, Luxembourg, 2020, 69 s. ISBN 978-92-76-12949-3.

BUSCHMANN, Andreas. Socialauswahl. [online]. [cit. 2020-27-09]. Dostupné z: <https://www.anderfuhr-buschmann.de/arbeitsrecht/sozialauswahl-kuendigung/>

Collective Bargaining Agreement: New Technology or Automation Clause by Practical Law Labor & Employment [online]. Dostupné z. [https://uk.practicallaw.thomsonreuters.com/Cosi/SignIn?redirectTo=%2fw-016-2069%3forigationContext%3dknowHow%26transitionType%3dKnowHowItem%26contextData%3d\(sc.RelatedInfo\)%26ScopedPageUrl%3dHome%252fPracticalLawGlobal%26firstPage%3dtrue](https://uk.practicallaw.thomsonreuters.com/Cosi/SignIn?redirectTo=%2fw-016-2069%3forigationContext%3dknowHow%26transitionType%3dKnowHowItem%26contextData%3d(sc.RelatedInfo)%26ScopedPageUrl%3dHome%252fPracticalLawGlobal%26firstPage%3dtrue)

Council Of the European Union. Report of the mission for flexicurity. REV 1 (en) 17047/1/08. [online]. 2008 [cit. 2020-27-09]. Dostupné z: <http://ec.europa.eu/social/BlobServlet?docId=1515&langId=en>

Digitalisation and workers participation: What trade unioni, copany levle, workers and onlne platform. [online]. *International Labour Organization* [cit. 2020-27-09]. Dostupné z: <https://www.etuc.org/sites/default/files/publication/file/2018-09/Voss%20Report%20EN2.pdf>

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. [online]. *Eur-Lex*. Dostupné z: <https://eur->

lex.europa.eu/legalcontent/EN/TXT/?uri=cellar%3Af2bc5eea-9cc4-4f56-889d-3cc4c5ee5927#

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

EPSU, Using collective bargaining to improve working conditions in the digital transformation of public services. [online]. *International Labour Organization* [cit. 2020-28-08]. Dostupné z: <https://www.epsu.org/article/report-seminar-how-trade-unions-can-use-collectivebargaining-improve-working>

European Commission, Employment and social development in Europe. Annual Review 2018. *Social dialogue for a changing world of work*. [online]. Dostupné z: <http://ec.europa.eu/social/esde2018>

European Commission. Employment and Social Development in Europe 2015. Luxembourg: Publications Office of the European Union, 2016. 465 s. ISBN 978-92-79-50128-9.

European Parliament. The right to disconnect [online]. *europarl.europa.eu* cit. [2020-25-09]. Dostupné z: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI\(2020\)642847_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/642847/EPRS_BRI(2020)642847_EN.pdf)

European Commissions. Commission staff working document „Fitness check“ on EU law in the area of information and consultation of Workers. [online]. *ec.europa.eu*. [cit. 2020-27-09]. Dostupné z: <http://ec.europa.eu/social/BlobServlet?docId=10415&langId=en>

Flexibilní pracovní trh a flexibilní pracovní prostředí. [online]. 2019 [cit. 2019-27-02]. Dostupné z: <https://www.uzs.cz/soubory/01%20-%20Manu%C3%A1l%20pro%20zam%C4%9Bstnavatele.pdf>

GALVAS, Milan a kol. Liberalizace pracovního práva a její nástroje v současném období. Brno: Masarykova univerzita, 2011. 182 s. ISBN 978-80-210-5666-4.

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

GRIECO, Nicoletta. *The italian experience in the light of collective bargaining and the project of the European Sectorial Social Dialogue Committee for Central Administrations*. Dostupné z: <https://www.epsu.org/sites/default/files/article/files/Presentation-Grieco.pdf>

HOLANOVÁ, Tereza. Nová průmyslová revoluce. Nezaspěte nástup Práce 4.0. *Aktuálně.cz* [online]. 2015-07-29 [cit. 2020-09-20].

HORECKÝ, Jan, Jakub HALÍŘ, Michal SMEJKAL, Jaroslav STRÁNSKÝ, Jana HAVLOVÁ, Vojtěch KADLUBIEC, Milan GALVAS a Petr MACHÁLEK. Zdraví a práce. 1. vyd. Brno: Masarykova univerzita, 2018. 219 s. Spisy Právnické fakulty MU, řada teoretická, Edice Scientia, svazek č. 639. ISBN 978-80-210-9150-4.

HORECKÝ, Jan. 100 let od vzniku Mezinárodní organizace práce - důstojná práce. 1. vyd. Praha: SONDY s.r.o., 2019. 30 s. ISBN 978-80-86809-75-5.

HORECKÝ, Jan. Dispoziční pravomoc zaměstnavatele. 1. vyd. Praha: Wolters Kluwer ČR, a. s., 2019. 128 s. ISBN 978-80-7598-255-1.

HORECKÝ, Jan. Vybrané zásady a principy v právu kolektivního vyjednávání. In: HAMULÁK, Ondřej a kol. Principy a zásady v právu - teorie a praxe. Sborník z konference Olomoucké debaty mladých právníků 2010. Praha: Leges, 2010, s 226-232. ISBN 978-80-87212-59-2.

HORECKÝ, Jan. Zástupci zaměstnanců – odborová organizace. *fulsoft.cz* [online]. 24. 10. 2018 [cit. 2020-27-09]. Dostupné z: <https://www.fulsoft.cz/33/zastupci-zamestnancu-odborovaorganizace-uniqueidmRRWSbk196FNf8-jVUh4EjYgSqiyes8b2jcgnoJn14T3dCx33mAsJA/>

HRABCOVÁ, Dana. *Sociální dialog: vyjednávání v teorii a praxi*. Brno: Masarykova univerzita, 2008. ISBN 978-80-210-4773-0.

