

The role of collective bargaining in securing working conditions, including fair remuneration for work.

RESUME

Social dialogue and collective bargaining are essential modern tools for ensuring fair working conditions, dignified work and decent wages. Collective bargaining and collective agreements are an effective means of fighting against social dumping. Environments with well-developed social dialogue and collective bargaining have higher levels of social reconciliation.

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

Act No. 89/2012 Coll., Civil Code (the “Civil Code”)

Act No. 262/2006 Coll., Labour Code

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

Government Regulation No. 567/2006 Coll., on the minimum wage rate, on the lowest levels of guaranteed wage rates, on the definition of difficult working conditions and on the amount of wage allowances for work in difficult working conditions (the “Minimum Wage Rate Regulation”)

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

International Labour Organisation Convention No. 98 on the Right to Organise and Collective Bargaining

International Labour Organisation Convention No. 144 on the Tripartite Agreements

International Labour Organisation Convention No. 154 on the Promotion of Collective Bargaining

European Social Charter



European Pillar of Social Rights

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1 Introduction and general remarks

The labour market is constantly evolving. Labour demand and supply rates vary in sinusoids over time. At times, labour demand prevails (e.g. following the post-COVID period in the tertiary food service sector when staff shortages emerge), and at other times labour supply prevails. The employment or employability rate of working-age people varies from stage to stage. The structure of the labour market determines the structure of the actual working conditions. The labour market is a market like any other. The significance of the labour market lies in the distinct and special commodity (although it must be admitted that, for example, the International Labour Organisation has long insisted that labour is not a commodity) of which the human being is the basic vehicle. The regulation of the conditions for the performance of dependent work, as a special subject of social relations, results from a number of labour law norms and is influenced by the basic supporting ideas of the whole labour law, first of all its functions - the protective function and, where appropriate, the organisational function.

The protective function of labour law aims precisely with regard to the special aspect of labour law - the bearer of the commodity and the performer of dependent work - the employee, as a natural person - to ensure dignified working conditions (e.g. fair wages), opportunities to reconcile family and working life and respect for the special nature of the bearer of the object of regulation. The description seems rather complex, but the opposite is true in terms of content. The labour market and the labour sector in general cannot be imagined without the human being - the employee. The human being represents an integral part of the labour market, without which the labour market could not function. However, as technology, the socio-economic situation (e.g. the impact of the COVID-19 pandemic) and the associated demands of employers evolve, the labour market itself logically evolves too. Labour law must respond optimally to these developments so that the changing interests of the parties to the legal relationship (employees and employers) are sufficiently protected).

The digitalisation of work, changes in the labour market, changing labour market trends and employers' demands are all major factors influencing the degree of employee representation

and, as a result, the level and intensity of collective bargaining. The modern world of work sets out a number of challenges to which the social partners should respond as positive stimuli to negotiate and improve the level of social dialogue. Capturing the challenges arising from the changes in the labour market resulting from globalisation and Industrial Revolution 4.0 in collective agreements and in the results of social partner negotiations is one of the main objectives and opportunities of the modern trade union movement. In collective agreements, trade unions should strive to ensure that social protection for employees is guaranteed, e.g. by making use of these challenges in order to make the most of them for employees.¹

In the modern world of work, social dialogue, or its integral executive component in the form of collective bargaining, is increasingly becoming an essential tool for achieving fair working conditions and dignified and decent work. The role of collective bargaining is growing. Although collective labour relations are among the original relations already in the creation of labour law itself (collective regulation of working conditions with the cooperation of employee representatives, which has been present in the Czech environment in various variations practically all the time since the demarcation of the labour law sector – e.g. in the form of works councils introduced in 1945)², and, although they also appeared as an integral and decisive component of labour and economic relations under socialism (the Revolutionary Trade Union Movement was involved in drawing up the economic plan, etc.), they are becoming particularly important in the current times in the context of respect for the economic and social model of the European Union. Employee participation in the company agenda is becoming an important part of establishing a fair European social and business environment.

¹ HORECKÝ, Jan. Nové trendy podporující roli a význam kolektivního vyjednávání - Role kolektivního vyjednávání v době rostoucí digitalizace práce. Odborná studie. Právní institut. 2020. s. 6. Dostupné z: https://ipodpora.odborny.info/soubory/uploads/Nov%C3%A9_trendy_podporuj%C3%ADc%C3%AD_rol%C3%AD_a_v.pdf

² Dekret presidenta republiky č. 104/1945 Sb., o závodních a podnikových radách. Dostupné z: <https://www.zakonyprolidi.cz/cs/1945-104>

Social dialogue and collective bargaining are influenced by both internal and external factors. External factors that are relevant for achieving positive outcomes of social dialogue and collective bargaining include, with regard to the focus of the study, e.g. the extent to which employee representatives are entitled to bargain collectively, as well as the extent to which the parties can exercise their autonomy to negotiate appropriate working conditions (the possibility of deviating from the primary parameters of working conditions set by law and legislation). The modern requirements of the work performed (the effects of digitisation and robotisation of work) are also an important aspect, as is the potential of the member base and the extent to which coalition law is applied.

Collective bargaining, by its very nature, is an essential legal instrument for achieving improved fair working conditions, including pay. Collective bargaining should result in a state of social conciliation under conditions of socio-economic optimum. The collective agreements concluded will bring more social security for employees (in particular the guarantee of a decent wage) and a more peaceful conflict environment for employers (satisfied employees).

First of all, it can be asked to what extent collective bargaining contributes to achieving the aforementioned social reconciliation, to what extent it guarantees fair working conditions (including remuneration) and to what extent collective bargaining is also a contradiction in terms, when, for example, under the current legal situation, the collective agreement (and the benefits derived from it) applies to all employees, regardless of whether they are members or not. Could it not be that, for example, a well-managed social dialogue and a well-negotiated collective agreement may result in having a negative impact on trade unionism, because *“everything is working as it should and I am fine, so I will not join a union - who would pay for it either!”*?

Over some of the questions raised, the following text seeks answers and seeks to confirm the argument that quality social partnership and quality social dialogue lead, through collective agreements, to fair working conditions (primarily including wage) and higher benefits (productivity) for employers.

1.1 Digitisation and robotisation

Contemporary developments in society and the economic market also affect the area of labour law and workers' working conditions. Modern practices and technologies bring new demands on both employees and employers. Both parties to the contractual relationship must work together to find ways of adapting to technical and technological developments.

The area of social dialogue and collective bargaining cannot remain immune to change. If collective bargaining and social dialogue are an important and inseparable part of the labour market, if they are one of the basic approaches to shaping working conditions, they must keep up with the trends. Collective labour relations must reflect the new demands and opportunities that digitisation, robotics and the overall industrial revolution 0.4 bring. In relation to the potential of collective bargaining as a tool for achieving fair working conditions, including dignified and decent wages, the factors that influence and condition the social dialogue and collective bargaining process itself must be perceived.

The modern world of work, under the influence of the digitisation and robotization of activities, provides a new and broad space for the exercise of participatory rights. Employers, as well as employee representatives, must reflect and respect these new trends in social dialogue. The impacts of digitalisation are consequently becoming a policy framework for both employers (and their representatives) and the trade union movement. In the national environment, the central representatives of employees are not inattentive to digitalisation - the Association of Independent Trade Unions, and above all the Czech-Moravian Confederation of Trade Unions, which reflects the new challenges associated with digitalisation and robotisation in their activities both at national level within the Economic and Social Agreement Council – Tripartite, and through their active inclusion in the structures of the supranational employee representative – the European Trade Union Confederation.³ In the programme of the Czech-Moravian Confederation of Trade Unions (ČMKOS), the

³ National Trade Union Organizations (Listo of Members Organizations). [online]. etuc.org [cit. 2021-25-05]. Dostupné z: <https://www.etuc.org/en/national-trade-union-confederations-list-member-organisations>

accentuation of the effects and impacts of digitalisation is an important part of the agenda. ČMKOS directly sets out to respond to the challenges and impacts of the new economic changes related to the development of digitalisation and information technology within the framework of Industry 4.0. Trade unions cannot overlook the possible negative impacts of this new agenda on the labour market, working conditions and the sustainability of social systems and will therefore demand that the government adopts an appropriate strategy to minimise these negative impacts.⁴

First of all, the manifestations of the digitalisation and robotisation of work must be perceived not only in the nature of production itself, but also in the working conditions of employees. With the increasing digitisation of work, where it is no longer necessary to concentrate all activities on the employer's production premises, issues relating to the performance of work from a place of work other than the employer's regular workplace are of primary importance.

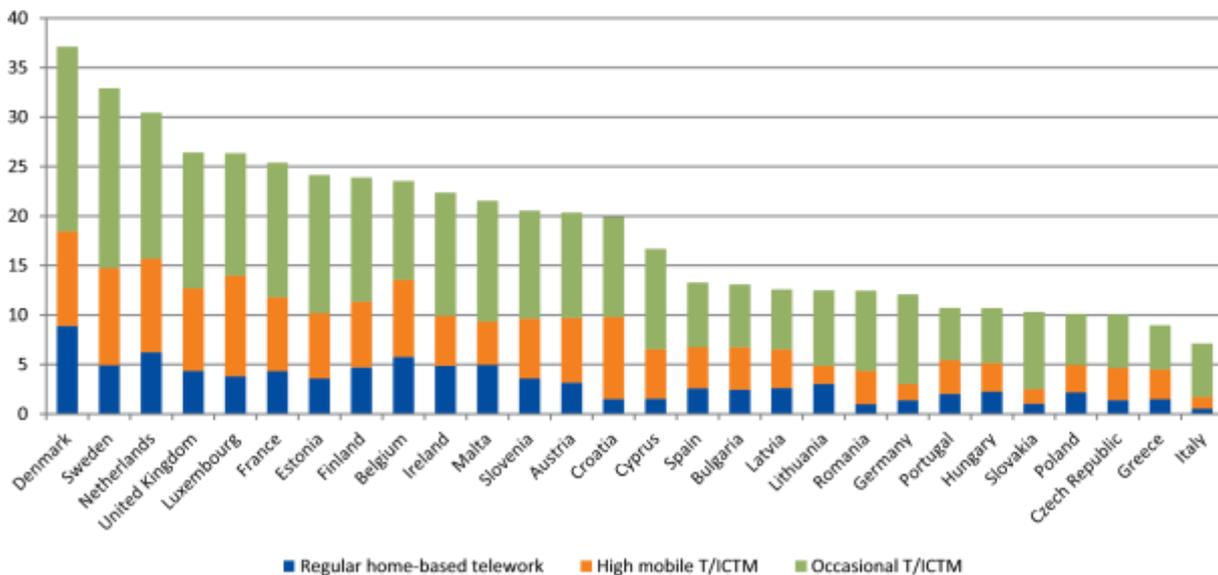
Digitisation and new forms of work bring both positives and negatives. As the International Labour Organisation shows in their findings, it appears that, although modern forms of work and the use of new and modern communication technologies, for example in the context of balancing family and working life, bring a number of positives, at the same time, they lead to a blurring of the division and boundaries between work and personal life.⁵ Here, there is an opportunity for social dialogue and the trade union movement to make its activities more attractive, increase membership and increase the mandate of expression in strengthening fair working conditions. The subject of consideration (see below) becomes the provision of conditions of activities for platform workers, as well as for workers predominantly using remote communication means.

⁴ Program ČMKOS 2018 – 2020. [online]. cmkos.cz [cit. 2021-25-05]. Dostupné z: https://ipodpora.odborny.info/dms/soubory/index?file=Program%20CMKOS%202018-2022_20200323114105.pdf s. 1

⁵ ILO. Executive summary. Working anytime, anywhere: The effects on the world of work. [online]. ilo.org [cit. 2021-28-05]. Dostupné z: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_544151.pdf

The following table shows the proportion of work performance through digital communication and telework across the European Union by country and by level of *telework* (regular work from home; telework from different locations, not just one workplace – home; occasional telework). The Czech Republic is not one of the countries where this type of work is predominant and where digitalisation would be crucial in this respect. However, inspiration can be drawn from other countries where the share of off-site work by the employer – and where work is becoming more flexible – is increasing as a result of digitalisation.

Table: Percentage of teleworking T/ICTM employees in the EU28, by category and country

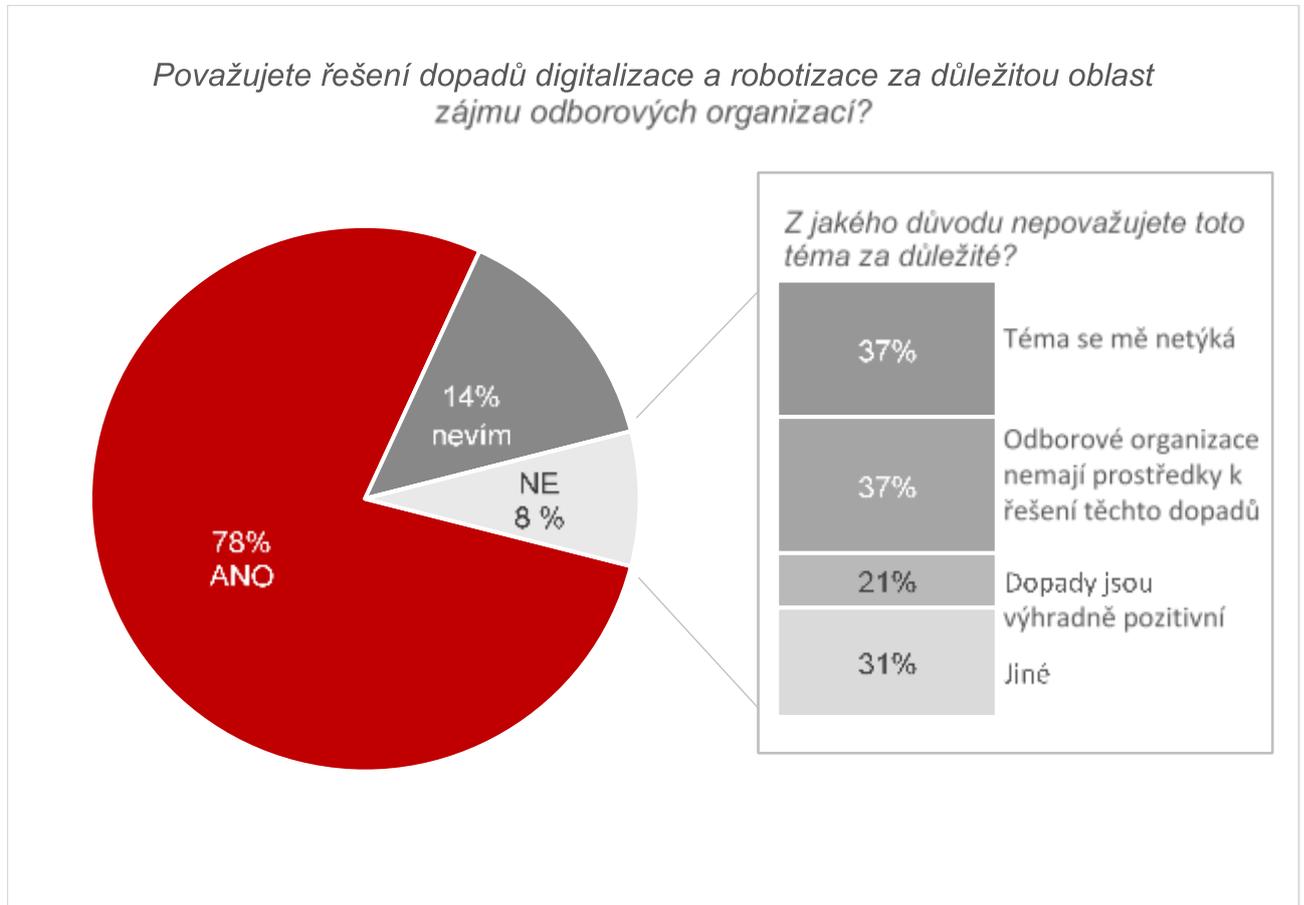


Digitalisation can also have an impact on the working conditions of employees working at a location other than the employer's workplace. Although employees do not work directly in the company, they are covered by collective agreements and negotiated working conditions. Regardless of the actual place of work, the employee is entitled to the remuneration specified in the collective agreement. The fact that the collective agreement and the favourable working conditions, including the agreed wage level, may result from a feeling of social

exclusion and the fact that the collective agreement and the favourable working conditions, including the agreed wage level, also apply to employees working, for example, in a *home office*, may result in a reduction in trade union membership or apathy towards applying for and actively participating in the trade union movement. A trade union is, after all, a purposeful association of several persons. A certain degree of socialization is therefore assumed. In an environment and under conditions where there is often a separation of employees from each other, the creation of barriers and the minimization of social ties, more autonomy and individuality of the person-employee is manifested. In combination with the universal effect of the collective agreement and the awareness of securing favourable working conditions even without active participation, there is a negative impact on the sense of need for trade unions and employee representatives in general. As a result, the degree of representativeness of the union disappears with the membership base, which may result in a reduction in the level of collective bargaining and, as a result, the quality of the working environment.

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

Figure: The role of trade unions in the age of digitisation and robotics⁶



Do you consider addressing the issues of digitalization and robotization to be an important area of interest for trade unions?

■ Yes, ■ No, ■ I don't know

For which reason you do not consider this topic as important?

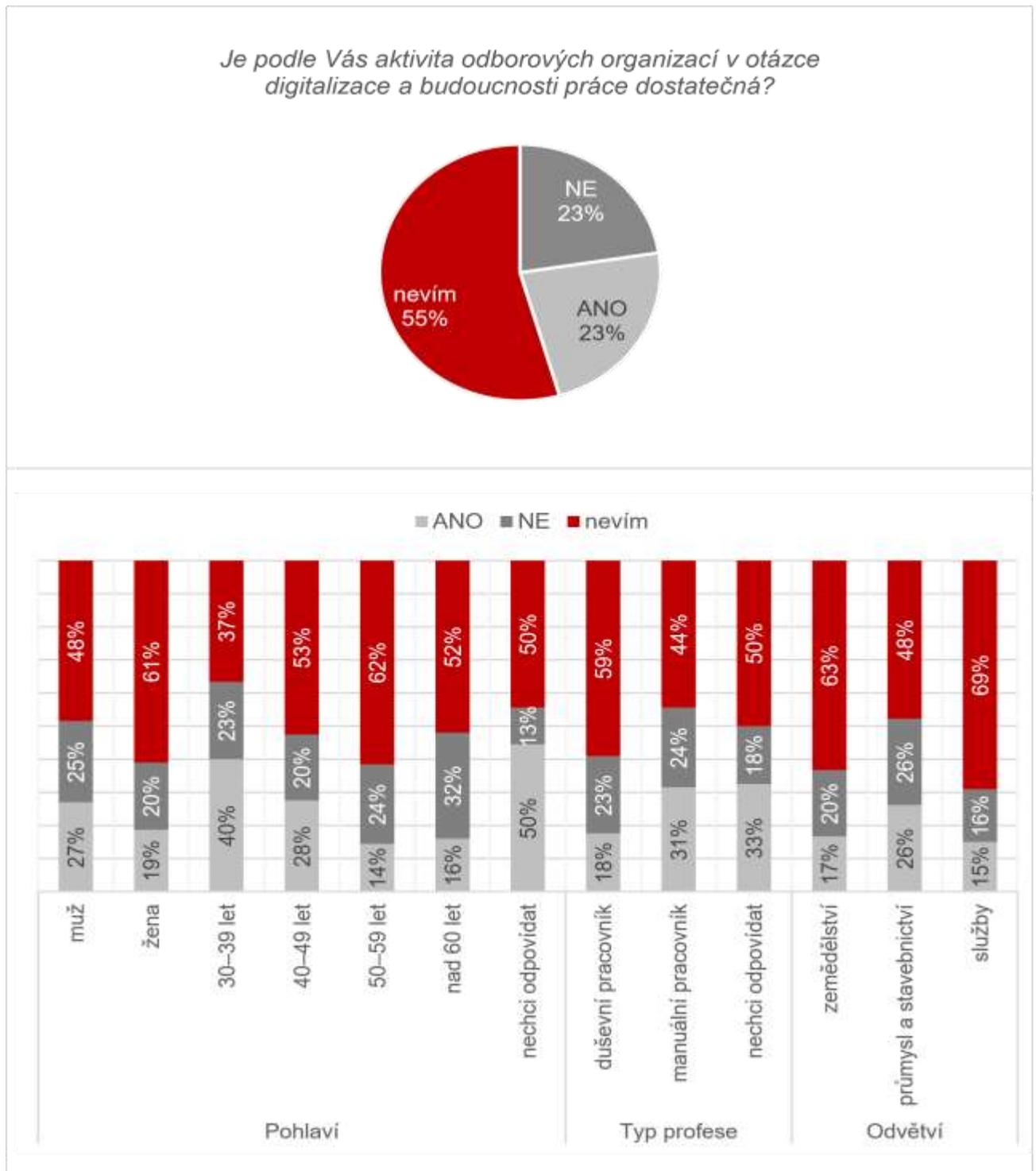
- The topic does not involve me.
- The trade unions lack tools to solve these impacts.
- The impacts are exclusively positive.
- Other.

⁶ HUSAŘÍKOVÁ, Ludmila. NESRSTOVÁ, Markéta. Role a význam kolektivního vyjednávání v době 4. průmyslové revoluce. TREXIMA. 2020. s. 8. Dostupné z: https://ipodpora.odborny.info/soubory/uploads/ASO_pr%C5%AFzkum_Role_a_v%C3%BDznam_KV.pdf

The figure shows the level of attention given to the impact of digitalization and robotization as an important area of concern for trade unions. In the vast majority of cases (78%), the topic is considered important and should be addressed by trade unions. 14% of respondents do not know whether addressing the impacts should be the responsibility of trade unions and 8% say it should not. These respondents were asked in the survey why they thought the topic should not be an important part of the activities of trade organisations. The most common reasons given by respondents were that the topic of digitalisation and robotisation does not concern them (37%), that trade unions do not have the resources to deal with these impacts (37%) or that they believe the impacts of these changes are exclusively positive (21%).

When considering the importance attached to trade union activity and the impact of digitisation, it can be concluded that in all groups the proportion of respondents dissatisfied with trade union activity is around 20%, with a significant derogation only in the case of older workers, where it can be assumed that they are an at-risk group and therefore also expect a higher involvement of trade unions in dealing with the impact of the 4th industrial revolution. At the same time, however, it must be acknowledged that the awareness of the people concerned also plays a significant role. It is important that employees are made aware of the results of collective bargaining and the areas of interests. Without sufficient information, it is difficult to increase the level of organisation and, consequently, the effectiveness of collective bargaining.

Figure: Trade union activity concerning the future of employees' work⁷



In your opinion, is the activity of resistance organisations on the issue of digitalisation and the future of work sufficient?

Yes, No, I don't know

Gender: Man, Woman, years, above 60, No comment

Type of profession: intellectual worker, manual worker, No comment

Sector: Agriculture, Industry and construction, Services

The role of employee representatives in dealing with the impact of digitalisation and robotisation of work is seen in a broader context. First of all, analytical activity can be traced through which employee representatives try not only to identify possible threats, but also to offer solutions and to set out supporting points that should lead to decent and fair working conditions. In terms of the impact of digitalisation, for example, towards reducing the physical performance of work in the workplace and moving towards more flexible ways of working, e.g. working from home or from any location (precisely in connection with the use of modern communication technologies), the challenges of *telework* can be mentioned. In a social dialogue environment, the social partners should take into account important elements and initiatives when addressing the conditions for teleworking that will lead to a socially responsible transition to more flexible forms of work.

Key initiatives (and the related objectives of protective action by employee representatives in setting the terms and conditions of employment through collective bargaining) to ensure not only flexible working but also sufficient protection for the benefit of the employee are

- conscientiously reflecting the need for technological change and adjusting work processes and activities to adapt to the virtual environment
- encouraging a voluntary transition to teleworking (i.e. employees must not be forced to telework, and the introduction of teleworking must be voluntary and agreed with the employee
- in reflecting the social aspect of the employee's life when it comes to reconciling work and family life

⁷ Ibid.

- the prevention of the risks associated with the separation and desocialisation of employees⁸
- new challenges and changing requirements of the labour market, employees and employers

1.2 Retraining

Digitisation, robotics and new technologies in production are bringing new demands from employers to the labour market. Both employers and employees must adapt to modern trends and seek practical answers to the emerging and changing environment of dependent work. Employee retraining plays a significant role in reflecting the new trend. Retraining seems to be a direct response and reaction to the changing requirements in order to maintain employment and, from the workers' point of view, social security. Retraining provides employers with the opportunity to address the negative impacts of technological change in advance. Employee training therefore plays an important role both in the employers' own human resources policies and in the social dialogue agenda.

In countries where social dialogue is at a high level, the interaction of the social partners is one of the fundamental ways of dealing effectively with the consequences. The social partners play an important role in setting rules and objectives. They are important, for example, in identifying the areas where retraining, re-skilling and increased training should be the primary focus and the ability to handle new technologies without losing their position and relevance in the labour market and society.⁹ Collective bargaining can also be used in the context of

⁸ BÉRASTÉGUI, Pierre. Teleworking in the aftermath of the Covid-19 pandemic: enabling conditions for a successful transition. [online] *etui.org* [cit. 2021-25-05]. Dostupné z: <https://www.etui.org/sites/default/files/2021-05/Teleworking%20in%20the%20aftermath%20of%20the%20Covid-19%20pandemic.%20Enabling%20conditions%20for%20a%20successful%20transition.pdf>

⁹ OECD. *Going Digital in Sweden_OECD Reviews of Digital Transformation*. [online]. *oecd.org* [cit. 2021-28-04]. Dostupné z: <https://www.oecd.org/sweden/going-digital-in-sweden.pdf>

preventing cases of unemployment. With regard to retraining and its impact on collective bargaining, it can be deduced that this is an important factor that should not be taken lightly by conscious social partners - on the contrary. The question of retraining does not have to be answered only from the point of view of the implementation of active employment policy in relation to unemployed persons. On the contrary.

The aim of employment policy is to eliminate negative unemployment and ensure that every individual who applies for a job and is able to perform and keep it. Social dialogue and collective bargaining can clearly contribute to the achievement of employment policy objectives. The content of collective agreements can confirm the awareness of employers, the state and employee representatives in the sense that it is better to prevent unemployment (and thus address the problem before it occurs). Arrangements concerning the conditions for retraining employees should become an integral part of collective agreements.

Retraining is closely linked to the training of employees, or training in the labour market in general. A distinction must of course be made between enhancing qualification and increasing qualification (retraining), since enhancing qualification is understood to mean the continuous addition to qualifications which does not change their nature, and which enables the employee to perform the agreed work; enhancing qualification is also understood to be it updating and renewal. The employer is obliged to ensure that qualifications are enhanced. On the other hand, the employee must submit to the obligation to participate in the further training. The employee is obliged to enhance his/her qualifications in order to perform the agreed work. The employer is entitled to oblige the employee to participate in training and studies or other forms of training to enhance his/her qualifications or to require the employee to undergo further training with another legal or natural person.

Enhancing qualification shall be related to the current type of work. However, an employee may also undergo increasing the qualification whereby he/she acquires new skills. Increasing qualification means a change in the value of a qualification; increasing qualification is also the acquisition or extension of it. Increasing qualification refers to study, education, training, or

any other form of preparation to attain a higher level of education if it is consistent with the employer's need.

Whether enhancing or increasing qualification, it can be seen as an integral part of maintaining the quality of the basic employment relationship from the point of view of its existence. Both enhancing and increasing qualification can be classified within the area of employee education. Finally, in the Czech Labour Code, the development and improvement of qualifications can be found directly in the special section devoted to the professional development of employees. In the contemporary world of work, the agenda of improving the educational qualifications of individuals in the labour market is one of the central tools for establishing a *culture* of the world of work.¹⁰

The increased interest in employee training is also linked to changing labour market conditions. The robotization and digitalization of work brings more and more new challenges to the world of work. It is necessary to learn modern practices, adapt to automation or, in the light of the increased level of robotization, adopt new working practices without which robotization would not have the necessary effect.

If digitisation and robotisation affect jobs directly in relation to the introduction of new devices and processes, then the related relationships are also indirectly affected. This includes collective labour relations.

The same applies to the correlation between retraining (enhancing or increasing qualifications both during and outside the employment relationship) and collective bargaining. Education is an important factor for employment. Indirectly, it is also important for the level and effectiveness of collective bargaining.

The attractiveness of trade union organisation in relation to the ability to bargain collectively and achieve fair working conditions must also reflect the demands of potential members in

¹⁰ ŠVEC, Marek, *Kultúra sveta práce formy výkonu závislej práce*. FES: Bratislava, 2013. 75 s. ISBN 978-80-89149-27-8.

the context of responses to digitalisation, robotisation and technological change in the labour market. The ideas of workers and labour market stakeholders about the activities and benefits of trade union activity in relation to training and reflecting the changing demands of the labour market vary. However, the survey shows that a large proportion of potential and actual trade union members and employees are aware of the interdependence of trade union activities regarding training and consider it important.

The link between contemporary developments and the needs of the labour market, as well as those of employers and employees, must be considered when addressing and setting objectives for strengthening the role of social dialogue and collective bargaining. The responses to the digitisation and robotisation of work, in connection with the promotion of fair working conditions, are also embedded in the recognition of the importance of the training aspect as one of the basic requirements in collective bargaining. When considering the sufficient emphasis on training for trade union activity, the results of questionnaire surveys should be considered, showing that training becomes a subject of social dialogue at about 50% of the possible level. According to the results of the IPP, about one third of collective agreements in the business sector (34%) and 61% of collective agreements in the public service and administration sector address the professional development of employees. However, only a small number of collective agreements (2% in the business sector and 4% in the public service and administration) address specific programmes with the number of employees concerned).

Figure: Satisfaction with the content of collective bargaining in the field of training ¹¹

In your opinion, does collective bargaining pay enough attention to the following topics?



In your opinion, does collective bargaining pay enough attention to the following topics?

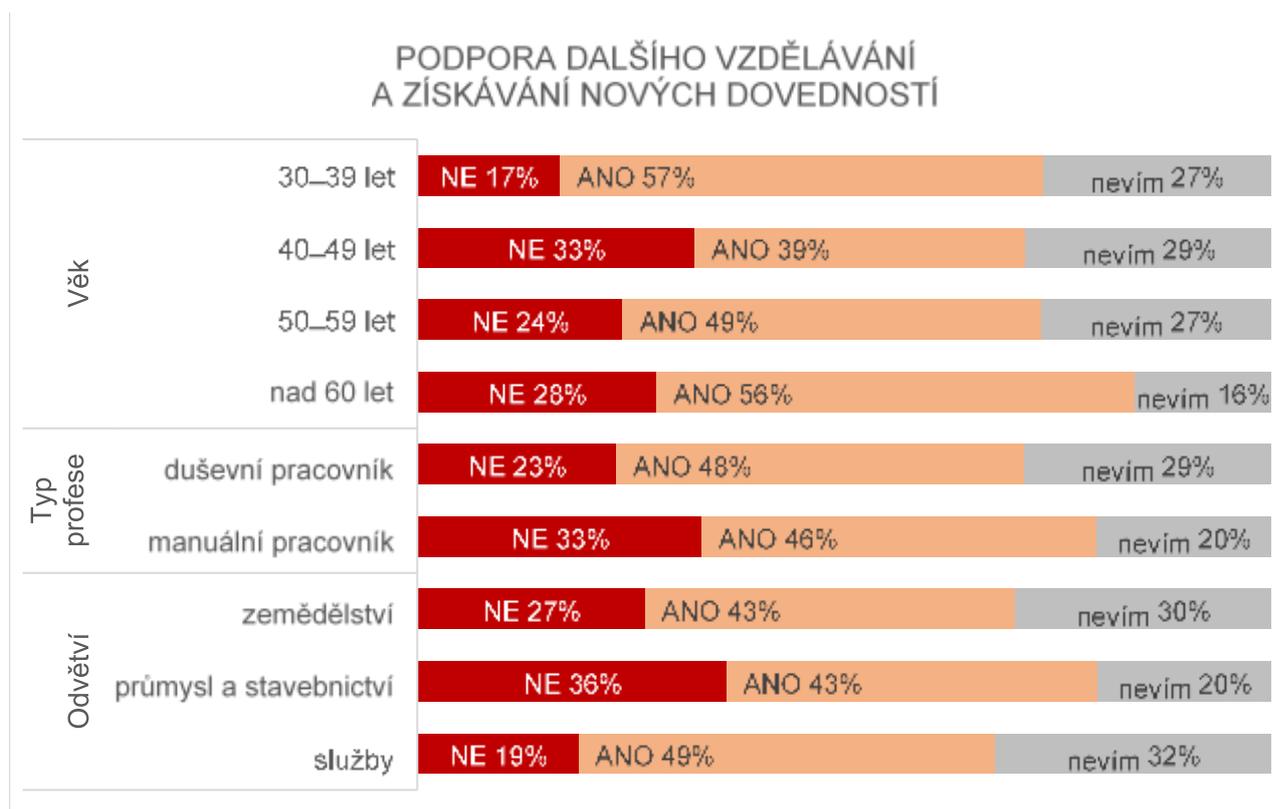
Support for further training and the acquisition of new skills:

■ No, ■ Yes, ■ I don't know

The attributes of training are relevant to the objectives of collective bargaining. The perceived inclusion of the education agenda (as a response to changing labour trends) by the social partners in the content of collective agreements and social dialogue co-determines the attractiveness of unionisation and, as a result, the potential strength of social dialogue. The challenge of strengthening trade union membership and increasing the importance of social dialogue is to address the subjective assessments of those concerned in the labour market.

¹¹ HUSAŘÍKOVÁ, Ludmila. NESRSTOVÁ, Markéta. Role a význam kolektivního vyjednávání v době 4. průmyslové revoluce. TREXIMA. 2020. s. 15.

Figure: Satisfaction with collective bargaining in the field of further training support by age, type of occupation and sector¹²



Support for further training and the acquisition of new skills

■ No, ■ Yes, ■ I don't know

Age: years, above 60,

Type of profession: intellectual worker, manual worker, No comment

Sector: Agriculture, Industry and construction, Services

Supporting the training of employees and people seeking jobs in the labour market is a long-standing strategy of the social partners at transnational level. Education is seen as the basis for achieving good labour market outcomes (increasing the level of potential employability

¹² Ibid, p. 16.

and minimising the risks of negative impacts associated with changes in the current level of knowledge and skills required). Increasing qualification has a direct proportionate effect on increasing the adaptability of jobseekers/employees in the labour market.

The New Start for Social Dialogue agenda launched in 2016 at central European level clearly shows that social dialogue and collective bargaining is not experiencing the most ideal period. The economic and social model of the European Community based on sectoral social dialogue has been and needs to be supported and given more impetus. One of the focal points of the New Start for Social Dialogue has therefore become the agenda of training and capacity building for collective bargaining.¹³ The social partners, particularly the employee representatives, attach great importance to training in connection with the quality of social dialogue and collective bargaining.

However, training should not be seen as an obligation but rather as an ideal expression of mutual empathy between employee and employer. A qualified employee brings potential productivity gains to the employer. The employee's ability to perform work independently and to adapt to changing working conditions in accordance with the legitimate interests and expectations of the employer contributes to the employer's (production) ability to adapt to changing market conditions.

It is primarily the employer's responsibility to identify the range of knowledge and skills that an employee should possess in order to perform his or her job properly. However, given the interdependence of the organisational structure, the employer and the employees themselves, an individual approach and contribution can also be expected from the employees, deepening the employee's loyalty and trust in the employer. Employee representatives should also contribute to a higher level of training and reflection of the labour market requirements in the context of the working conditions of the employer. First of all,

¹³ A new start for social dialogue – one year after. Luxembourg: Publication Office of the European Union. 2016. s. 4

trade unions, as representatives of employees defending their legitimate interests, have an important role to play in the social dialogue, where they must also respect the legitimate interests of the employer and in the search for a socio-economic optimum of a functioning society, in finding challenges and bringing solutions with the aim of increasing the interconnection of the employer's and employees' ideas and achieving social reconciliation within a functioning organisational and performing environment at the employer.

Training, retraining, enhancing of knowledge and experience are all factors influencing the importance of collective bargaining and social dialogue. Following the development of employment and, in particular, the resources spent on the implementation of active and passive employment policy, intensive cooperation between the employer, employee representatives and, where appropriate, central government bodies can be pursued. The opportunity for trade unions to improve the quality of social dialogue and the results of collective bargaining (while respecting the factors of digitisation and robotisation as factors that may affect the labour market) lies in the possibility of carrying out enterprise, sectoral or regional social dialogue and setting the conditions for drawing on the funding of active employment policy. The social partners can cooperate not only in identifying the areas suitable for retraining, but also in promoting employment at a particular employer by taking initiatives to set conditions, for example, by providing retraining courses or accreditation, as well as setting up cooperation on community service, creating jobs suitable for employing people with disabilities or people and employees who are otherwise disadvantaged.

Table: Employment policy costs in the Czech Republic 2015 to 2020¹⁴

Employment policy costs in the Czech Republic	2015	2016	2017	2018	2019	2020
SPZ (in thousands, CZK)	22 521 725	20 318 256	18 399 624	18 891 482	18 100 547	44 964 595
PPZ in thousands, CZK)	8 303 370	8 254 527	7 853 520	7 542 836	8 144 407	10 566 518
APZ in thousands, CZK)	9 668 796	6 860 879	4 703 189	4 336 836	2 273 719	25 717 789

►¹⁴ MPSV. Výdaje na státní politiku zaměstnanosti [online]. *Mpsv.cz* [cit. 2021-28-04]. Dostupné z: <https://www.mpsv.cz/vydaje-na-statni-politiku-zamestnanosti>

APZ - of which						
<i>Graduate jobs</i>						
created jobs	0	0	0	0	0	0
Placements	0	0	0	0	0	0
costs as of 31.12. (thousands, CZK)	0	0	0	0	0	0
<i>SÚPM</i>						
created jobs	51 232	25 244	16 338	11 137	4 079	3 887
placements	50 161	26 759	17 437	12 180	4 117	3 899
costs as of 31.12. (thousands, CZK)	3 806 978	3 480 869	943 165	735 988	121 441	106 422
<i>VPP</i>						
created jobs	34 541	21 137	18 287	15 842	11 585	7 750
placements	35 169	22 608	19 259	16 279	11 886	8 038
costs as of 31.12. (thousands, CZK)	2 669 611	2 687 116	2 242 218	1 923 670	1 099 239	871 354
<i>Retraining</i>						
new placements	38 078	22 548	18 174	13 241	9 561	7 411
redundancy	44 276	23 112	18 502	13 558	9 584	7 547
costs as at 31.12. (thousands, CZK)	380 350	269 494	174 338	128 410	94 754	71 058
<i>OZP</i>						
created jobs	871	824	593	169	203	161
placements	1 255	899	1 187	566	364	318
costs as of 31.12. (thousands, CZK)	60 462	54 194	40 737	14 526	25 620	14 021
operations (thousands, CZK)	3 091	3 800	4 209	5 434	1 038	4 427
<i>subsidies**</i>	x	x	x	x	x	x
<i>additional employees more than 50% of ZPS***</i>	4 320 059	4 952 515	5 675 572	6 754 655	7 404 749	8 406 393
<i>insolvency (thousands, CZK)****</i>	229 500	250 339	167 343	257 154	277 672	273 895
<i>others (thousands, CZK)*****</i>	2 736 479	323 102	1 239 023	1 394 197	903 627	645 005
<i>CP Antivirus</i>	0	0	0	0	0	23 786 007
<i>Investment incentives (thousands, CZK)</i>	11 825	42 300	59 500	134 611	28 000	219 494

Retraining is one of the main potential instruments for addressing employment policy. Trade unions can be directly involved in creating the conditions for enhancing, increasing qualification and retraining of employees in general. The conditions for retraining are laid down in the Employment Act. A special provision that allows for greater participation of employee representatives in the solution of specific conditions prevailing at the employer's premises is the provision of Section 110 of the Employment Act, according to which retraining procedures include retraining of employees (this does not include normal work with employees in the context of enhancing qualification or agreement on the increase of workers' qualifications). Retraining may also be carried out at the employer's premises in the interest

of further employability of its employees. Retraining of employees is carried out on the basis of an agreement between the employer and the employee. The Labour Office may conclude an agreement with the employer on the retraining of employees consisting in the acquisition, increase or extension of qualifications. In response to changes in working conditions and employers' requirements for employee knowledge (not only as a result of the digitalisation of work), social dialogue can identify challenges and risks before they actually occur. For example, a collective agreement can include an obligation for the employer to discuss all issues related to the introduction of new technologies with the trade union in order to prepare employees for the changes and ensure maximum employment. The identification of employees available for retraining, as well as the employer's needs before redundancies occur, contributes to the stability of the employer's social harmony. The importance of social dialogue and collective bargaining brings benefits not only to employees but also to employers. The trade union can subsequently assist the employer in communicating with the relevant branch of the Labour Office in securing the conditions for retraining (possible financial support is not an entitlement component, a positive point in the assessment of the allocation of support is the reference to the active participation of employee representatives in the resolution of the issue, i.e. the effective conduct of social dialogue) and obtaining financial support for retraining.

If the retraining of employees is carried out on the basis of an agreement with the Labour Office, the employer or the retraining institution which provides the retraining of employees for the employer may be fully or partially reimbursed by the Labour Office for the costs of retraining the employees and the costs associated with it. If a retraining institution provides retraining for the employer, an agreement shall be concluded between the employer and the retraining institution or between the Labour Office, the employer and the retraining institution. The employee is therefore entitled to wage compensation for the entire period of

retraining in the amount of average wage. Re-training outside working hours shall be carried out exceptionally if this is necessary due to the way it is provided.¹⁵

In addition to obliging the employer in the collective agreement to actively cooperate in resolving employment issues, trade unions can also set favourable rules for the participation of employees in retraining, both in terms of working time arrangements and remuneration (motivational aspects).

In order to promote the intensity of collective bargaining and to outline their importance and increase trade unionism with the employer, trade unions can negotiate in collective agreements the above-mentioned commitments concerning the obligation to cooperate or to increase incentives in the case of retraining of employees. In addition, employees who are unemployed can be motivated to remain in the union or to sign up for union membership by not being exempted from the obligation to pay membership fees. Exemptions from the compulsory contribution, i.e. the payment of membership fees, can be specified in the basic documents of the trade union (the constitution, which has the character of a public charter).

Members are exempted from the obligation to pay membership fees

- *during temporary incapacity for work*
- *during the course of excusable obstacles at work*
- ***during the course of unemployment and while being on the register of jobseekers and during retraining***
- *during the preparation for a future profession in the present form of study.*

¹⁵ Komentář k § 110 zákona o zaměstnanosti, viz HLOUŠKOVÁ, Pavla, HOFMANNOVÁ, Eva, ROUČKOVÁ, Dana, SCHMIED, Zdeněk, SCHWEINER, Petr, TOMANDLOVÁ, Ludmila a VÁCHA, Jan. Zákoník práce, prováděcí nařízení vlády a další související předpisy s komentářem k 1. 1. 2021. 14. aktualizované vyd. Olomouc: ANAG, 2021..