ILO, Mission and impact of the ILO. [online]. *International Labour Organization* [cit. 2020-2809]. Dostupné z: <https://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang-en/index.htm>

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

ILO. Executive summary. Working anytime, anywhere: The effects on the world of work. [online]. International Labour Organization [cit. 2020-28-09]. Dostupné z: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_544151.pdf

JAGODZINSKI, Romuald. KLUGE, Norbert. STOLLT, Michael. Worker interest representation in Europe – Towards a better understanding of the pieces of a still unfinished jigsaw. [online]. *worker-participation.eu* [cit. 2020-28-08]. Dostupné z: <https://www.workerparticipation.eu/content/download/2086/16081/file/Jagodzinski-Kluge-Stollt-Jigsaw-Manchester-final.pdf>

LLORENTE MUNO-DE BUSTILLO, Rafael. *Digitalization and social dialogue: Challenges, opportunities and responses*. [online]. [cit. 2020-25-09]. Dostupné z: https://www.researchgate.net/publication/339948338_Digitalization_and_social_dialogue_challenges_opportunities_and_responses/stats

MARŠÍK, Vladimír a kol. *Národní iniciativa Průmysl 4.0*. [online]. 2015. Dostupné z: <http://www.ppp4.cz/prezentace/documents/pdf/prumysl-4-0-brozurka.pdf>

Nařízení Evropského parlamentu a Rady (EU) 2016/679 ze dne 27. dubna 2016 o ochraně fyzických osob v souvislosti se zpracováním osobních údajů a o volném pohybu těchto údajů a o zrušení směrnice 95/46/ES (obecné nařízení o ochraně osobních údajů). [online]. *eur-lex. europa.eu* [cit. 2020-27-09]. Dostupné z: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=celex%3A32016R0679>

NAVARRO, César. New digital rights: employees' right to disconnect. [online]. *International Labour Organization* [cit. 2020-27-09]. Dostupné z: <https://www.internationallawoffice.com/Newsletters/Employment-Immigration/Spain/CMS-Albiana-Surez-de-Lezo/New-digital-rights-employees-right-todisconnect>

OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, 2019. 270 s. ISBN 978-92-64-63974-4.

OECD. *Going Digital in Sweden_OECD Reviews of Digital Transformation*. [online].
oecd.org[cit. 2020-28-09]. Dostupné z: <https://www.oecd.org/sweden/going-digital-insweden.pdf>

OECD. Skills for Jobs. – Czech republic. [online]. [cit. 2020-25-09]. Dostupné z:
https://www.oecdskillsforjobsdatabase.org/data/country_notes/Czech%20republic%20country%20note.pdf

OECD. Skills for Jobs. [online]. Dostupné z:
<https://www.oecdskillsforjobsdatabase.org/index.php#CZ/>

Program ČMKOS 2018 – 2020. [online]. cmkos.cz [cit. 2020-25-09]. Dostupné z: Dostupné z:
https://ipodpora.odborny.info/dms/soubory/index?file=Program%20CMKOS%202018-2022_20200323114105.pdf

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

Resolution adopted by the General Assembly on 25 September 2015. A/RES/70/1 – Transforming our world: the 2030 Agenda for Sustainable Development. [online]. *un.org* [cit. 2020-27-09]. Dostupné z:
http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

Rozsudek Nejvyššího soudu ČR ze dne 26. srpna 2020, sp. zn. 21 Cdo 443/2019.

RYDER, Guy in Sustainable Development Goals – 2030 development agenda: Major breakthrough for world of work. Dostupné z: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_388407/lang--en/index.htm

RYDER, Guy. Decent work and the 2030 Agenda for sustainable development. [online]. *International Labour Organization* [cit. 2020-27-09]. Dostupné z:
http://cite.gov.pt/pt/destaques/complementosDestqs2/Decent_work.pdf

SCHROEDER, Wolfgang. GREFF, Samuel., SCHREITER Benedikt. *Shaping Digitalisation*. FES Stockholm. 2017. 17 s. ISSN 978-3-96250-005-4.

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

Sozialauswahl – social criteria for redundancy. [online]. *erofond.europa.eu* [cit. 2020-27-09].

Dostupné z: <https://www.eurofound.europa.eu/efemiredictionary/social-criteria-forredundancy>

The digital agenda of the European Commission: Preliminary ETUC assessment. [online]. *etuc.org* [cit. 2020-27-09]. Dostupné z: <https://www.etuc.org/en/document/digital-agenda-european-commission-preliminary-etuc-assessment>

UNI Global, The Right to disconnect. [online]. Dostupné z: https://uniglobalunion.org/sites/default/files/imce/right_to_disconnect-en.pdf

UNITE the Union. Work Voice Pay – Draft new technology agreement. [online]. [cit. 2020-27-09]. Dostupné z: <https://unitetheunion.org/media/1236/draft-new-technology-agreement-october-2016.pdf>

UNITED NATIONS. Employment, decent work for all and social protection. [online]. *sustainabledevelopment.un.org* [cit. 2020-28-08]. Dostupné z: <https://sustainabledevelopment.un.org/topics/employment>

UNITED NATIONS. Transforming our World: The 2030 Agenda for sustainable development. [online]. *sustainabledevelopment.un.org* [cit. 2020-28-08]. Dostupné z: <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

What is an SME? - Small and medium sized enterprises (SME) - Enterprise and Industry. [online]. *ec.europa.eu*. [cit. 2020-27-09]. Dostupné z: http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf

Zákon č. 198/2009 Sb., Zákon o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)

Zákon č. 435/2004 Sb., o zaměstnanosti, ve znění pozdějších předpisů

Zákon č. 262/2006 Sb., zákoník práce, ve znění pozdějších předpisů