2 Definition of basic terms

2.1 Social dialog

Social dialogue, or understanding the content of the term, does not have a legal definition in the Czech Republic (it is not defined terminologically in any legislation). It is certain that the terms social dialogue and collective bargaining cannot be confused. Collective bargaining is a somewhat narrower concept than social dialogue itself. While social dialogue can be understood as any negotiation between employee representatives and the employer on all issues related to work (and social issues - e.g. in the case of reconciliation of family and work life, linking it with the provision of a range of benefits such as employee day care, subsidised meals for family members or holiday allowances, etc.), collective bargaining already has its own definition when it refers to a formalised process of social dialogue aimed at concluding a collective agreement.

The quality and level of social dialogue is often linked to the very existence of the social partners and their ability to communicate. From the perspective of collective bargaining and the anchoring of working conditions in collective agreements, a very important aspect can be seen not only in the legitimacy of the legitimate body for collective bargaining, but also in the civic activity transferred to the membership of the legitimate entities. In the case of the Czech Republic, the so-called trade union density becomes an important factor. However, the degree of organisation of employees in trade unions, as the basic representatives of those entitled to collective bargaining, has been declining for a long time. If the aim and potential to influence social justice, including the achievement of decent pay and working conditions through collective agreements, is to be consistently achieved, it is essential that the mandate of trade unions to negotiate on behalf of employees is as strong as possible. The strength of the mandate is not more easily assessed in relation to membership (although exceptions can be identified where, for example in France, union membership is not staggering), but trade unions can rely on extensive civic initiative and empathy to address socio-economic employment issues – even without the interdependence of union membership, employees

participate in actions organised by the trade union movement. Although unions in France have one of the lowest statistical levels of density of organisation – membership – they play an essential role at both company, national and sectoral levels¹⁶).

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

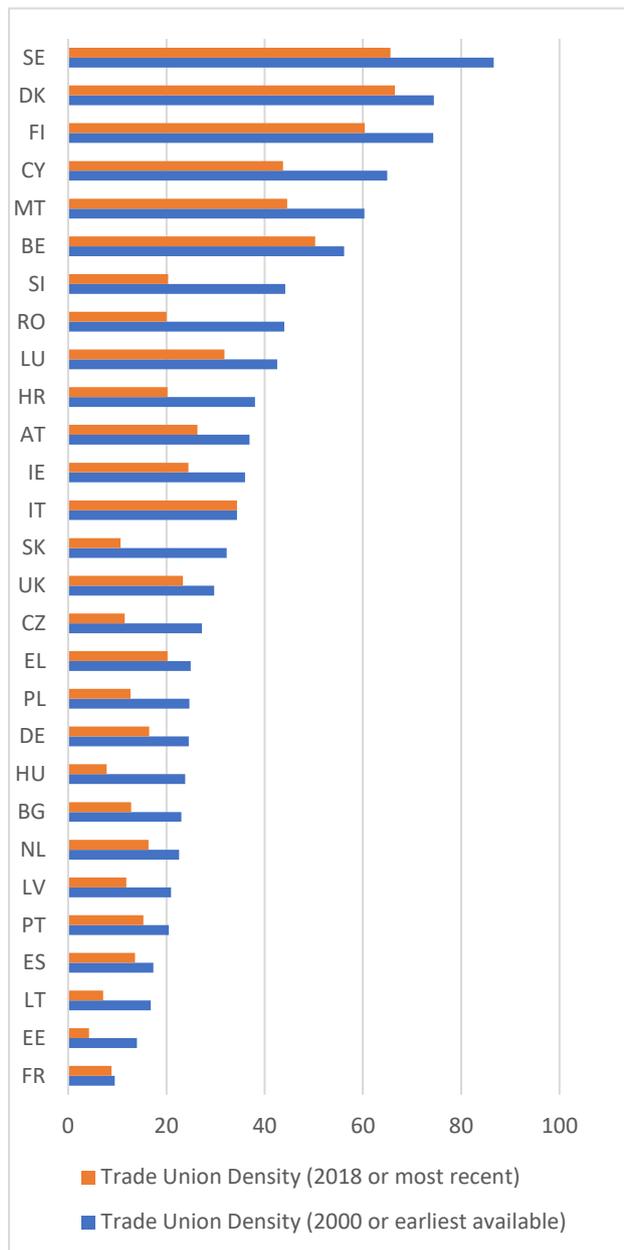
The long-term downward trend in trade union organisation is also evident in otherwise socially strong countries where social dialogue has historically been an important instrument for shaping the working environment. Declines can also be seen in Sweden and Denmark. The following figure shows a graphical visualisation of the decline in union membership over time.¹⁷

In the Czech Republic, union membership currently oscillates around 10% of the active workforce. In Sweden, on the other hand, union organisation is at a high level of over 80%.

¹⁶ Five things you need to know about trade unions in France . [online]. *thelocal.fr* [cit. 2021-28-04]. Dostupné z: <https://www.thelocal.fr/20190920/five-things-you-need-to-know-about-trade-unions-in-france/>

¹⁷ EUROFOUND AND CEDEFOP (2020), *European Company Survey 2019: Workplace practices unlocking employee potential*, European Company Survey 2019 series, Publications Office of the European Union, Luxembourg. s.113

Table: union organisation ¹⁸



Country	Country Abbreviation	Year	Trade Union Density (2000 or earliest available)	Trade Union Density (2018 or most recent)
France	FR	2018	9,479782	8,828584
Estonia	EE	2018	13,99092	4,254379
Lithuania	LT	2018	16,82847	7,131681
Spain	ES	2018	17,37105	13,62975
Portugal	PT	2016	20,52008	15,30582
Latvia	LV	2018	20,93533	11,8517
Netherlands	NL	2018	22,57522	16,38896
Bulgaria	BG	2017	23,01614	12,82943
Hungary	HU	2018	23,80587	7,869555
Germany	DE	2018	24,57076	16,51107
Poland	PL	2016	24,70014	12,73022
Greece	EL	2016	24,93623	20,23755
Czech Republic	CZ	2018	27,21328	11,49815
United Kingdom	UK	2018	29,70529	23,39111
Slovak Republic	SK	2016	32,27227	10,67771
Italy	IT	2018	34,36181	34,39621
Ireland	IE	2017	35,99084	24,46494
Austria	AT	2018	36,93737	26,32926
Croatia	HR	2018	38,03497	20,22971
Luxembourg	LU	2018	42,54533	31,83829
Romania	RO	2016	44	20,01042
Slovenia	SI	2016	44,18829	20,38346
Belgium	BE	2018	56,20024	50,25936
Malta	MT	2018	60,3035	44,58978
Cyprus	CY	2016	64,93161	43,73455
Finland	FI	2018	74,30704	60,33891
Denmark	DK	2018	74,45578	66,4899
Sweden	SE	2017	86,6	65,62043

¹⁸ EUROFOUND AND CEDEFOP (2020), *European Company Survey 2019: Workplace practices unlocking employee potential*, European Company Survey 2019 series, Publications Office of the European Union, Luxembourg. s.106

Digitalisation brings with it new challenges and changes not only in terms of the content of collective bargaining (what can be negotiated), but also in terms of form and subject matter. If trade unions are constituted from employee associations, and if their strength is derived from the size of their membership, social dialogue - and above all the position of the trade union - will be affected by the introduction of new forms of employment. In particular, precarious forms of employment and platform work are based on a distance from the normal workplace, or the normal performance of work in the social environment of a collective of employees.¹⁹ This leads to social disconnection, which often entails a reduction in trade union membership.

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

A fundamental issue of collective bargaining and achieving the possible enshrinement of fair pay is the identification of the range of entities that are entitled to bargain collectively. The scope of employee representatives and their authority may vary. The Czech legal environment grants trade unions a privileged position and a monopoly for collective bargaining, when the

¹⁹ Platformové zaměstnávání se vyznačuje vysokou mírou individualizace a nízkou mírou odborové organizovanosti, viz např. BRANCATI, op. cit. s. 3

Charter and the Labour Code are based on the assumption that only the trade union is entitled to conclude collective agreements on behalf of employees and that any substitution of other arrangements for the collective agreement is considered contrary to the law and different agreements and contracts will be disregarded.²⁰

In the Czech legal environment, it is possible to identify other participants in social dialogue as provided for by law (note, not entities authorised to bargain collectively), which are the so-called quasi-entities²¹ in the form of a works council, a European works council and a representative for occupational safety and health. However, only trade unions have collective bargaining rights and the ability to conclude collective agreements.

The scope of the various ways of representing employees' interests is distinctively laid down in national legislation, with the Austrian and German systems as an example, where works councils are a body which, although they do not have the right to conclude tariff agreements (but do have specific powers to enter into enterprise agreements which can, in specific cases, intervene in the area of pay)²² and where the activities of employee representatives and the autonomy of the parties' are restricted.²³

Consideration of the actions of employee representatives is essential from a collective bargaining perspective. The scope of the participants in social dialogue is quite broad and the specific entitlements of each form must always be taken into account. The following chart (2019) shows the intensity of employee representation in its various forms and structures.²⁴

²⁰ Ustanovení § 22 a § 28 zákoníku práce

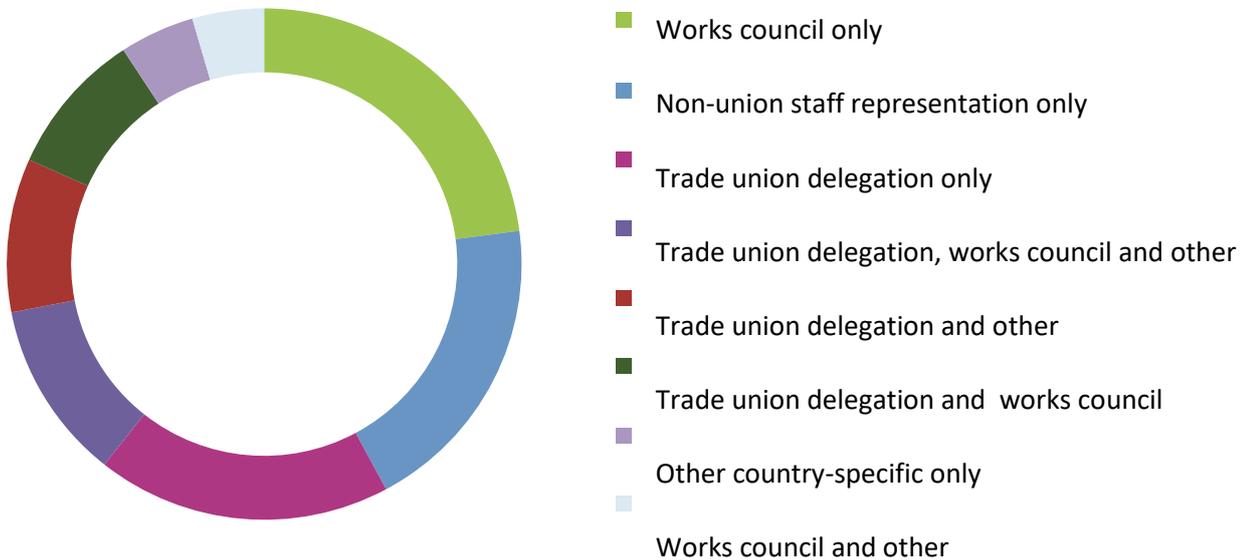
²¹ HORECKÝ, Jan. STRÁNSKÝ, Jaroslav. *Sociální dialog a jeho účastníci*. In JUDr. Dana Hrabcová, Ph.D. Sborník příspěvků z mezinárodní vědecké konference Pracovní právo 2011 na téma Sociální dialog. 1. vydání. Brno: Masarykova univerzita, 2011. s. 27 – 41.

²² V souladu s ustanovením § 77 odst. 3 zákona o podnikové ústavě („betriebsverfassungsgesetz“) se jedná o situaci, kdy tak předvidá výslovně tarifní smlouva, viz Dostupné z: <https://www.mayr-arbeitsrecht.de/blog/betriebsvereinbarung-lohnabsprache/>

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

²⁴ EUROFOUND AND CEDEFOP (2020), *European Company Survey 2019: Workplace practices unlocking employee potential*, European Company Survey 2019 series, Publications Office of the European Union, Luxembourg. s. 114

Table: Configuration of employee representation structures (%)



2.2 Collective bargaining

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

Collective bargaining influences the wage conditions at the employer. Achieving fair remuneration for work, decent pay and dignified working conditions are among the essential

objectives of collective bargaining. However, just as collective bargaining influences working conditions at the employer, working conditions at the employer influence collective bargaining itself. This does not only concern the legal framework of collective bargaining possibilities, i.e. first of all the scope of possible contents of collective agreements (what can be the content of a collective agreement from a legal perspective), but also the economic framework (what can collective agreements contain and regulate from an economically sustainable perspective) and finally the personal framework. In relation to the question of whether a fair wage can influence collective bargaining, or whether fair working conditions introduced by a collective agreement can in fact constitute, in priority, the fulfilment of the purpose of collective bargaining but, on the other hand, also a threat to it, it is precisely the interconnection with the personal aspect of collective bargaining that needs to be reflected. In seeking the answer to the question presented, it is necessary to abstract from the perception of the personal limit of collective bargaining consisting in the person of the negotiator (the active participant), but rather to focus on the employees who constitute the membership base and mandate for the trade union, and at the same time on the non-members - the employees - who are covered by the collective agreement and all its achievements without having to actively participate. Indeed, in a work environment with successful social dialogue and a good collective agreement, the union's recruitment activities often run up against the essence of the scope of the collective agreement - it also applies to persons not involved in any organisation.

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

Negotiated advantages in collective agreements apply to all employees!

The general scope of the collective agreement with respect to personal limits and recruitment activities is revealed by trade unionists as one of the fundamental elements of why membership growth does not occur. Following the resolution of the challenge presented, the

so-called Objection Manual has been developed as a manual containing a number of pre-defined common negative statements against the trade union movement and collective bargaining and helpfully written reflections on them.

Responses from the Objection Manual:²⁵

That is why I am trying to explain why it is important to be a member, because our bargaining position is directly proportional to the number of organized workers.

So it is clear that if we are poorly organized, we have a weak mandate and will negotiate much less. And this less applies to everyone.

If our organization is weak, we leave everything in the hands of management and are dependent on their decisions.

All those who have just been taking credits so far are our potential members and our job is to explain to them why it is important to join the union.

Of course, there are always people who think they are clever but just cannot see two steps ahead.

Yes, by law we must, we are representatives of all employees. But if there are only a few people in the union, we will not be heard much by the employer.

If there is a lot of us, we will be able to get our suggestions and comments across better.

Yes, the collective agreement applies to all employees, but only trade unions can conclude it, so the more of us there are, the better bargaining position we will have.

In addition, we have benefits and benefit programs outside of the collective agreement, but those are only for our members.

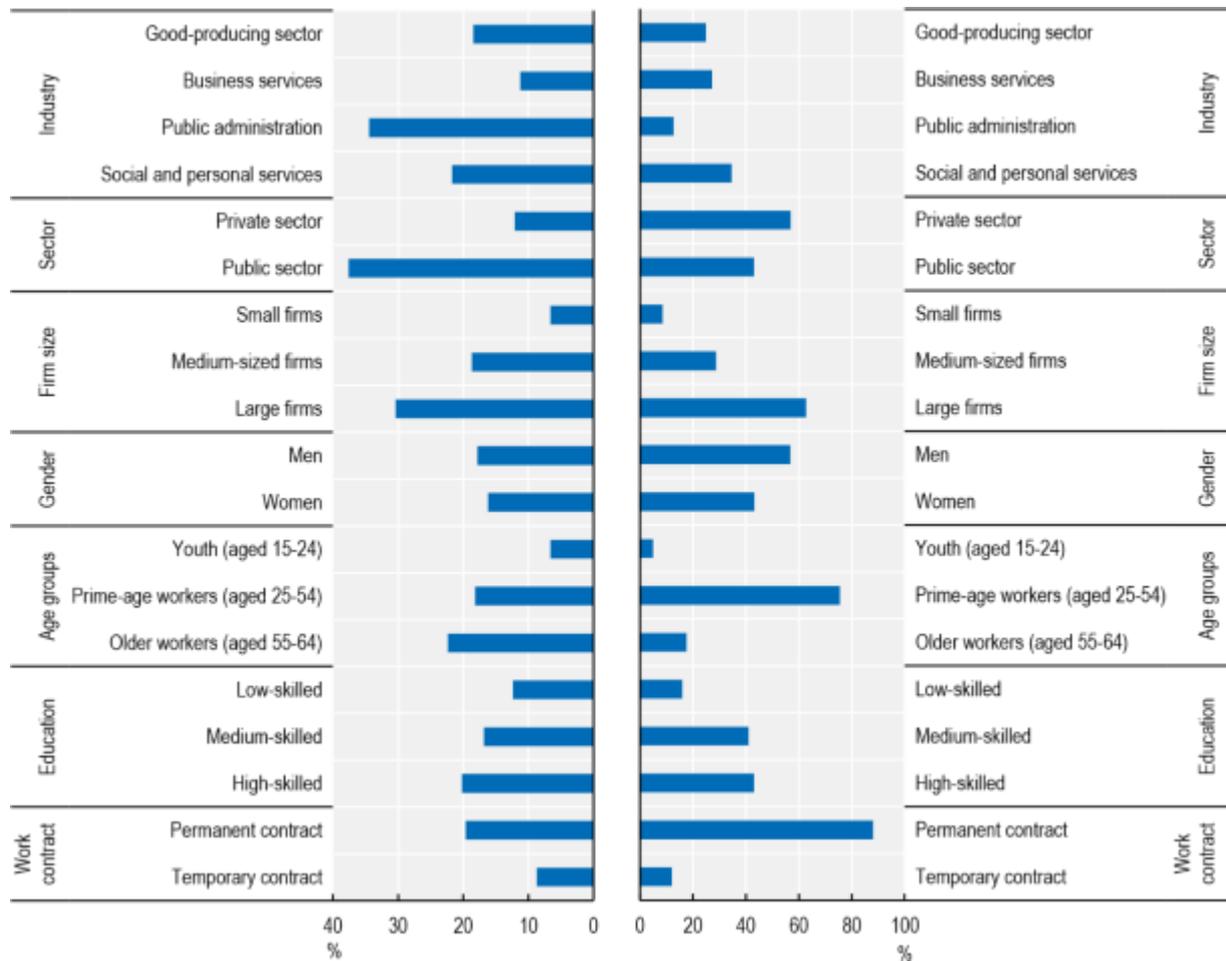
²⁵ Námitkovník. [online]. *skolskeodbory.cz* [cit. 2021-28-04]. Dostupné z: https://skolskeodbory.cz/sites/skolskeodbory.cz/files/downloads/1501953846/namitkovnik_cmos_ps.pdf

That is true, but if failing to fulfil the collective bargaining agreement, we only provide protection and assistance to union members.

The attractiveness of union membership is influenced not only by the actual wage arrangements in collective agreements, but also by the general setting of working conditions resulting from other benefits. The fact that union membership is not compulsory, but non-members can also benefit from the benefits agreed in the collective agreement, makes it necessary to focus on promoting additional added values.

Organisation and membership are related to the size of the enterprise and the sector in which employees work. Employers with a large number of employees have higher levels of organisation, while in small and medium-sized enterprises higher levels of organisation are more the exception. This may be due to the fact that in small enterprises the relationship with the employee is built more on personal contact and social bonding.

Table: Membership by different criteria (sector; size of employer; age; gender ...) ²⁶



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

²⁶ OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, 2019. s. 30

Table: Membership by different criteria (type of employment contract; enterprise size ; general sector)²⁷

	total	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
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

²⁷ Employment and social development in Europe. Annual Review 2018, cit. p. 173.

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 tables outline a key finding in that collective agreement arrangements that provide employees with greater employment stability lead to greater organisation. Employees with employment contracts and tenure tracks have a higher share of union organisation, whereas

employees with fixed-term contracts have a lower share of membership. Similarly, it is noticeable that lower union organisation is found in smaller enterprises and in the public sector. In any case, union organisation represents a major challenge, especially in view of the changing nature of work, greater individualisation and the use of the means of the digital revolution (see e.g. platform workers).²⁸

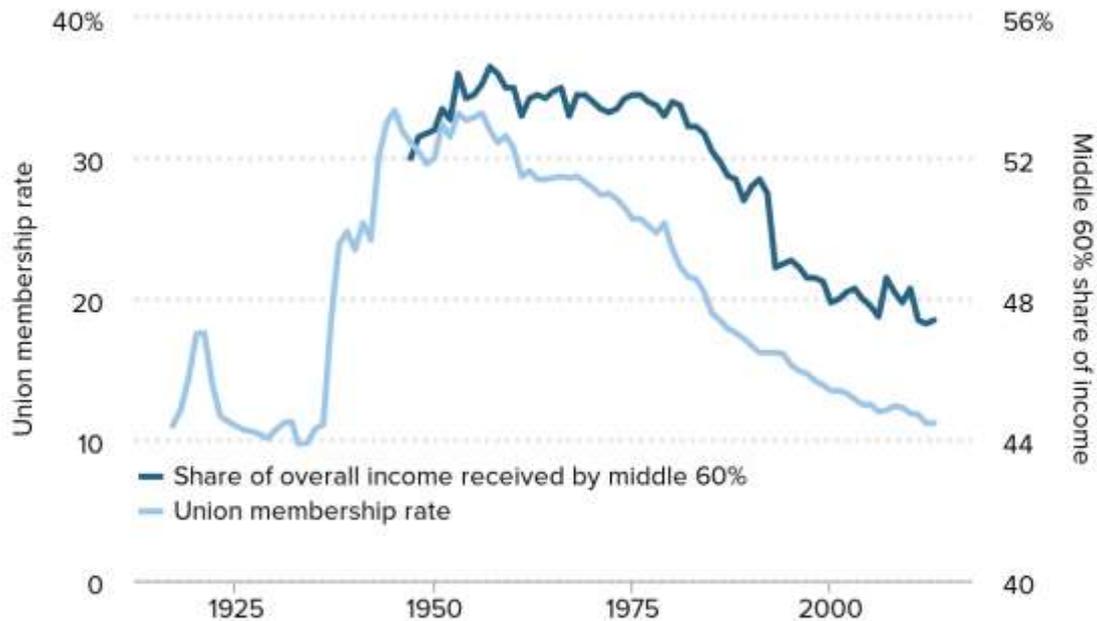
The interconnection of fair working conditions at the employer level with collective bargaining and the level of union membership cannot be easily proven or rejected. However, a certain trend can be observed from the available data on working conditions in employers where there is a trade union and working conditions are co-regulated by collective agreements and employers where there is no collective bargaining (or collective bargaining at company and sector level). In general, employers where social dialogue is perceived as an important tool for achieving social reconciliation and dignified working conditions can be found to have higher working conditions than where social dialogue is not supported.

The effect of union membership rates on fair wages can be traced particularly where the outcomes of collective agreements operate on a membership basis. The sharing of the employer's economic results (profit-sharing reflected in quality wages and working conditions) indicates the crucial interdependence and importance of membership precisely in relation to ensuring fair pay (see table below²⁹).

²⁸ HORECKÝ, Jan. Nové trendy podporující roli a význam kolektivního vyjednávání - Role kolektivního vyjednávání v době rostoucí digitalizace práce. Op. cit., s. 65.

²⁹ EPIC. Collective Bargaining's Erosion Has Undercut Wage Growth and Fueled Inequality [online]. www.epi.org [cit. 2021-28-04]. Dostupné z: <https://www.epi.org/publication/benefits-of-collective-bargaining/#epi-toc-5>

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



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

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A strong social dialogue and a strong position of employee representatives and their respect by the employer promotes quality and fair working conditions. The level and extent of trade union activity is also important. Not only enterprise-based but also social dialogue and collective bargaining at a broader - sectoral or regional level contribute to fair pay and working conditions. The fight against social dumping and the gradually opening up of scissors in labour costs and remuneration, as well as other aspects of the labour market such as the gender pay gap, can be addressed at a higher level with a broader scope. Higher levels of trade union membership and the consequent scope of trade unions and the collective agreements they negotiate have the effect of aligning the working and social conditions of workers and society in general.

Experience in comparing working conditions and conducting social dialogue shows that trade unions built on a strong membership base and dense coverage and scope are able to negotiate working conditions more universally. Standards are then applied to multiple workplaces or entire sectors and regions. Increasing the attractiveness of trade union membership and promoting social dialogue and collective bargaining should become an objective not only for the enterprise social partners but also for national interests.³⁰

2.3 Fair working conditions

Fair working conditions are a fundamental right of every employee. At the same time, fair working conditions are a fundamental objective for social dialogue and collective bargaining. Achieving fair working conditions (wages; working time arrangements, etc.) is one of the main attributes of social dialogue and collective bargaining.

However, a precise definition of fair working conditions is difficult to find. The basic legal documents of the Member States, as well as those of the European Union and supranational entities, make reference to the guarantee of fair working conditions. However, their fulfilment is largely linked to the socio-economic, political, cultural and social factors of the Member State concerned. Gradual harmonisation is occurring within the European Union. However, exceptions must be maintained.

The guarantee of fair working conditions can be found, for example, in the Charter of Fundamental Rights of the European Union³¹ or in the European Pillar of Social Rights, which in Chapter II directly defines the categories of fair working conditions. In addition to remuneration, fair working conditions include secure and adaptable employment, information on working conditions and protection in the event of dismissal, social dialogue

³⁰ RHINEHART, Lynn. McNICHOLAS, Celine. Collective bargaining beyond the worksite. Economic Policy Institute. [online]. *epi.org* [cit. 2021-28-04]. s. 2. Dostupné z: <https://www.epi.org/publication/collective-bargaining-beyond-the-worksite-how-workers-and-their-unions-build-power-and-set-standards-for-their-industries/>

³¹ Listina základních práv Evropské unie. [online]. *fra.europa.eu* [cit. 2021-28-04]. s. 2. Dostupné z: <https://fra.europa.eu/cs/eu-charter/article/31-slusne-spravedlive-pracovni-podminky>

and employee involvement, work-life balance, a healthy, safe and well-adapted working environment and data protection.³²

Image: European Pillar of Social Rights³³



Modern trends affecting collective bargaining across the developed world and especially within the European Economic Area are related to changing trends not only in terms of changes in the subject matter of production but also in relation to modern approaches to human resources. The social partners and trade unions (employee leaders) must play their part in creating a harmonious working environment and in finding ways of establishing and maintaining the concept of *decent* and *dignified work* (referred to globally as the decent work agenda). With the reference to *decent work*, it has historically fallen under the remit of the social partners and employee representatives in particular. According to the Managing

³² Evropský pilíř sociálních práv [online]. *ec.europa.eu* [cit. 2021-28-04]. s. 2. Dostupné z: https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_cs#kapitola-ii-spravedliv-pracovn-podmny

³³ Tamtéž

Director's statement, the common future depended on how the ILO and its Member States could deal with the current social demands of the labour market, all within the concept of the decent work challenge.³⁴ Decent work was an integral part of the Agenda for Sustainable Development.

Figure: Decent work as part of the Agenda for Sustainable Development³⁵



Decent work becomes an explicit goal and means to achieve a fair labour market and to ensure sustainable development in the future. Particularly in the implementation of labour standards in less developed countries (although the validity of the *Decent Work for All Agenda* is universal), decent work tends to be mentioned as probably the most powerful concept and

³⁴ 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>

³⁵ ILO. Decent work and the 2030 Agenda for sustainable development. [online]. *ilo.org* [cit. 2020-28-08]. Dostupné z: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/event/wcms_667247.pdf

effective tool at the disposal of the international community, which has been developed over the years, and which provides unprecedentedly accommodating policy opportunities that can offer effective, appropriate and, above all, efficient responses to the current globalisation trend.³⁶

In implementing the decent work agenda, the ILO sets out the basic identifying elements of the potential activity under evaluation - work. Not all work can be identified as decent and dignified work. Nor can the concept of dignified work be understood to mean only that a person has a right to work, i.e. any work, but work that enables him or her to live normally in society and to satisfy usual needs.

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

- Efforts to create enough job and employment opportunities while developing the conditions for entrepreneurship,
- Guaranteeing labour rights (respect for workers' rights)
- Increasing social protection; and
- Promoting social dialogue.³⁷

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

³⁶ REPORT I (A)/ILC 96-2007. Director - General introduction to the International Labour Conference. *Decent work for sustainable development*. International Labour Office: Geneva, s. 2.

³⁷ GALVAS, Milan a kol. *Pracovní právo*. Brno: Masarykova univerzita, 2012, s. 63.

2.3.1 Fair remuneration

Fair working conditions are a complex concept that includes a range of factors that determine the work performance environment. One of the pillars of fair working conditions is the area of remuneration – fair remuneration. Following modern trends in the world of work, both working conditions and remuneration itself are affected by the changing demands of the labour market (see, for example, the relationship of digitalisation or retraining to the requirements and content of collective agreements). Fair remuneration can be understood as a situation in which employees are not only not treated unequally but are also paid a decent wage for their work. Collective bargaining makes an essential contribution to the fulfilment of both conditions.

With reference to the above guarantee of fair working conditions, reference may also be made to the guarantee of fair remuneration arising from national legislation. The right to fair remuneration is already enshrined in the Czech legal environment, for example, in the Charter of Fundamental Rights and Freedoms in Article 28 - Employees have the right to fair remuneration for work and to satisfactory working conditions. The details of fair remuneration are subsequently set out in the Labour Code in the provisions of Section 110. The basic criteria for fair remuneration are based on the prohibition of unequal treatment and on an objective assessment of the performance of the same work by the employee. All employees of an employer are entitled to the same wage, salary or agreed remuneration for the same work or for work of equal value. Work of equal work or work of equal value means work of equal or comparable complexity, responsibility and effort, carried out under the same or comparable working conditions, with the same or comparable work performance and results. The complexity, responsibility and demands of the work shall be assessed according to the training and practical knowledge and skills required to perform the work, the complexity of the subject matter of the work and of the work activity, the organisational and managerial demands, the degree of responsibility for damage, health and safety, the physical, sensory and mental demands and the exposure to the negative effects of the work. Working conditions are assessed according to the difficulty of working regimes resulting from the

distribution of working time, for example, into shifts, rest days, night work or overtime, according to the harmfulness or difficulty due to the exposure to other negative effects of the working environment and according to the riskiness of the working environment. Work performance is assessed by the intensity and quality of the work performed, work ability and work competence, and work results are assessed by quantity and quality. Collective agreements may establish specific rules and control mechanisms.

Collective bargaining is involved in setting the conditions for fair remuneration. The difficulty of setting a precise boundary for the degree of fairness is related to various socio-economic, geographical or political factors. However, collective bargaining can make a significant contribution to guaranteeing at least minimum wage rates, taking all aspects into account. Minimum wages are considered fair if they are fair in relation to the distribution of wages in a given country and ensure a decent standard of living. The adequacy of statutory minimum wages is determined in the light of national socio-economic conditions, including employment growth, competitiveness and the situation in each region and sector. Their adequacy should be assessed at least in terms of their purchasing power, productivity developments and their relationship to the level, distribution and growth of gross wages. Indicators commonly used at international level, such as 60 % of the median gross wage and 50 % of the average gross wage, can provide guidance in assessing the adequacy of the minimum wage in relation to the level of gross wages.³⁸

3 The effect of collective bargaining on fair wage

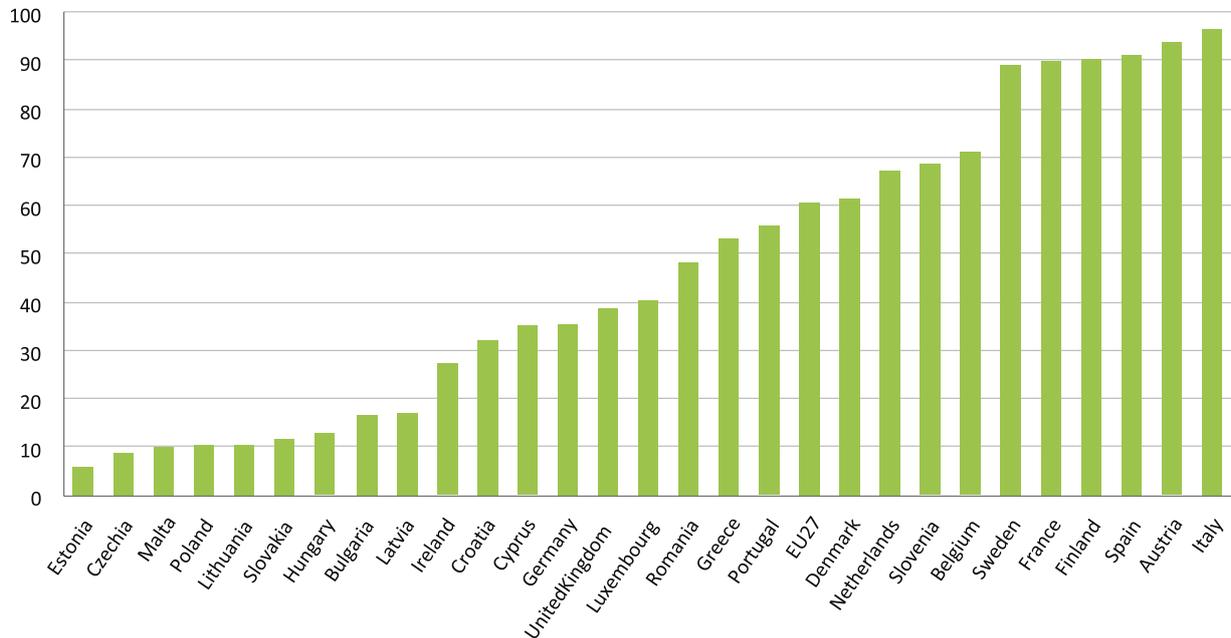
The basic objectives of social dialogue aim at setting fair working conditions and achieving social harmony while maintaining the parameters of the socio-economic optimum. The formation and nurturing of non-conflicting collective labour relations is a way to avoid or at

³⁸ Bod 21, Proposal for Directive of the European Parliament and of the Council on adequate minimum wages in the European Union. [online]. *Eur-lex.europa.eu* [cit. 2021-28-04]. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN>

least minimise the negative effects associated with the fundamental conflicting interests of employees and employers.

Collective bargaining is often only associated with discussions on wage levels. Although wages (remuneration for work) certainly constitute a fundamental element and objective of collective agreement regulation, it is not the only objective. In addition to remuneration arrangements, the regulation of many other terms and conditions of employment becomes part of the text of collective agreements and the subject of discussions with the employer. Collective agreements, by the nature of their legal nature, where they can be seen as a binding source of law and where, in the normative part, they guarantee better working conditions for all employees than the minimum standard enshrined in the Labour Code. The binding nature of a collective agreement with direct effect on the employer makes collective agreements a very attractive and important means of achieving a fair level of working conditions. Wage agreements are relatively common in collective agreements. This is not just a typically Czech approach, quite the contrary. The establishment of fair remuneration, or at least of some kind of wage policy, is quite common in the Czech Republic in international comparison, but not as common as in Austria or Finland, for example. The following table shows the extent to which wage agreements are included in collective agreements.³⁹

³⁹ EUROFOUND AND CEDEFOP (2020), European Company Survey 2019: Workplace practices unlocking employee potential, European Company Survey 2019 series, Publications Office of the European Union: Luxembourg. 116.



Anchoring wage arrangements in collective agreements is of undisputable substance. Irrespective of whether or not remuneration conditions are subject to national regulation in a given country (e.g. if there are centralised tables for minimum and guaranteed wage levels), collective bargaining always brings the benefit of guaranteed, ensured (mostly) dignified remuneration conditions for employees. Not only in the Czech Republic, but also in international comparison, it is evident that collective bargaining generally contributes to a higher level of social security for employees and fair remuneration for work. A comparison of remuneration conditions in employers where wage agreements are included in collective agreements and where effective social dialogue and collective bargaining are in place clearly shows that both employees and employers actually experience positive effects.

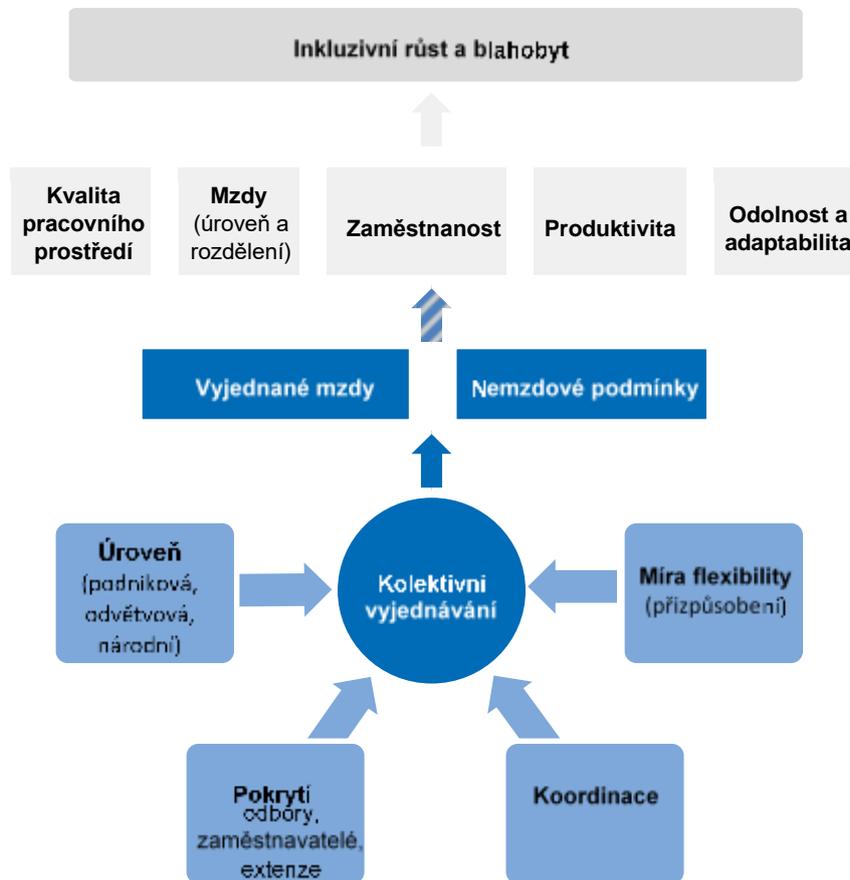
Collective bargaining and collective agreements are an important tool for achieving fair working conditions. However, fair conditions cannot be understood only as fair and dignified wage levels. The scope of collective bargaining to ensure decent and fair working conditions can also include employee benefits that are directed beyond remuneration systems (or that are not aimed at wage guarantee only). Although the collective agreements concluded between employers and employee representatives regulate remuneration as their priority



(wage levels or indexing coefficients, etc.), they also include provisions on other working conditions such as working time, holidays, work-related obstacles and various instruments for reconciling family and working life.

Collective bargaining and its outcomes have a direct impact on the working and social conditions of employees. The level of fair working conditions and the quality of life of employees are influenced by the complex conditions of social dialogue. In particular, at national and sectoral level, the rules on remuneration and non-wage benefits enshrined in collective agreements are reflected in the overall level and quality of life.

Figure: Collective bargaining, labour market performance and inclusive growth ⁴⁰



Inclusive growth and well-being

Working environment quality, Wages (level and distribution), Employment, Productivity, Resilience and adaptability

Bargained wages, Non-wage conditions

Level (enterprise, sectoral, national) Collective bargaining, Flexibility rate (adaptation)

⁴⁰ OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, 2019. s. 122

TU coverage, employers, extension, Coordination

A practical question related to the levels of social dialogue and collective bargaining (collective agreements) can be understood as the effectiveness of the individual stages or levels at which wage questions are negotiated and incorporated. In the Czech Republic, as abroad, there have been tendencies in recent decades to decentralise employee representation. There is often a fragmentation of trade unionism, with the emphasis on individual approaches, for example at enterprise level. While decentralisation may give the impression of ensuring a sufficient degree of flexibility to allow specific individual needs to be taken into account, on the other hand, it places high demands on employees themselves, particularly with regard to their activity and the application of the positive coalition right (to form and join trade unions). Employees, or employee representatives at decentralised and lower levels, are then forced to take an active approach to collective bargaining on their own responsibility and find it difficult to take advantage (precisely because of the lack of centralisation) of the benefits of, for example, sectoral social dialogue. If the outcome of the sectoral social dialogue - the sectoral collective agreement (the so-called higher-level collective agreement) - sets out the conditions for a wider range of employees according to the respective sectoral remit, and if the higher-level collective agreement was negotiated by a higher-level trade union body (e.g. a trade union), then at the enterprise level in a decentralised system, to demand fair conditions and conduct the social dialogue, employees depend on themselves or the enterprise trade union.

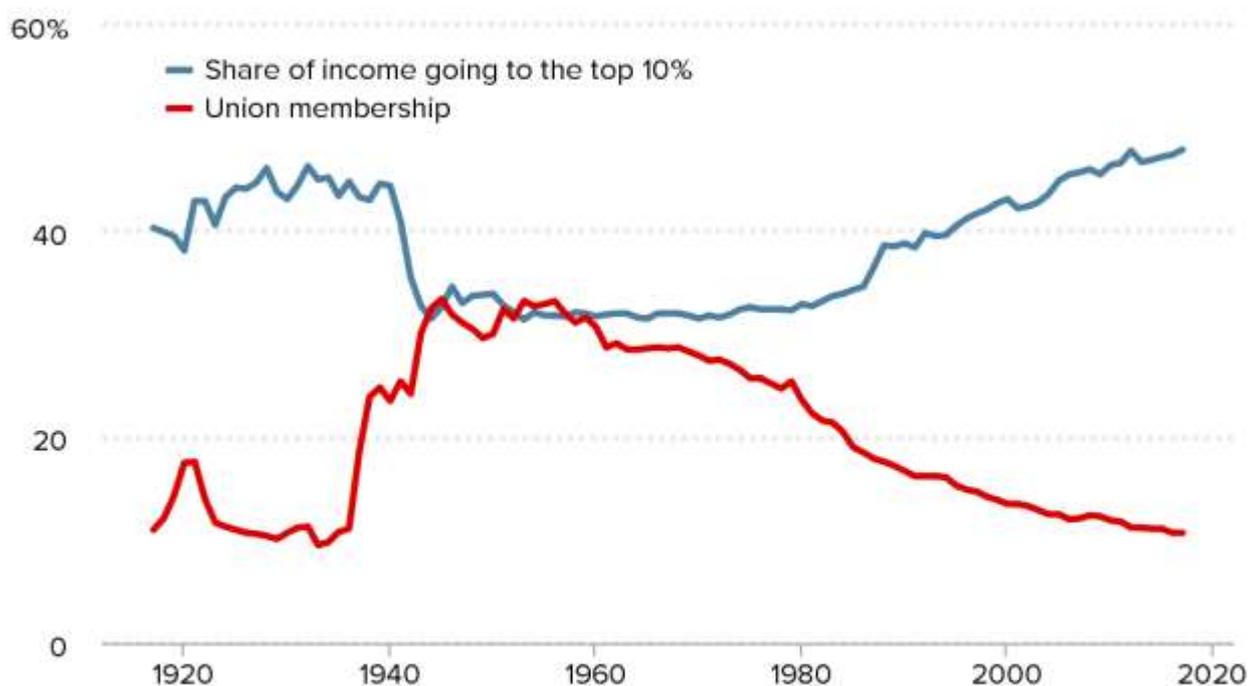
The impact of collective bargaining on the level of working conditions is particularly evident at the level of setting above-standard working conditions in the workplace. Fair working conditions, including fair remuneration, are reflected in employee job satisfaction and the overall effectiveness of the work performed and the employer's performance. In enterprises where social dialogue between employers and employee representatives plays an important part in the standardisation of working conditions and real relations (i.e. where employee representatives are respected partners of the employer in the management of enterprise affairs), better employer performance outcomes can be observed.

The relationship between the level of fair working conditions in the form of wages and the level of union membership is reflected in the strength of the union and its bargaining mandate. Employer resistance to conducting social dialogue and negotiating the appropriate content of collective agreements tends to be all the more intense the lower the union's strength supported by union membership and bargaining mandate. The unequal power of the social partners is consequently reflected in the possible scope of negotiated benefits and the share of the employees in the enterprise in the employer's total income and profits. The graph below shows the correlation of the degree of union membership on the sharing of the employer's economic performance. This is a universal pattern. It does not only apply to national conditions, but also to supranational ones. Regardless of the specific location and legal systems governing collective labour relations.

Figure: Chart showing the income distribution relationship – USA⁴¹

As union membership declines, income inequality rises

Union membership and share of income going to the top 10%, 1917–2017



Sources: Data on union density follows the composite series found in Historical Statistics of the United States; updated to 2017 from unionstats.com. Income inequality (share of income to top 10%) data are from Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States, 1913–1998," *Quarterly Journal of Economics* 118, no. 1 (2003), and updated data from the Top Income Database, updated March 2019.

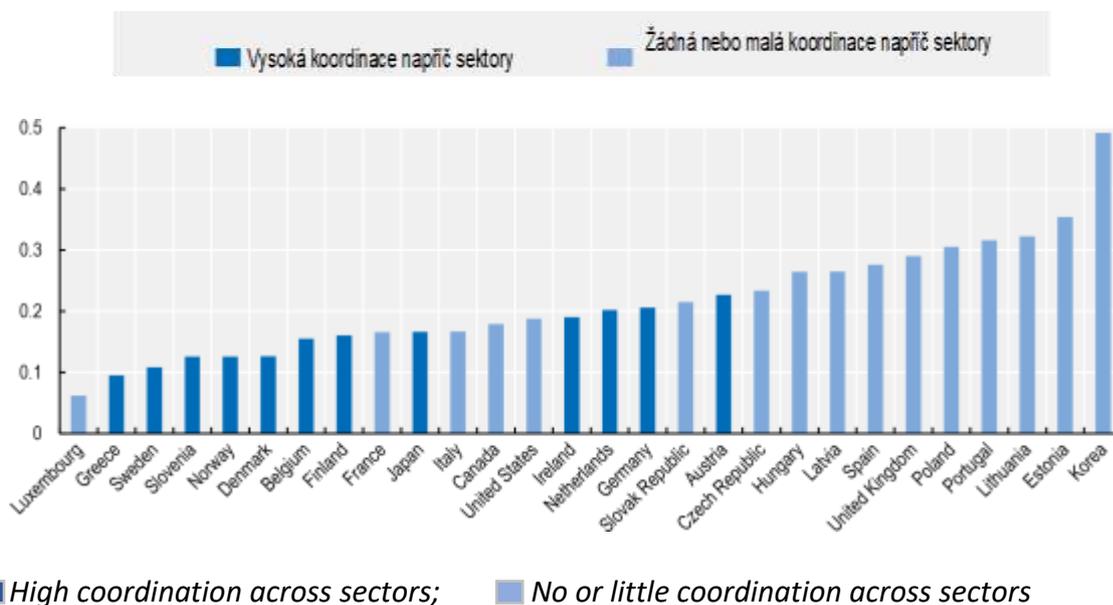
Economic Policy Institute

The impact of collective bargaining on the structure and conditions of remuneration cannot be set in a completely universally. Respecting the factors affecting the socio-economic

⁴¹ RHINEHART, Lynn. McNICHOLAS, Celine. Collective bargaining beyond the worksite. Economic Policy Institute. [online]. *epi.org* [cit. 2021-28-04]. Dostupné z: <https://www.epi.org/publication/collective-bargaining-beyond-the-worksite-how-workers-and-their-unions-build-power-and-set-standards-for-their-industries/>

situation of the employer is an important part of the whole process of effective collective bargaining so that sustainable fairness can be achieved. Taking labour productivity into account becomes an important factor. International comparisons show varying levels of collective bargaining coordination, taking into account specific sectoral conditions.

Figure: Wage flexibility with respect to productivity across sectors⁴²



3.1 National minimum wage levels

The minimum wage represents a basic, non-negotiable limit on the remuneration for work done by an employee for an employer within a fixed weekly working time. In simple terms, it is the lowest rate for work that an employer must pay an employee. The minimum wage becomes an imaginary springboard for collective bargaining to set demands that will bring better working conditions for employees. If, in the context of the application of the *minimax* rule (i.e. the collective bargaining limit under which it is not possible to go below the minimum statutory conditions), it is not possible to negotiate in a collective agreement a level of

⁴² OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, 2019. s. 138

remuneration that is lower than that guaranteed by law, collective bargaining can only be conducted with the aim of securing a higher standard.

Increasing the level of the minimum wage is one of the fundamental objectives of the trade union movement. The cheap labour concept agenda⁴³ is part of the policy of achieving dignified work and decent working conditions. Through social dialogue at the national level, the demands of employee representatives (primarily the Czech-Moravian Confederation of Trade Unions) have been gradually reflected over time and the level of the minimum wage has been increased to practically double since 2015.⁴⁴ These are the tangible results of the targeted policy and well-managed work of the Czech-Moravian Confederation of Trade Unions and its recurrent End Cheap Labour agenda. The End Cheap Labour agenda has become the central activity of the trade union movement and the conduct of social dialogue at the national level, in line with the CMKOS programme. Already in 2015, the CMKOS expressed a clear objective to achieve decent working conditions and dignified work through social dialogue - when it announced the organisation of a demonstration meeting – “The CMKOS wants to support and motivate trade unionists who will negotiate wage increases for 2016. It is therefore calling for a large trade union demonstration meeting in Prague on 16 September under the slogan “End of cheap labour in the Czech Republic”.

Collective agreements are generally characterised by their universal application. In accordance with the Labour Code, the collective agreement and the provisions contained therein apply to all employees regardless of their union affiliation. Membership in a trade union is not a condition for the effect of a collective agreement on an employee. The favourable working conditions guaranteed by the collective agreement also apply to non-unionised employees. The effect of collective agreements on fair and better working conditions even for non-unionised employees can be both an example of good practice

⁴³ ČMKOS. Konec levné práce. Dostupné z: <https://www.cmkos.cz/cs/obsah/219/konec-levne-prace-v-cr/12791>

⁴⁴ viz Přehled o vývoji částek minimální mzdy. MPSV. Dostupné z: <https://www.mpsv.cz/prehled-o-vyvoji-castek-minimalni-mzdy>

(negotiated results) and a danger and threat to recruitment activities (even without membership, the collective agreement will apply to the employees). However, a general relationship can be inferred between the quality of working conditions and non-unionised employees and the level of union membership. A direct correlation is confirmed between the level of union membership, negotiated working conditions and fair working environment and the quality of work among non-unionised employees⁴⁵ (the universal scope of collective agreements simply guarantees comparable and fair working conditions for all employees, regardless of membership). As well as the results achieved at the level of company collective bargaining, the benefits negotiated at national level or achieved by the leadership of the national social dialogue also apply to non-unionised employees. This is no different with regard to minimum wage increases. The legal minimum wage has been gradually increasing as a result of intensive action by employee representatives. As a result of the activities of employee representatives within the Tripartite, the minimum wage level has risen, since the launch of the End Cheap Labour campaign (CMKOS), as there was and has been a tangible integration of the demands on life (reconciling family and working life of employees) with the setting of the minimum wage.

Table: Development of the minimum wage⁴⁶

Period	In CZK/month	In CZK/hour
February 1991	2 000	10,80
January 1992	2 200	12,00

⁴⁵ RHINEHART, Lynn. McNICHOLAS, Celine. Collective bargaining beyond the worksite. Economic Policy Institute. [online]. *epi.org* [cit. 2021-28-04]. s. 3. Dostupné z: <https://www.epi.org/publication/collective-bargaining-beyond-the-worksite-how-workers-and-their-unions-build-power-and-set-standards-for-their-industries/>

⁴⁶ MPSV. Přehled o vývoji částek minimální mzdy [online]. *Mpsv.cz* [cit. 2021-28-04]. Dostupné z: <https://www.mpsv.cz/web/cz/prehled-o-vyvoji-castek-minimalni-mzdy>

January 1996	2 500	13,60
January 1998	2 650	14,80
January 1999	3 250	18,00
July 1999	3 600	20,00
January 2000	4 000	22,30
July 2000	4 500	25,00
January 2001	5000	30,00
January 2002	5 700	33,90
January 2003	6 200	36,90
January 2004	6 700	39,60
January 2005	7 185	42,50
January 2006	7 570	44,70
July 2006	7 955	48,10
2007 to 2012	8 000	48,10
August 2013	8 500	50,60

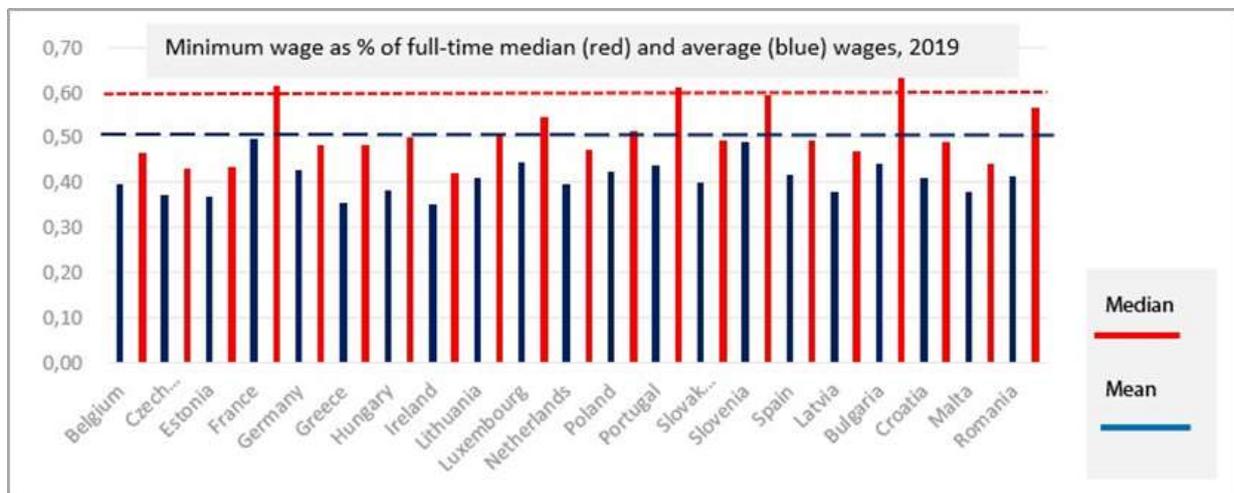
January 2015	9 200	55,00
January 2016	9 900	58,70
January 2017	11 000	66,00
January 2018	12 200	73,20
January 2019	13 350	79,80
January 2020	14 600	87,30
January 2021	15 200	90,50

The presented table shows the impact of trade union activity on the increase in wage levels. A noticeable increase in the minimum wage can be seen since 2015, which directly coincides with the launch of the campaign of the largest trade union headquarters in the Czech Republic. By launching regular and conceptual activities in support of raising the minimum wage within the framework of the End Cheap Labour agenda, the Czech-Moravian Confederation demonstrates the importance of the position of the employees' representative in ensuring favourable working conditions. The gradual increase in the minimum wage level should reach at least 60% of the average earnings in the national economy so that the minimum wage in the Czech Republic is not below the poverty line. In an international comparison, the minimum wage has remained stably above the poverty line (60% of the gross median) in only three Member States and that in the other Member States it does not protect against poverty (including the Czech Republic), given that certain sectors, certain groups of employees and certain forms of work are in some cases not covered by the minimum wage system or collective agreements, and since in recent years, according to EUROSTAT statistics, around

10% of employees have been below the poverty line, the initiative to increase the minimum wage belongs to central policies also at the supranational level.⁴⁷

3.2 Minimum and decent wages at supranational level

The pressure to raise wages and ensure decent working conditions through collective bargaining is felt at both national and supranational levels. The currently debated draft directive on working conditions and the promotion of the right to bargain collectively⁴⁸ clearly indicates a perception of the importance of collective bargaining in setting decent working conditions at the universal supranational level in order to harmonise working conditions.⁴⁹ According to the draft directive, the aim is to achieve the guarantee of dignified and fair wages through social dialogue – collective bargaining. The minimum wage should not be below 60% of the wage in the national economy. In the Czech Republic, in comparison with other Member States, there is still a lot of room for achieving this objective (see the presented chart)⁵⁰.



⁴⁷ Návrh Usnesení Evropské Parlamentu o snižování nerovnosti ve zvláštním zaměření na chudobu pracujících 2019/2188 (INI). [online]. www.europarl.europa.eu [cit. 2021-28-04]. Dostupné z: https://www.europarl.europa.eu/doceo/document/A-9-2021-0006_CS.html

⁴⁸ Proposal for Directive of the European Parliament and of the Council on adequate minimum wages in the European Union. [online]. [Eur-lex.europa.eu](http://eur-lex.europa.eu) [cit. 2021-28-04]. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN>

⁴⁹ EMPL. The proposed Minimum Wage Directive [online]. europa.eu [cit. 2021-28-04]. Dostupné z: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/658208/IPOL_ATA\(2020\)658208_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/658208/IPOL_ATA(2020)658208_EN.pdf)

⁵⁰ Tamtéž.

Social dialogue and collective bargaining are seen as important and central approaches to ensuring decent wage and fair working conditions. At the level of the European Union, with the new Presidency, collective bargaining is becoming an area of interest following the implementation of the New Start initiative for social dialogue at European level and in view of the importance of collective bargaining in guaranteeing working conditions. Social dialogue at European level is intended to contribute to the harmonisation of working conditions across the European labour market. First of all, it should ensure a decent wage (including the minimum wage). The current President of the European Commission sees collective bargaining as an essential tool for promoting decent wage and dignified working conditions, following the enshrinement of the minimum wage threshold, as a priority. The introduction of appropriate minimum wages through social dialogue is the ideal way to set the level in a way that takes account of national specificities and at a level that is consistent with the principles of a fair, just and decent wage.⁵¹

The draft directive on adequate minimum wages currently represents a fundamental and central focus for the activities of the social partners in promoting collective bargaining and its impact on guaranteeing fair working conditions. The text of the draft directive directly highlights the importance of collective bargaining in ensuring fair working conditions. Well-functioning collective bargaining on wage setting is an important means of ensuring that workers are protected by a fair minimum wage. In Member States with a legal minimum wage, collective bargaining supports overall wage developments and therefore contributes to improving the adequacy of minimum wages. In Member States where protection in the form of a minimum wage is provided exclusively by collective bargaining, its level, as well as the proportion of workers protected by it, is directly determined by the nature of the functioning of the collective bargaining system and the extent to which it is spread in the country. Strong and well-functioning collective bargaining and the widespread use of sectoral or cross-sectoral

⁵¹ Srov. Opening Statement Ursula von der Leyen European Parliament. [online]. *Eur-lex.europa.eu* [cit. 2021-29-04]. Dostupné z: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_4230

collective agreements benefit the adequacy of minimum wages and their extension. In relation to the declining prevalence of collective bargaining, it is essential that Member States promote it in order to facilitate workers' access to minimum wage protection through collective agreements. Member States with a high level of collective bargaining tend to have a low proportion of low-wage workers and a high minimum wage. In Member States with a low proportion of low-wage earners, the rate of extension of collective bargaining exceeds 70%. Similarly, in most Member States where the minimum wage is high relative to the median wage, the collective bargaining coverage rate is above 70%. All Member States should be encouraged to promote collective bargaining, but where it is not widespread to that extent, they should, upon a consultation and/or an agreement with the social partners, establish a framework for mediation procedures and institutional arrangements that create the conditions for collective bargaining, or strengthen such a framework where it already exists. This framework should be laid down by law or tripartite agreement.

The linkage of the setting of a fair minimum wage level through collective bargaining is explicitly supported by the European social partners in Article 4 of the draft Directive when it sets out initiatives to promote collective bargaining and the extension of collective agreements across a wider spectrum of the labour market. In order to achieve a greater extension of collective bargaining, Member States will adopt at least the following measures in consultation with the social partners:

- a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level;
- b) encourage constructive, meaningful and informed negotiations on wages among social partners.

In addition, Member States in which the prevalence of collective bargaining does not reach at least 70% of the workers shall establish a framework to create the conditions for collective bargaining, either by law following a consultation with social partners or by agreement with

them and shall draw up an action plan to promote collective bargaining. The action plan shall be published and communicated to the European Commission.

The draft Directive also provides for close and intensive involvement of the social partners in setting and updating the legal minimum wage. Member States shall accept the necessary measures to ensure the timely and effective involvement of the social partners in the setting and updating of the statutory minimum wage, including through participation in advisory bodies set up to advise on statutory minimum wages, and in particular with regard to:

- a) the choice and application of criteria and indicative benchmarks (the criteria are intended to allow flexibility and variability, taking into account the different conditions in the various Member States) and situations for setting the level of the statutory minimum wage;
- b) updating the level of the statutory minimum wage (e.g. an indexation mechanism enshrined in the Labour Code or in collective agreements or other labour law documents is encouraged;
- c) the establishment of derogations from the legal minimum wage and deductions
- d) collecting data and carrying out studies to inform the bodies responsible for setting the legal minimum wage.

Today's globalisation era requires that the importance of collective bargaining be enshrined in supranational documents. The proposal for a directive has been drawn up in the context of European social dialogue, when the participation of the social partners in resolving social (and therefore labour) issues is explicitly provided for in the European Union's founding treaties. Support for collective bargaining and social dialogue also flows from the EOC's electoral initiative for the 2019 European Parliament elections. The EOC's programme for the 2019 European Parliament elections⁵² makes clear that stronger and more widespread collective

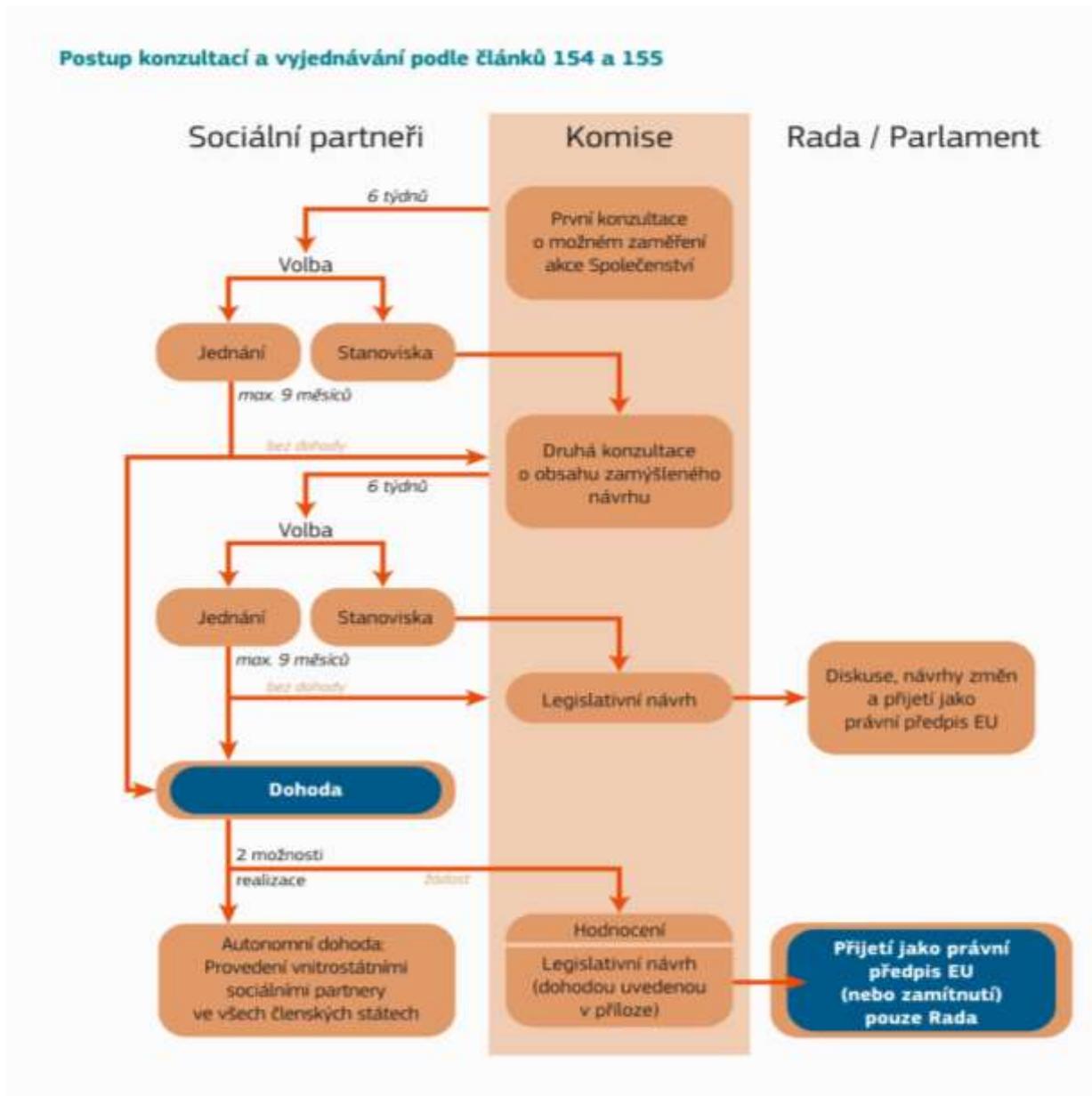
⁵² Spravedlivější Evropu pro zaměstnance – program EOK pro Eurovolby 2019. [online]. *tripartita.cz* [cit. 2021-29-04]. Dostupné z: <https://www.tripartita.cz/spravedlivejsi-evropu-pro-zamestnance-program-eok-pro-eurovolby-2019/>

bargaining – bargaining between trade unions and employers – social dialogue and employee participation in all EU countries is essential to achieve a fairer Europe and more democracy.

The adoption of the minimum wage directive and the promotion of collective bargaining will be the result of a functioning social dialogue at European level. In view of the importance of the Directive, the draft text at the date of its submission is attached as an annex.⁵³

⁵³ Příloha č. v závěru celé studie.

Figure: How European social dialogue works⁵⁴



*Consultation and negotiation procedure according to Articles 154 and 155
Social partners, Commission, Council/Parliament,
6 weeks, 1st consultation on the possible action focus of the Union,
voting, negotiations, decisions,*

⁵⁴ Evropská komise. *Nový začátek pro sociální dialog*. EU: Belgie. 2016. s. 7

*up to 9 months, without agreement, 6 weeks, Second consultation of the content of the intended proposal,
voting, negotiations, decisions, up to 9 months, , without agreement, legislation proposal,
discussion, proposed amendments and adoption as EU legislation,
agreement, 2 possibilities of implementation, request,
Autonomous Agreement: Implementation by the national social partners in all Member States,
Evaluation, Legislative proposal (by agreement as set out in the Annex), Adoption as EU
legislation (or rejection) by the Council only*

Social dialogue at European level plays an essential role in guaranteeing fair socio-economic policies. Given the fact that European social dialogue favours transnational bargaining, a framework for sectoral social dialogue has historically been developed. Sectoral social dialogue can more appropriately and accurately reflect the changing requirements of the labour market in a given sector and can thus also provide an optimised framework for collective bargaining, taking into account sectoral specificities. As a result of the Commission's decision, *sectoral social dialogue at European level* has been formally established. Following Commission Decision 98/500/EC⁵⁵ social dialogue committees are being formed.

4 Collective agreement and its content

Collective agreement is the basic instrument for the binding regulation of labour relations and working conditions with an employer.

Collective agreements are the result of formalised social dialogue – collective bargaining. Fair working conditions and fair wages become a frequent and central objective of collective bargaining. Collective agreements may contain commitments by the parties and rights of employees that favour their working conditions (e.g. increase in amount of leave; indisposition leave).

⁵⁵ Rozhodnutí Komise ze dne 20. května 1998 o zřízení výboru pro kolektivní vyjednávání k podpoře dialogu mezi sociálními partnery na evropské úrovni. Dostupné z: <https://eur-lex.europa.eu/legal-content/CS/TXT/PDF/?uri=CELEX:01998D0500-20130701&qid=1592253281898&from=CS>

4.1 Wage arrangements⁵⁶

Wage arrangements are a regular part of collective agreements. They concern not only the actual precise definition of wages, but also the setting of tariffs or criteria for achieving certain remuneration for work. According to the report on collective bargaining by the CMKOS, wage agreements are included in about 95% of company collective agreements. However, comprehensive remuneration conditions (rules for the provision of all components of wages) are set out in only about 26.3% of company collective agreements.

The majority of enterprise collective agreements (ECAs), 69.6% of ECAs this year (70.1% of ECAs in 2019), set the terms and conditions for employee remuneration by combining all three options given by the LC - i.e. part of the terms and conditions are agreed in the collective agreement, part is set by the employer in an internal wage regulation and part is agreed with the employee in an individual contract. IPP Table A18a

Forms of remuneration

Virtually all known forms of wage are used in enterprise collective agreements. The use of piecework pay is particularly monitored in the system, which is agreed in 14.3% of EACs in 2020 (14.5% of EACs in 2019).

Procedures for the introduction of labour consumption standards under the provisions of section 300 of the Labour Code are negotiated in 7.8% of the EACs this year (7.9% of the EACs in 2019). IPP Table A17a

Wage developments negotiated in EACs

Number of EACs containing arrangements on wage developments

Year	2015	2016	2017	2018	2019	2020
% of EACs	61.2	66.1	68.7	71.8	72.8	69.2

⁵⁶ Text převzat ze Zprávy o průběhu kolektivního vyjednávání na vyšším stupni a na podnikové úrovni v roce 2020. [online]. ipodpora.odborny.info [cit. 2021-29-04]. Dostupné z: https://ipodpora.odborny.info/dms/soubory/index?file=Analyza%20KV%202020_20201109104248.pdf

IPP Table A15a

Until 2008, wage developments were negotiated in about 75% of EACs. With the onset of the economic crisis, the number of EACs regulating wage developments began to decline. The biggest drop occurred **in 2010**, when only **42.4% of the EACs** contained an agreement on wage developments. In 2011, the trend reversed, and this upward trend has continued. This year, **69.2% of EACs** already include a wage developments agreement. A positive finding is that this year the **social partners have not agreed on a reduction in the average wage in any of the EACs**.

The most widespread form of agreement on wage developments this year is the agreement on **wage scale increase**. This agreement is contained in **41.8% of the EACs** (43.5% of the EACs in 2019). The following follow in terms of frequency:

Increase in average nominal wages – 24.1% of EACs (in 2019 in 25.9% of EACs),

Maintaining real wages – 11.7% of EACs (in 2019 in 12.9 % of EACs),

Increase in total volume of wage bill – 8.9% of EACs (ditto in 2019),

Increase in average real wages – 1.7% of EACs (in 2019 in 2.0% of EACs),

Maintaining the average wages – 0.2 % of EACs (ditto in 2019).

A combination of the above forms of wage growth was used **by 17.3% of EACs** (in 2019 in 18.6% of EACs).

An overview for the whole monitored period:

Wage increases in the form of wage scale increase was negotiated in:

Year	2015	2016	2017	2018	2019	2020
% of EACs	25.9	31.6	34.3	38.6	43.5	41.8
Average increase (in % of EACs)	2.6	3.4	4.3	5.7	5.5	4.8

IPP Table A15a

Wage increase in the form of an increase in the average nominal wage was negotiated in:

Year	2015	2016	2017	2018	2019	2020
% of EACs	23.3	25.6	26.4	27.0	25.9	24.1
Average increase (in %)	2.6	3.0	3.5	5.1	5.0	4.2
of which without management (in % of EACs)	3.3	2.8	3.0	5.4	5.1	5.3

IPP Table A15a

Wage increases in the form of real wage retention were negotiated in:

Year	2015	2016	2017	2018	2019	2020
% of EACs	12.9	12.1	11.8	12.9	12.9	11.7
of which without management (in % of EACs)	0.6	0.6	0.4	0.7	0.8	0.8

IPP Table A15a

Wage development in the form of an increase in average real wages was negotiated in:

Year	2015	2016	2017	2018	2019	2020
% of EACs	1.5	1.5	1.7	1.9	2.0	1.7
Average increase (in %)	1.9	1.8	1.7	2.3	2.4	2.0
of which without management (in % of EACs)	-	-	-	2.0	-	1.8

IPP Table A15a

Wage development in the form of an increase in total wage bill was negotiated in:

Year	2015	2016	2017	2018	2019	2020
% of EACs	6.1	8.0	8.6	9.2	8.9	8.9
of which without management (in % of EACs)	0.5	0.6	0.9	1.5	1.6	1.4

IPP Table A15a

In terms of demonstrating the importance of the conduct and existence of collective bargaining in ensuring fair and dignified working conditions, the most important comparisons are between employers where social dialogue is not conducted, or where it is conducted without collective bargaining or a collective agreement containing wage arrangements in relation to increasing employee wage standards. An assessment of the working conditions negotiated in collective agreements in the Czech Republic confirms a similar trend as abroad. Where collective agreements are negotiated, there is usually a guarantee of a fair and decent wage at a higher level than for employers without collective agreements.

2019										
Collective agreement	Employee shares in%			Average wage in CZK			Median wage in CZK			Wage variation coefficient
	Total	Men	Female	Total	Men	Female	Total	Men	Female	
Total	100.00	54.93	45.07	36 336	39 699	32 237	31 434	33 763	28 795	0.69
Collective agreement yes	45.41	26.30	19.11	39 866	42 934	35 645	35 190	37 321	32 475	0.61
Collective agreement no	52.27	27.35	24.92	33 677	37 073	29 949	28 098	30 106	26 242	0.77
<i>Not specified</i>	<i>2.33</i>	<i>1.28</i>	<i>1.05</i>	<i>27 171</i>	<i>29 379</i>	<i>24 463</i>	<i>23 386</i>	<i>24 429</i>	<i>21 933</i>	<i>0.62</i>
Difference (CA yes-CA no) (in CZK)	-	-	-	+6 189	+5 861	+5 696	+7 092	+7 215	+6 233	-
Share (CA yes/CA no) (in %)	-	-	-	118.4	115.8	119.0	125.2	124.0	123.8	-

The table showing wage developments in 2019 shows that in environments with collective agreement coverage, there is more favourable remuneration for employees than where wages are not covered by a collective agreement. The difference in earnings for employees whose wage terms are covered by a collective agreement is quite significant and amounts to CZK 6,000 on average.

4.2 Strategic goals towards fair wage and decent work

In practice, the evaluation of the results of collective bargaining can have an impact not only on the level of working conditions themselves, employee satisfaction in the workplace and the achievement of fair pay, but also on the attractiveness of trade union membership. Employee representatives are aware of their important role in defending the economic and social interests of employees. They therefore set both short-term and long-term objectives in the light of the achievements reached (the benefits resulting from the collective agreement) and in order to meet the objectives of decent work, taking into account the different levels of conducting social dialogue. These include working with the membership base and trying to increase union membership and the level of representation, as well as ensuring that the minimum wage and employer-specific remuneration standards (wage indexation) are increased. For example, the largest trade union headquarters, the Czech-Moravian Confederation of Trade Unions, has set targets for 2021 that take into account both company and sectoral levels of social dialogue and collective bargaining.

Table: Goals of CMKOS for 2021

Goals for collective bargaining at enterprise level in 2021

In the area of remuneration

- ✓ The CMKOS Assembly recommends to conduct collective bargaining in such a way that, according to the overall economic situation and the economic situation in the sector, enterprise (company), despite the negative impact of the COVID-19 pandemic and taking into account the relatively high inflation rate, **the average nominal wage in 2021 for the business sector as a whole will increase by at least 6-7%** compared to 2020 and to ensure that there is **no reduction in benefits for employees** in connection with Covid;
- ✓ Promote increased wage compensation for employees in the case of the use of programmes such as Antivirus or “kurzarbeit”, so that it totals at least 80% of the employee’s wage;
- ✓ Agree in the collective agreement a special bonus to ensure that the total amount of the employee’s salary compensation exceeds 60% during quarantine periods and in the case of sick leave;
- ✓ Exclude from collective agreements all provisions that make the granting of any part of the wage conditional on the completion of full working hours in a given period;

- ✓ In view of the threat of breaking the link between the minimum wage and the level of the guaranteed wage, agree to maintain this link in the collective agreement, or ensure that the guaranteed wage is increased in this way;
- ✓ Negotiate an **indexation clause** in the event of a significant rise in consumer prices,
- ✓ **Strive to negotiate a higher minimum wage** than the legal level in the ECA, so that the level of the minimum wage provides sufficient protection against **working poverty**;
- ✓ In wage bargaining, strive for **wage convergence and the elimination of differences between the West and East of the EU**;
- ✓ Strive to **close the gender pay gap**;
- ✓ **Strive for trade union to be involved in the decision process** when employers are involved in government programmes aimed at compensating for the impact caused by the Coronavirus crisis or other similar events.

In the area of employment

In relation to the negative impact of COVID-19, strive to maintain employment and preserve decent working conditions and continue to negotiate:

- ✓ **Reduction of working hours** by at least **0.5 hours per day (37.5 hours per week) without a reduction in wage**;
- ✓ **Provision of 5 weeks of leave**;
- ✓ **Home-office** under conditions that ensure the safe performance of work by the employee at the employer's expense;
- ✓ Commitment by the employer to give **priority to the employment of workers through tenure tracks**;
- ✓ **Co-decision of the trade union on the use of agency employment**, on the employer's employment of foreign nationals from third countries, and on **negotiating equal conditions for permanent and agency workers** in terms of remuneration, working hours and safety at work;
- ✓ **Co-decision of the trade unions in the introduction of Industry 4.0 elements and the replacement of human labour by robotic workplaces and, in the context of digitisation**, negotiating arrangements that do not worsen working and wage conditions for employees; **with the advent of digitisation, placing greater emphasis on negotiating conditions for education, training and retraining of employees** to retain jobs;
- ✓ **Conditions for specific forms of work**, i.e. part-time work, home working, job-sharing, etc.;
- ✓ **Increasing the scope of severance payments** beyond the scope of the Labour Code.

Furthermore, the CMKOS Assembly recommends that more attention be paid to

- ✓ **Employment of the elderly and disabled persons**;
- ✓ **Employment of youth**;

- ✓ Strive to arrange **lifelong learning programmes for employees to systematically improve their professional knowledge and skills** and thus prevent their dismissal due to lack of qualifications or changes to the required skills and qualifications.

Strive to maintain or introduce employee representation in the supervisory board of a joint stock company

- ✓ In the form of an employer's commitment to submit such a proposal to the general meeting of a joint stock company where employee representation is not provided for by law, to require at least **one-third representation** of employee representatives.

In the area of reconciliation of professional, private and family life and equal treatment, continue to negotiate

- ✓ **Longer leaves** beyond the scope of the Labour Code and **shorter working hours** without reducing wages;
- ✓ Appropriate **adjustments to working time** and the provision of paid leave for employees in the event of personal obstacles to work on the part of the employee beyond the scope of the Labour Code;
- ✓ Possibility of **working part-time** if requested by an employee with family responsibilities;
- ✓ **Social fund** (or similar fund, programme), while at the same time strive to ensure that an appropriate proportion of expenses is allocated to support the reconciliation of employees' work and private life;
- ✓ **Automatic indexation of wages and salaries for employees on parental leave and a guarantee that the employee will be allocated to the same job after returning from parental leave.**

In the area of supplementary pension schemes and supplementary pension savings

- ✓ Continue to negotiate **contributions to supplementary pension schemes⁵⁷ and supplementary pension savings⁵⁸**;
- ✓ Ensure that employers undertake in the ECAs **to provide higher contributions for employees** performing strenuous and hazardous work so that employees can, if necessary, **possibility of drawing a "pre-retirement"⁵⁹** from the supplementary pension scheme, especially for employees performing work in risk categories 3 and 4.

In the area of OSH

- ✓ Ensure that **he level of occupational safety and health at work is not reduced** and within the collective bargain further promote:

⁵⁷ Zákon č. 42/1994 Sb., o penzijní připojištění se státním příspěvkem a o změnách některých zákonů souvisejících

⁵⁸ Zákon č. 427/2011 Sb., o doplňkovém penzijním spoření

⁵⁹ V rámci předdůchodu lze odejít do starobního důchodu až o 5 let před dosažením důchodového věku.

- ✓ Creating **safer and healthier working environments and working conditions** and **reducing and eliminating hazardous and strenuous work, including the closing of carcinogenic workplaces** with the aim of eliminating them;
- ✓ measures to **reduce stress and prevent overloading of workers** and to avoid them.

Goals for higher-level collective bargaining in 2021

Given the widely differing conditions in which the various TUs collectively bargain and conclude higher-level collective agreements, **the CMKOS Assembly recommends that the main focus of higher-level collective bargaining be on concluding higher-level collective agreements that include a basic framework for employee remuneration, wage developments in the sector and measures to maintain existing or create new jobs;**

Furthermore, the CMKOS Assembly recommends that efforts should be made to ensure that the higher-level collective agreements include measures leading to:

- **Extension of control activities or the introduction of co-decision in the employment of foreigners and agency workers.** The aim is to prevent the **illegal employment** of both groups of employees and, at the same time, to guarantee equal treatment in terms of remuneration, working hours and occupational safety for all employees, throughout their working time in the company (enterprise);
- **Enhancing employee training.** The aim is to increase the number of employees enrolled in various forms of training and to ensure that the training system includes specific programmes for older employees in order to prevent their dismissal;
- **Improving employment conditions for graduates and disabled people** who are most affected by unemployment;
- **Improving the pro-family environment at the employers.** The aim is to better protect employees with family responsibilities from dismissal, introduce appropriate working time arrangements and appropriate forms of employment relationship, allow for the provision of leave according to the needs of employees with family responsibilities, facilitate the return of employees to work after parental leave, improve the availability of transport to and from work, etc.;
- Implementation of agreements of the European Social Partners and the European Social Partners' Framework for Action on Gender Equality;
- **Advocating for conditions for reducing working time without reducing wages;**
- **Capturing the process of digitisation within the higher-level collective agreements, e.g. in the following areas:**

- The impact of digitalisation on employment and on employees' social security;
- The impact of shared economy on the status of employees;
- Issues relating to the return to the labour market after parental leave;
- Preparing for changes in the training system as a result of digitalisation;
- Teleworking issues and their solutions for employees.

In connection with the coronavirus epidemic, seek to ensure in the higher-level collective agreements:

- Timely access to comprehensive up-to-date information on the likely impact of the COVID-19 crisis on the company's economic performance, jobs and working conditions;
- Sufficient time and resources to conduct a thorough assessment of the information provided, with the support of economic/financial experts, to work on alternatives to dismissals, plant closures and other measures that would adversely affect the interests of employees;
- Involving employees in ensuring a safe and successful return to the workplace;

ensuring that health and safety requirements (i.e. appropriate social distance measures) are met in negotiations.

It is clear from the above goals that the CMKOS recognises its position and importance for fair working conditions (including wage) for all working people.

5 Challenges, opportunities and barriers

Collective bargaining faces a number of challenges and barriers in the new world of work. Among the emerging ones are digitalisation and the changing demands on work performance and on employees themselves as a result of technological changes. The world is changing and will continue to change. The social partners must respect and reflect the changing world of work. All obstacles and barriers must be seen as challenges and opportunities to deepen and streamline employee representation.

5.1 Responding to changed conditions and social demands

The environment of the new world of work under the influence of new technologies is a challenge for collective bargaining. Adaptability to the activities of the social partners, particularly trade unions, has a major impact on the effectiveness of collective bargaining. Digitalisation of work brings with it various possibilities not only for the modification and performance of the work itself, but also threats to the principle of the employee's personal sphere. In this context, trade unions can be seen as the basic watchdog and insurance (guarantee) for the preservation of a decent workplace, fair wages, as well as the protection of the employee's personal and family sphere. Modern technology allows employers to obtain a range of information about employees (albeit not in a targeted way, but indirectly). The general statutory regime for the processing of personal data in employment relationships⁶⁰ guarantees a broad level of protection for data subjects – both employees and job applicants. At the same time, it provides the employer with a legal licence to process personal data. If the employer does not have a legal justification for processing personal data, it may handle the data on the basis of the employee's consent, if any. Although employee consent is a common part of the employee-employer relationship regime in employment law practice, it is not a priority but rather a very specific and exceptional means of legitimation from a legal perspective. The extent to which fair and dignified working conditions are protected and ensured, for example also in relation to the collection and processing of employees' personal data, will be greatly enhanced by the inclusion of employee representatives in the employer's own employment practices. Collective agreements may contain a number of provisions, thus complementing the statutory regime, which will lead to the protection of employees' personal data processing. The importance of collective agreements for setting the terms and conditions for processing personal data and thus the intensity of protection of employee rights (e.g. in relation to the use of production automation; monitoring of employees for the purposes of

⁶⁰ Viz např. VALENTOVÁ, Tatiana, Jan HORECKÝ a Marek ŠVEC. *GDPR v pracovnoprávnej praxi: ako byť v súlade s nariadením o ochrane osobných údajov*. Bratislava: Wolters Kluwer, 2020. s. 7.

evaluating employee performance, compliance with work obligations and setting remuneration systems, etc.) is also directly recognised by the GDPR⁶¹. As directly stated in the Recital 155 and Article 88 of the Regulation, Member States may lay down more specific rules by law or collective agreements to ensure the protection of rights and freedoms in relation to the processing of employees' personal data in the context of employment, in particular for the purposes of recruitment, performance of the contract of employment, including compliance with the obligations laid down by law or collective agreements, management, planning and organisation of work, for the purpose of ensuring equality and diversity in the workplace, health and safety in the workplace, protection of the employer's or customer's property, individual and collective exercise and enjoyment of rights and benefits associated with employment, and termination of employment.

The challenge of technological change in the labour market is reflected in a number of areas. Social dialogue, and trade unions in particular, must respond to these changes. Adequate reflection of changing conditions, a substantive and factual response to them, and informing employees of the results achieved can contribute to increasing trade union membership and thus to the strength of the mandate to ensure fair and decent working conditions.

Collective bargaining still seems to be probably the most effective tool for providing guarantees and protection to workers in an environment of rapid technological development and the use of algorithmic management of employees.⁶²

Employers use a variety of tools to support the evaluation system. The data collection itself can be based on direct personal HR activities of the employer, or with the use of new technologies, tracking devices, etc. The GDPR Regulation sets out a general framework for

⁶¹ Nařízení Evropského Parlamentu a Rady 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).

⁶² DE STEFANO, Valerio. TAES, Simon. *Algorithmic management and collective bargaining*. [online] *etui.org* [cit. 2021-25-05]. s. 9. Dostupné z: <https://www.etui.org/sites/default/files/2021-05/Algorithmic%20management%20and%20collective%20bargaining-web-2021.pdf>

employee monitoring and processing of personal data. The regime based on the GDPR Regulation is complemented by the Czech Labour Code and other legislation. In relation to employee monitoring, e.g. installation of CCTV systems, collection of data on computer work, introduction of location devices monitoring employee's movements, etc., which may interfere with the employee's personal sphere, limits are set for employers primarily in Section 316 of the Labour Code. An employer may not, without a compelling reason based on the special nature of the employer's business activity, interfere with the privacy of an employee at the employer's workplaces and common areas by subjecting the employee to overt or covert surveillance, interception and recording of his or her telephone conversations, inspection of electronic mail or inspection of mail addressed to the employee. Where the employer has a compelling reason, based on the specific nature of the employer's business activities, which justifies the introduction of control mechanisms, the employer shall directly inform the employee of the scope of the control and the means of its implementation. Moreover, the Labour Code directly sets out the range of questions that the employer cannot require employees to answer (in the context of the regulation of individual employment relationships). The employer may not request information from the employee that is not directly related to the performance of work and the underlying employment relationship (employment relationship and legal relationships based on a work performance agreement and a work activity agreement). In particular, it may not request information on pregnancy, family and property status, sexual orientation, origin, trade union membership, membership in political parties or movements, membership in a church or religious society, criminal record. The restrictions shall not apply in justified cases relating to property, pregnancy and criminal record, provided that there is a factual reason for this, based on the nature of the work to be performed, and that this requirement is reasonable, or in cases where this Act or a special legal regulation so provides. The employer may not obtain such information even through third parties.

The importance of trade unions and collective bargaining is reflected precisely in the combination of both the definition of cases of exemption and the possibility of monitoring

compliance. The European Trade Union Organisation is of the opinion that social dialogue at all levels, collective bargaining, the exercise of the right to information and consultation, the implementation of the participatory rights of workers' representatives and trade unions are the essential keys to the implementation of the necessary support for workers in order to better achieve a fair working environment in conditions of decent work with the introduction of new technologies and artificial intelligence (robotization of work). Emphasis on the inclusion of the social partners and the implementation of social dialogue is essential to ensure that workers' rights are fully respected.⁶³

A number of specific rules can be laid down in collective agreements for the installation of tracking systems or the processing of obtained data, or the introduction of technology, e.g. for teleworking, etc. Overall, trade unions can help to address the impact of the expansion of the use of artificial intelligence in collective agreements. For example, the scope of employee monitoring can be defined. They can also introduce and provide criteria to improve the transparency of decisions based on the use of AI (e.g. in relation to employee evaluation and compliance with the criteria - employer requirements) or understanding of how results are evaluated and achieved. An example can be seen in the participation of the social partners in the development of national regulation in Spain, where framework agreements imply that the results of the use of AI and employee tracking (any digital platform) are to be made available to trade unions for inspection. Trade unions are to be informed about the use of technology and AI and the resulting data collected must be made available to them, as well as the purpose of its use. At the same time, the right to information is guaranteed to all those who work in the conditions concerned. Thus, social dialogue and collective agreements can contribute to making it mandatory to respect employees' rights by making it mandatory (not only for platform employees) to implement the right to information and consultation vis-à-vis

⁶³ Resolution on the European strategies on artificial intelligence and data. Dostupné z <https://www.etuc.org/en/document/resolution-european-strategies-artificial-intelligence-and-data>

employee representatives on mathematical and algorithmic formulas determining employees' working conditions.⁶⁴

Communication with the social partners should, according to the basic principle of regulating legal relations *neminem ledere*, already take place when planning employer initiatives. A decent work environment urgently requires the involvement of employee representatives in decisions leading to the introduction and definition of the level of digitisation and the use of algorithms. An *ex ante* approach can certainly be preferred to an *ex post* approach, particularly with a view to minimising potential damage and avoiding the negative consequences of digitisation in the new world of work.⁶⁵

Drawing on the challenges and increased effectiveness of collective bargaining, trade unions can be expected to take a proactive approach. The level and influence of collective bargaining will certainly increase if it is possible to offer examples of good practice arising from the activities of trade unions with employers. Trade unions need to be aware of the risks associated with the digitisation and robotisation of work and their position as the main guarantor and insurer of fair working conditions. This raises questions for trade union actions:

- Are you aware to what extent and how algorithmic governance is being implemented and standardised in the enterprise?
- Are you aware of the risks associated with the introduction of modern technologies, or are there other risks that must be perceived and evaluated?
- Does national legislation provide sufficient protection (rules) to counter the risks of introducing algorithmic labour management practices? And should it be changed and made more effective?
- To what extent may digitalization and the use of algorithmic management affect the exercise of the right to information, consultation and overall workers' participatory rights?

⁶⁴ ARANGUI. Ane. Spain's platform workers win algorithm transparency, [online]. socialeurope.eu [cit. 2021-17-05]., 18 March 2021. <https://www.socialeurope.eu/spains-platform-workers-winalgorithm-transparency>

⁶⁵

- What role can trade unions actually play in addressing the issues outlined and how can workers be included in addressing the practices used?
- Is there sufficient awareness of European trends towards the regulation of artificial intelligence and the digitalisation of work? And if so, are employee representatives taking action or are actions being prepared in terms of a European approach?⁶⁶

Trade unions should work through collective bargaining and collective agreements to improve the working environment and achieve fair remuneration, decent working conditions and reconciliation of employees' family and working life. The impact of the aforementioned agenda of artificial intelligence, digitisation and the robotisation of work must not be left behind. The effective exercise of the right to represent workers' interests is the basis for decent and dignified working conditions.

5.2 The relationship between ensuring wage conditions and trade union organisation

Trade union organisation is on a steady decline. There is a decline in trade union membership across Europe and the world. The resulting curve measuring joining trade unions has a downward trend. The challenge for the trade union movement can be understood as the question of how to stop the decline and even make trade union membership more attractive. The present study is not intended to address the issues of marketing and selling the product of trade unionism but, on the other hand, the issue cannot be overlooked. It is closely linked to the nature of collective bargaining, its level and effect. As presented above, it is faced in most countries (specificity e.g. USA) with the universal scope of the collective agreement, which leads to a lax attitude of many employees for joining a union. However, taking into account different marketing practices, examples of good practice can be highlighted. When measuring fair working conditions in a decent work regime, the result is usually clear and uniform. Where there is a strong social dialogue and where employers cooperate fairly with trade unions, there is usually better labour productivity and a higher level of social harmony.

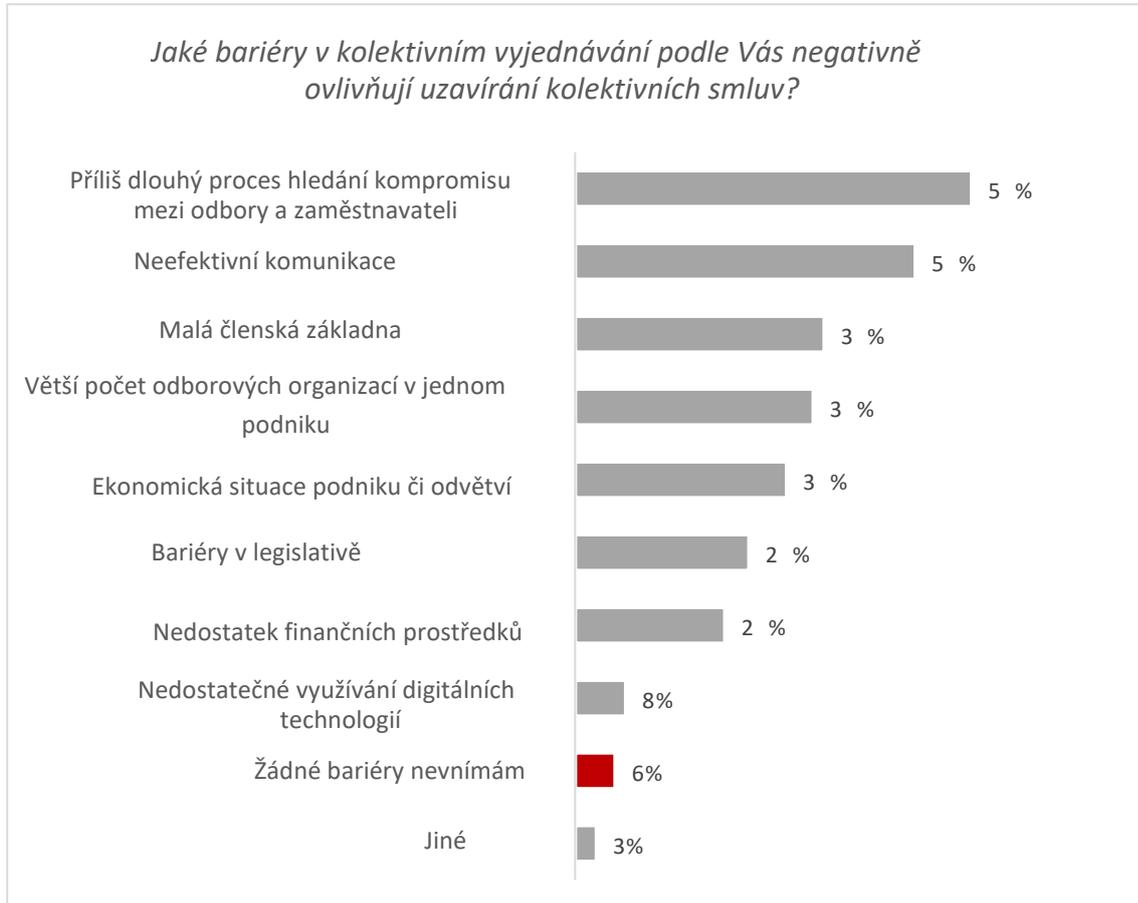
⁶⁶ DE STEFANO, Valerio. TAES, Simon. *Algorithmic management and collective bargaining*. s. 10.

5.3 Barriers to collective bargaining

Achieving fair remuneration and decent working conditions through collective bargaining and the conduct of social dialogue has its limits, barriers and obstacles. Limits can be found not only in the economic situation of the employer and the legal environment, but also in other non-legal factors. The importance of the level of trade union membership in obtaining a strong mandate for collective bargaining has been pointed out in the previous text. The relationship between the quality of the social dialogue conducted in terms of existing outcomes and existing working conditions and the applicability of collective agreements to non-unionised workers was also debated. Factors that influence membership and consequently the level of results achieved also lie in the personnel level and other aspects of the labour market and the real life of workers. Subjective perceptions of possible obstacles to collective bargaining are among the important aspects of social dialogue and the development of collective labour relations *for the future*. The study carried out for the purpose of identifying these barriers shows that limiting factors are also the operational or procedural conditions of trade union activity (e.g. the degree of perceived effectiveness).

Figure: Barriers to collective bargaining⁶⁷

⁶⁷ HUSAŘÍKOVÁ, Ludmila. NESRSTOVÁ, Markéta. Role a význam kolektivního vyjednávání v době 4. průmyslové revoluce. TREXIMA. 2020. s. 29. Dostupné z: https://ipodpora.odbory.info/soubory/uploads/ASO_pr%C5%AFzkum_Role_a_v%C3%BDznam_KV.pdf



What barriers to collective bargaining do you think negatively affect the conclusion of collective agreements?

Too long process of finding a compromise between unions and employers, Ineffective communication, Small membership base, Large number of trade unions in one enterprise, Economic situation of the enterprise or sector, Barriers to legislation, Lack of financial resources, Lack of use of digital technologies, No barriers perceived, Other

The most frequently cited barriers to collective bargaining include the process of finding a compromise between unions and employers taking too long. This was mentioned by up to 58% of respondents. The second most frequently cited problem is ineffective communication in collective bargaining. Half of the respondents consider this to be a barrier. A small membership base is then a problem according to 37% of respondents. 35% of respondents also rank the larger number of trade unions in an enterprise as a barrier to collective

bargaining. Other barriers mentioned include, for example, the economic situation of the enterprise or the sector (31% of respondents), barriers in legislation (26% of respondents), lack of funding (22% of respondents), and the least number of employees consider the lack of use of digital technologies in collective bargaining to be a barrier (8% of respondents). 6% of respondents say they do not perceive any barriers in collective bargaining.⁶⁸

5.4 Specific scope (economic dependants; platform workers; work in the digital age)

Collective bargaining and social dialogue are eligible means to ensure fair working conditions and decent wage. However, despite the universal scope of collective agreements, there is an exclusion of certain groups of people who would benefit from the protection established by collective agreements. These are mainly so-called platform workers. The category of platform workers is not precisely defined, but it is nevertheless crucial to the realisation of the idea of a socially just society.

The platform workers' agenda has recently been the subject of intense social dialogue, including at transnational level. An example could be the European Economic and Social Committee's opinion on fair working conditions in the platform economy.⁶⁹ From the perspective of fair working conditions and the importance of collective bargaining, the challenge lies primarily in considering platform workers not as self-employed but as genuine employees. Viewing activities within platform economy as dependent work covered by labour law norms would ensure that the protective provisions of labour law apply to all persons in the platform economy. In particular, it would be possible to draw on the right to fair working conditions secured by collective bargaining and collective agreement.

⁶⁸ HUSAŘÍKOVÁ, Ludmila. NESRSTOVÁ, Markéta. Role a význam kolektivního vyjednávání v době 4. průmyslové revoluce, s. 28.

⁶⁹ Opinion SOC/645 - European Economic and Social Committee - Fair work in the platform economy EESC-2020-01859-AC. Dostupné z: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=PI_EESC%3AEESC-2020-01859-AC&qid=1624825477187 (dále jako „stanovisko EHSV“)

According to Eurofound studies,⁷⁰ work carried out through platforms is to be a form of employment relationship that uses an online platform to enable an organisation or individuals to access other organisations or individuals to solve problems or provide services for remuneration. The most important aspects of working through platforms are:

- Paid work is organised through an online platform;
- Takes place with the participation of three parties: the online platform, the client and the worker;
- The aim is to perform specific tasks or solve specific problems;
- The work is carried out through external provider or put out to tender;
- Activities are divided into tasks;
- Services are provided on demand.

Capturing platform work and bringing it under the labour law regime will ensure better working conditions for workers. However, at present, it is very complicated to clearly define in which cases platform employees and in which cases only regular self-employed workers are involved. The complexity of platform activities, the lack of terminological coverage and the virtual absence of statistical data (more accurate) make it difficult to assess its growth and thus the potential and importance of social dialogue coverage. According to the OECD,⁷¹ most studies show that work through platforms represents something between 0.5% and 3% of the total workforce. In a group of 16 European countries, only 1.4% of the population aged 16 to 74 works through a platform as their main occupation (ranging from 0.6% in Finland to 2.7% in the Netherlands)⁷². Around 11% of adults have ever worked through a platform⁷³.

⁷⁰ EUROFOUND. Employment and working conditions of selected types of platform work, Publications Office of the European Union, Luxembourg. (2018), s. 9.

⁷¹ OECD. *Employment Outlook 2019: The Future of Work*. OECD Publishing, Paris, s. 55.

⁷² KILHOFFER, Zachary et. all. *Study to gather evidence on the working conditions of platform workers*, Luxembourg: Publications Office of the European Union, 2019. s. 45.

⁷³ Tamtéž, s. 47.

A key point in the whole issue is the identification of platform workers as employees. If platforms generally present themselves more as a service delivery relationship, neither European nor national legislation allows for the direct application of labour law protection. Thus, workers are considered as “self-employed” rather than “employees”, which excludes the application of legislation governing the employment relationship (including health and safety), social protection and taxation. Whilst the European Economic and Social Committee (EESC) believes that there are workers who are genuinely self-employed, it considers that the EU and Member States must examine the application of the principle that a platform worker is deemed to be an employee in all respects unless proven otherwise. This would ensure that the interests of those employees whose main income comes from platforms are protected. However, the EESC believes that workers who are genuinely self-employed should be able to retain this status if they expressly wish to do so. According to the EESC “it is necessary while respecting national competences, to establish a legal framework for workers that precisely defines the relevant employment rules: decent wages and the right to participate in collective bargaining, protection against arbitrary conduct, the right not to be connected for the digital working hours to meet the parameters of dignity, etc.”⁷⁴

In the risks and the low legal coverage may lie the challenge and incentive for trade unions. Ensuring collective bargaining and stronger status for platform workers will increase the trade union movement’s potential to grow its membership base while achieving the fundamental goal of establishing fair working conditions, including remuneration. Social partners can build on the identified risks inherent in the special nature of work. EU-OSHA’s study⁷⁵ shows that working through platforms poses increased physical and social risks, in particular job insecurity and exposure to various risks (road accidents, risks associated with chemicals, etc.) and risks associated exclusively with online activity (cyberbullying, posture disorders, visual fatigue and stress caused by a wide range of factors). Risks are also evident in the fulfilment

⁷⁴ EHSV. [Úřední věstník. C 75, 10.3.2017, s. 33](#), odstavec 4.4.2.

⁷⁵ EU-OSHA (2017). Protecting Workers in the Online Platform Economy. *An overview of regulatory and policy developments in the EU.*

of the protective function of labour law in the context of ensuring safe working conditions. There are also risks of denial of fundamental rights, the right to organize and bargain collectively (secured through independent representatives), insecurity of commitment, low or underpaid wages, the increasing intensity of work demands, the extreme fragmentation of work on a global scale and the lack of participation of workers in social security systems.⁷⁶

The importance for social dialogue and collective bargaining and ensuring fair remuneration lies in the case law of the Court of Justice of the European Union, which shows a certain degree of acceptance of the existence of collective agreements in conjunction with the coverage of the conditions of work of platform workers. One makes an important exception in the application of European competition law. The decision (C-67/96, Albany) shows that when the principle of competition comes into conflict with social policy, collective agreements of employees do not fall within the scope of competition law. In another decision (C-413/13, FNV Kunsten Informatie), the Court confirmed the compatibility of European competition law with collective agreements, holding that self-employed workers were in fact “quasi-self-employed”. This is of particular relevance to work through platforms as it allows the quasi-self-employed to be treated as employees⁷⁷.

Social dialogue and collective bargaining in the area of platform activities is relatively limited. Complications arise mainly from the treatment of workers as self-employed rather than employees. Bargaining exists in some countries (transport and distribution sectors). Measures taken by platforms focus on dealing with criticism of their practices, joining employers’ organisations, self-regulation and subscribing to codes of conduct, including cessation of activities. Actions taken by workers are diverse, including protests and strikes, and do not only occur in the case of platforms for on-site work of qualified workers, but also in other types of

⁷⁶ Stanovisko EHSV, *op. cit.* bod 3.2.

⁷⁷ KILHOFFER, *op.cit.*, s. 85.

platforms, as in the project launched in 2016 by IG Metall, which led to the Frankfurt Declaration in cooperation with Swedish and Austrian trade unions (Fair Crowd Work, 2016).⁷⁸

To address the issue of platform workers and to ensure decent work and fair working conditions, social dialogue is a very crucial protective institution. Collective bargaining opportunities should also be promoted and developed in this area. Social dialogue must be strengthened and coherent at all levels. Social dialogue and collective bargaining must play a key role at all relevant levels, with full respect for the autonomy of the social partners, in order to ensure high-quality work in the platform economy.⁷⁹

⁷⁸ Bod 5.1.2 Stanoviska EHSV

⁷⁹ Bod 1.11 Stanovisko EHSV

6 Summary

The present study dealt with collective bargaining and its impact at the employer on working conditions, including the achievement of fair remuneration for work, in the modern world of work, where the robotisation and digitalisation of work and the rapidly changing specific demands of employers on the performance of work by employees are becoming an essential factor.

Social dialogue, and its formalised form – collective bargaining – have a major impact on the level of working conditions at the employer. The importance lies at all levels of collective bargaining, at the enterprise level, at the sectoral level and at national and transnational levels. Although the sectoral level of collective bargaining in particular faces a number of complications – first and foremost the lack of bargaining partners – collective bargaining is, in the modern world of work and on a European scale, a crucial and central tool for achieving decent working conditions, fair wage, dignified work and reconciliation of family and working life. Labour market environments where the erosion of collective labour relations and social dialogue is evident, and where collective bargaining and collective agreements are not taking place, show lower labour productivity, as well as a lower overall level and quality of labour relations (which is particularly evident in the systems, where collective agreements operate primarily against specified groups of workers⁸⁰, which only supports the importance of collective bargaining and trade union membership in achieving decent working conditions with fair wages).

Adequate minimum wages and minimum income can have a beneficial effect on social mobility in the EU. Similarly, social dialogue and collective bargaining have an impact on

⁸⁰ Srov. např. výsledky ze studie pro trh práce v rámci USA, COOPER, David. MISCHÉL, Lawrence. The erosion of collective bargaining has widened the gap between productivity and pay. Economic Policy Institute [online]. *Epi.org* [cit. 2021-17-05]. Dostupné z: <https://www.epi.org/publication/collective-bargainings-erosion-expanded-the-productivity-pay-gap/>

fairness of working conditions in the workplace and the promotion of fair wage, better working conditions and an overall inclusive labour market.⁸¹

In collective bargaining, trade unions can influence the quality of working conditions. Fair wage, dignified work and reconciliation of family and working life are not only among the main objectives of collective bargaining in the modern world of work (with the emphasis on new technologies and the digitisation and robotisation of work), but also among the main results. The impact of collective bargaining on fair working conditions is clear.

⁸¹ Employment and Social Developments in Europe: 2020 report addresses social fairness and solidarity [online]. *Ec.europa.eu* [cit. 2021-28-04]. Dostupné z: <https://www.age-platform.eu/publications/employment-and-social-developments-europe-2020-report-addresses-social-fairness-and>

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8 Annex 1: Proposal for a directive on adequate minimum wages in the European Union

2020/0310 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on fair minimum wages in the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2) in conjunction with Article 153(1)(b) thereof, having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments, having regard to the opinion of the European Economic and Social Committee⁸², having regard to the opinion of the Committee of the Regions², acting in accordance with the ordinary legislative procedure, whereas:

- (1) According to Article 3 of the Treaty on European Union, the objective of the Union is, inter alia, to promote the well-being of its citizens and to pursue the sustainable development of Europe based on a highly competitive social market economy.
- (2) Article 31 of the Charter of Fundamental Rights of the European Union⁸³ provides that every worker has the right to working conditions which respect his or her health, safety and dignity.
- (3) The European Social Charter provides that all workers have the right to fair working conditions. It recognises the right of all workers to fair remuneration which ensures a fair standard of living for them and their families. In order to ensure the effective exercise of this right, Article 4 of the Charter recognises the role of freely negotiated collective agreements as well as legal methods of setting minimum wages. (4) Chapter II of the European Pillar of Social Rights, proclaimed in Gothenburg on 17 March on 17 November 2017, sets out a set of principles to guide fair working conditions. Principle 6 of the European Pillar of Social Rights affirms the right of

⁸² Úř. věst. C , , s. . 2 Úř. věst. C , , s. .

⁸³ Listina základních práv Evropské unie, 2012/C 326/02 (Úř. věst. C 326/391, 26.10.2012).

workers to fair wages that provide for a decent standard of living. It also states that an adequate minimum wage shall be ensured to meet the needs of workers and their families, taking into account national economic and social conditions, while safeguarding access to employment and the incentives to seek work. Furthermore, it recalls that in-work poverty shall be prevented and that all wages shall be set in a transparent and predictable way, respecting the autonomy of the social partners.

(5) Guideline 5 of Council Decision (EU) 2020/1512 on guidelines for the employment policies of the Member States⁴ calls on Member States to ensure an effective involvement of social partners⁸⁴ in wage setting, to ensure fair wages allowing a decent standard of living and to ensure that wages respond adequately to productivity developments and move towards upward convergence. The guideline also calls on Member States to promote social dialogue and collective bargaining on wage-setting. Furthermore, it calls on Member States and social partners to ensure that all workers are paid fair and equitable wages on the basis of collective agreements or reasonable legal minimum wages, taking into account their impact on competitiveness, job creation and in-work poverty. The 2021 Annual Strategy for Sustainable Growth⁸⁵ states that Member States should take measures to ensure fair working conditions. In addition, the 2020 Annual Strategy for Sustainable Growth⁸⁶ recalled the importance of ensuring fair wages for every worker in a context of growing social disparities. Several recommendations on minimum wages have also been issued to some Member States. However, individual countries may be reluctant to improve their minimum wage settings, as this could, in their view, adversely affect their external cost competitiveness.

(6) Better working and living conditions, provided for, inter alia, by an adequate level of minimum wages, benefit workers and enterprises in the Union and are a prerequisite for inclusive and sustainable economic growth. Reducing the wide disparities in the extension and adequacy of minimum wage protection contributes to greater fairness in the EU labour market and promotes economic and social progress and upward convergence. Competition in the single market should be based on high social standards, innovation and productivity gains ensuring a level playing field.

(7) Minimum wages, when set at an adequate level, protect the income of disadvantaged workers, help to ensure a decent living and prevent income losses in times of adversity, as recognised in ILO Convention No 131 concerning the establishment of a system for setting

84 Rozhodnutí Rady (EU) 2020/1512 ze dne 13. října 2020 o hlavních směrech politik zaměstnanosti členských států (Úř. věst. L 344, 19.10.2010, s. 22).

85 Sdělení Komise COM(2020) 575 final.

86 Sdělení Komise COM(2019) 650 final.

minimum wages. Minimum wages contribute to sustaining domestic demand, increasing the incentive to work, reducing wage inequalities and the incidence of in-work poverty.

(8) Women, young workers, workers with low qualification and persons with disabilities are more likely than other groups of workers to receive minimum or low wages. During economic downturns, such as the COVID-19 crisis, the role of minimum wages in protecting low-income workers becomes more important and is essential to support a sustainable and inclusive economic recovery. Progress on minimum wages contributes to gender equality, closing the gender pay and pension gaps and protecting women from poverty.

(9) The COVID-19 pandemic is considerably affecting the service sector and small enterprises, which have a large share of minimum wage workers. Minimum wages are also important in view of structural trends that are reshaping labour markets and are increasingly characterised by a high share of non-standard and precarious jobs. These trends have led to a greater polarisation of jobs, which in most Member States has led to an increase in the share of low-paid and low-qualified occupations and, in some of them, to greater wage inequality.

(10) Protection in the form of a minimum wage exists in all Member States, in some of which it is the result of legislation (“statutory minimum wages”) and collective agreements, while in others it is ensured exclusively through collective agreements.

(11) For low-paid occupations, protection in the form of minimum wages under collective agreements is in most cases adequate; by contrast, statutory minimum wages are low in several Member States compared to other wages in the given economy. In nine Member States, the legal minimum wage failed to provide single parents with sufficient income to overcome the poverty line in 2018. In addition, the adequacy of statutory minimum wages is adversely affected by the reduced rates (derogations) and deductions applied to them.

(12) Not all workers are protected by the minimum wage in the Union. Because the applicable rules are not respected, some workers in certain Member States are paid less than the legal minimum wage even though it applies to them. According to the available evidence, this non-compliance particularly affects women, young workers, people with disabilities and workers in agriculture. In Member States where protection in the form of a minimum wage is provided only through collective agreements, it is estimated that the proportion of workers who are not protected ranges between 2% and 55% of all workers.

(13) While the strong position of collective bargaining at sectoral or inter-sectoral level contributes to ensuring adequate minimum wage protection, the traditional structures of collective bargaining have been weakening in recent decades, both as a result of the structural

shift of the economy towards less unionised sectors and the decline in trade union membership due to the emergence of atypical and new forms of work.

(14) In accordance with Article 154 of the Treaty on the Functioning of the European Union, the Commission consulted the social partners in a two-stage process on possible measures to address the issue of adequate protection in the form of minimum wages in the Union. The social partners did not agree to enter into negotiations on these matters. However, in the light of the results of the consultations with the social partners, it is important to take action at Union level to ensure that workers in the Union are protected by adequate minimum wages.

(15) This Directive establishes minimum requirements at Union level to ensure that minimum wages are set at a reasonable level and that workers are ensured the protection provided for minimum wages, whether in the form of a legal minimum wages or in the form of wages set by collective agreements as defined for the purposes of this Directive.

(16) In full compliance with Article 153(5) of the Treaty on the Functioning of the European Union, it is not the objective of this Directive to harmonise the level of minimum wages in the Union or to establish a uniform mechanism for setting minimum wages. This Directive is without prejudice to the freedom of Member States to set legal minimum wages or to promote access to protection in the form of minimum wages on the basis of collective agreements, according to the customs and differences of each country and with full respect for the contractual freedom of the social partners. This Directive does not oblige Member States in which minimum wage protection is based exclusively on collective agreements to introduce a legal minimum wage or to make collective agreements generally applicable. Neither does it set the level of wages, which is a matter for the contractual freedom of the social partners at national level and the respective competence of the Member States.

(17) This Directive should apply to workers who have concluded an employment contract or have an employment relationship defined by the legislation, collective agreements or practices in force in each Member State, taking into account the criteria for determining the status of a worker as laid down by the Court of Justice of the European Union. If they meet those criteria, domestic workers, call-out workers, casual workers, persons performing casual work, persons working on the basis of a voucher, ostensibly self-employed persons, platform workers, interns and apprentices may be included in the scope of this Directive. Genuinely self-employed workers are not covered by this Directive as they do not meet the criteria. Abuse of the self-employed status as defined by national law, whether at national level or in cross-border situations, is a form of false reporting, which is often linked to undeclared work. Ostensible self-employment occurs when a person is declared self-employed, although he or she fulfils the conditions characteristic of an employment relationship, in order to circumvent certain legal or tax obligations. Such

persons should be included in the scope of this Directive. The assessment of whether an employment relationship exists in a particular case should be based on the facts relating to the actual performance of the work and not on the description of the relationship by the parties.

(18) Well-functioning collective bargaining on wage setting is an important means of ensuring that workers are protected by an adequate minimum wage. In Member States with a legal minimum wage, collective bargaining supports the overall development of wages and therefore contributes to improving the adequacy of minimum wages. In Member States where protection in the form of a minimum wage is provided exclusively by collective bargaining, its level, as well as the proportion of workers protected by it, is directly determined by the nature of the functioning of the collective bargaining system and the extent to which it is spread in the country. Strong and well-functioning collective bargaining and the widespread use of sectoral or cross-sectoral collective agreements benefit the adequacy of minimum wages and their extension.

(19) In the context of the declining coverage of collective bargaining, it is essential that Member States promote it in order to facilitate workers' access to minimum wage protection through collective agreements. Member States with a high degree of collective bargaining tend to have a low proportion of low-wage workers and a high minimum wage. In Member States with a low proportion of low-wage workers, the collective bargaining coverage rate exceeds 70%. Similarly, in most Member States where the minimum wage is high relative to the median wage, the collective bargaining coverage rate is above 70%. All Member States should be encouraged to promote collective bargaining, but where it is not covered to that extent, they should, in consultation and/or agreement with the social partners, establish a framework for mediation procedures and institutional arrangements that create the conditions for collective bargaining, or strengthen such a framework where it already exists. This framework should be laid down by law or by tripartite agreement.

(20) Sound rules, procedures and practices for setting and updating legal minimum wages are essential to ensure adequate minimum wages and to preserve jobs and the competitiveness of enterprises, including small and medium-sized enterprises. These include a number of elements that help to maintain the adequacy of statutory minimum wages, including criteria and indicators for assessing adequacy, regular and timely updates, the existence of advisory bodies and the involvement of the social partners. Their early involvement is another element of good governance that enables informed and inclusive decision-making.

(21) Minimum wages are considered adequate if they are fair in relation to the distribution of wages in a country and ensure a decent standard of living. The reasonableness of legal minimum wages shall be determined taking into account national socio-economic conditions, including employment growth, competitiveness and the situation in different regions and sectors. Their

adequacy should be assessed at least in terms of their purchasing power, productivity developments and their relationship to the level, distribution and growth of gross wages. Indicators commonly used at international level, such as 60% of the median gross wage and 50% of the average gross wage, can provide guidance in assessing the adequacy of the minimum wage in relation to the level of gross wages.

(22) In order to promote the adequacy of minimum wages for all groups of workers, the use of derogations from the legal minimum wage and the deductions thereof should be kept to a minimum and it should be ensured that the social partners have an appropriate say in the definition of such derogations and deductions. Some deductions from the legal minimum wage may be justified by a legitimate aim, including overpayments or deductions ordered by a judicial authority. Conversely, other deductions, such as those relating to equipment necessary for the performance of work or deductions for contributions in kind, such as accommodation, may be considered unjustified or inadequate.

(23) For national frameworks for statutory minimum wages to function effectively, an effective enforcement system, including in-site controls and inspections, is needed. Close cooperation with the social partners is also needed for enforcement authorities to work as effectively as possible, including addressing key issues such as in subcontracting, ostensible self-employment or unrecorded overtime. In addition, workers should have easy access to relevant information on the applicable legal minimum wages in order to ensure an adequate degree of transparency and predictability regarding their working conditions.

(24) The effective application of minimum wage protection provided for by law or collective agreements is essential in the performance of public contracts and concessions. It may happen that, in the course of their performance or in the downstream subcontracting chain, collective agreements which provide for minimum wage protection in the sector concerned are not respected and workers are thus paid less than the wage levels agreed in sectoral collective agreements. In order to avoid such situations, economic operators must pay their workers the wages that have been set by the collective agreements for the sector and geographic area in question, and thus comply with the applicable labour law obligations in accordance with Articles 18(2) and 71(1) of Directive 2014/24/EU of the European Parliament and of the Council⁸⁷ on public procurement, Article 36(2) and Article 88(1) of Directive 2014/25/EU of the European Parliament

87 Směrnice Evropského parlamentu a Rady 2014/24/EU ze dne 26. února 2014 o zadávání veřejných zakázek a o zrušení směrnice 2004/18/ES (Úř. věst. L 94, 28.3.2014, s. 65).

and of the Council⁸⁸ on the award of contracts by entities operating in the water, energy, transport and postal services sectors and Articles 30(3) and 42(1) of Directive 2014/23/EU of the European Parliament and of the Council⁸⁹ on the award of concessions.

(25) Reliable monitoring and data collection is essential for minimum wages to provide effective protection. The Commission should report annually to the European Parliament and the Council on its assessment of the evolution of the adequacy of minimum wages and their extension, on the basis of annual data and information to be provided by Member States. Progress should also be monitored in the context of the economic and employment policy coordination process at Union level. In this context, the Employment Committee should assess the situation in the Member States on an annual basis on the basis of the Commission's reports and other multilateral observational tools such as benchmarking.

(26) Workers should be able to exercise their right of defence when their rights relating to the protection provided by the minimum wage are violated. In order to ensure that workers are not deprived of their rights, and without prejudice to the specific forms of redress and dispute resolution provided for in collective agreements, including collective dispute resolution systems, Member States should take the necessary measures to ensure that workers have access to effective and unbiased dispute resolution and redress rights, including adequate compensation, as well as effective protection from any form of harm should they decide to exercise their right of defence.

(27) The Commission should carry out an evaluation to review the effectiveness of the implementation of this Directive. The Council and the European Parliament should be informed of the results of this review.

(28) The reforms and measures adopted by the Member States to promote the protection of workers in the form of an adequate minimum wage, while moving in the right direction, are not coherent and systematic. In addition, individual countries may be reluctant to improve the adequacy of minimum wages and their extension, as this could, in their view, adversely affect their external cost competitiveness. Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of their scope and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of

88 Směrnice Evropského parlamentu a Rady 2014/25/EU ze dne 26. února 2014 o zadávání zakázek subjekty působícími v odvětví vodního hospodářství, energetiky, dopravy a poštovních služeb a o zrušení směrnice 2004/17/ES (Úř. věst. L 94, 28.3.2014, s. 243).

89 Směrnice Evropského parlamentu a Rady 2014/23/EU ze dne 26. února 2014 o udělování koncesí (Úř. věst. L 94, 28.3.2014, s. 1).

subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the same Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(29) This Directive lays down minimum requirements and therefore does not interfere with the right of Member States to adopt or maintain more favourable provisions. Rights acquired under the existing national legal framework should continue to apply unless this Directive introduces more favourable provisions. The implementation of this Directive shall not be used to restrict existing workers' rights, nor shall it be regarded as a valid reason for limiting the general level of protection afforded to workers in the areas covered by this Directive.

(30) In implementing this Directive, Member States should avoid imposing administrative, financial or legal constraints that hinder the establishment and development of micro, small and medium-sized enterprises. Member States are therefore invited to assess the impact of their implementing act on small and medium-sized enterprises to ensure that they are not disproportionately affected, with particular regard to micro-enterprises and the administrative burden, and to publish the results of this assessment. If Member States find that micro, small and medium-sized enterprises are disproportionately affected, they should consider whether to introduce measures to support these enterprises to adapt their remuneration structures to the new requirements.

(31) The Technical Support Instrument⁹⁰ and the European Social Fund Plus⁹¹ are available to Member States for the purpose of developing or improving the technical aspects of minimum wage frameworks, including adequacy assessments, monitoring and data collection, widening access, as well as advocacy and general capacity building in relation to the implementation of those frameworks,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

1. GENERAL PROVISIONS

Article 1

2. Subject matter

90 Návrh nařízení Evropského parlamentu a Rady ze dne 28. května 2020, kterým se zřizuje nástroj pro technickou podporu, COM(2020) 409 final.

91 Návrh nařízení Evropského parlamentu a Rady o Evropském sociálním fondu plus, COM(2018) 382 final.

3. In order to improve working and living conditions in the Union, this Directive establishes a framework for:

- a) setting adequate minimum wages;
- b) access of workers to the protection afforded by a minimum wage, either in the form of wages set by collective agreements or in the form of a statutory minimum wage, if established.

This Directive is without prejudice to full respect for the autonomy of the social partners and their right to negotiate and conclude collective agreements.

4. This Directive is without prejudice to the choice of Member States to set statutory minimum wages or to promote access to protection in the form of minimum wages set by collective agreements.

5. No provision in this Directive shall be interpreted as imposing an obligation on Member States where wages are fixed exclusively by collective agreements to introduce a statutory minimum wage or to make collective agreements generally applicable.

Article 2

6. **Scope**

This Directive shall apply to workers in the Union who have concluded an employment contract or have an employment relationship defined by law, collective agreements or custom in force in each Member State, taking into account the case-law of the Court of Justice of the European Union.

Article 3

7. **Definitions**

For the purposes of this Directive:

- 1) “Minimum Wage” means the minimum remuneration which an employer is required to pay workers for work done during a given period, calculated on the basis of time or performance;
- 2) “Statutory Minimum Wage” means the minimum wage laid down by law or other binding legislation;
- 3) “Collective Bargaining” means all negotiations which take place between an employer, a group of employers or one or more employers’ organizations on the one hand

and one or more workers' organizations on the other, for the purpose of determining the terms and conditions of employment; and/or regulating the relations between employers and workers; and/or regulating the relations between employers or their organizations and an organization or organizations of workers;

4) "Collective Agreement" means any written agreement concerning terms and conditions of employment concluded by the social partners on the basis of collective bargaining;

5) "Extension of Collective Bargaining " means the proportion of workers covered by a collective agreement at national level.

Article 4

8. Promotion of collective bargaining on wage-setting

1. In order to achieve a greater extension of collective bargaining, Member States shall, after consulting the social partners, take at least the following measures:

a) support the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting at sectoral or inter-sectoral level;

b) promote constructive, meaningful and informed wage negotiations between the social partners.

2. In addition, Member States in which the prevalence of collective bargaining does not reach 70% of workers as defined in Article 2 shall establish a framework to create the conditions for collective bargaining, either by law in consultation with or by agreement with the social partners and shall draw up an action plan to promote collective bargaining. The action plan shall be published and communicated to the European Commission.

CHAPTER II

9. STATUTORY MINIMUM WAGES

Article 5

10. Adequacy

1. Member States with a statutory minimum wage shall take the necessary measures to ensure that the setting and updating of statutory minimum wages are guided by criteria established to promote adequacy with a view to achieving decent working and living conditions,

social cohesion and upward convergence. Member States shall define these criteria in accordance with their national procedures, either in the relevant national legislation, in decisions of the competent authorities or in tripartite agreements. The criteria shall be defined in a stable and clear manner.

2. The national criteria referred to in paragraph 1 shall include at least the following elements:

- a) the purchasing power of the legal minimum wage, taking into account the cost of living and the contribution of taxes and social benefits;
- b) the general level of gross wages and their distribution;
- c) the rate of growth of gross wages;
- d) labour productivity developments.

3. In order to assess the adequacy of statutory minimum wages in relation to the general level of gross wages, Member States shall use indicative benchmarks, such as those commonly used at international level.

4. Member States shall take the necessary measures to ensure that statutory minimum wages are regularly and timely updated in order to maintain their adequacy.

5. Member States shall set up advisory bodies to advise the competent authorities on statutory minimum wages.

Article 6

Derogations and deductions 1. Member States may allow a variation in the legal minimum wage for certain groups of workers. Member States shall keep such derogations to a minimum and shall ensure that they are non-discriminatory, proportionate, limited in time where relevant and objectively and reasonably justified by a legitimate aim.

2. Member States may authorise by law deductions which reduce the remuneration paid to workers below the level of the legal minimum wage. Member States shall ensure that such deductions from the legal minimum wage are necessary, objectively justified and proportionate.

Article 7

11. **Involvement of the social partners in setting and updating the statutory minimum wage**

Member States shall take the necessary measures to ensure the timely and effective involvement of the social partners in the setting and updating of the statutory minimum wage, including through participation in the advisory bodies referred to in Article 5(5), and in particular as regards:

the choice and application of the criteria and indicative reference values referred to in Article 5(1), 5(2) and 5(3) for setting the level of the statutory minimum wage;

- a) the updating of the level of the statutory minimum wage referred to in Article 5(4);
- b) the establishment of the derogations from and deductions from the statutory minimum wage referred to in Article 6;
- c) collecting data and carrying out studies to inform the authorities responsible for setting the statutory minimum wage.

Article 8

12. **Effective access of workers to the statutory minimum wage**

Member States shall take the following measures, in cooperation with the social partners where appropriate, to improve workers' access to protection in the form of a legal minimum wage:

- 1) Reinforce controls and field inspections by labour inspectorates or bodies responsible for the enforcement of legal minimum wages. Controls and inspections must be adequate and non-discriminatory;
- 2) Develop guidelines to enable enforcement bodies to actively target non-compliant enterprises and hold them liable;
- 3) Ensure that information on the legal minimum wage is published in a clear, comprehensive and easily accessible manner.

CHAPTER III

13. **HORIZONTAL PROVISIONS**

Article 9

14. **Public procurement**

In accordance with Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU, Member States shall take appropriate measures to ensure that economic operators comply with the wages set for the relevant sector and geographical area by collective agreements and the legal minimum wage, where set, when performing public contracts or concessions.

Article 10

15. Monitoring and data collection

1. Member States shall mandate their competent authorities to develop effective data collection tools to monitor the extension of minimum wages and their adequacy.
2. Member States shall submit such data to the Commission before 1 October each year:
 - a) In the case of statutory minimum wages:
 - i) the level of the statutory minimum wage and the proportion of workers to whom it applies; ii) existing derogations and the proportion of workers to whom they apply; iii) existing deductions; iv) the extent to which collective bargaining is extended.
 - b) In the case of protection in the form of a minimum wage, solely on the basis of collective agreements:
 - i) the distribution of such wages in deciles weighted by the proportion of workers to whom they apply;
 - ii) the extent to which collective bargaining is extended;
 - iii) the level of wages of workers not protected by minimum wage through collective agreements and its relationship to the level of wages of workers covered by such minimum wage protection.

The statistics and information referred to in this subparagraph shall be provided by the Member States broken down by sex, age, disability, company size and by sector. The first report shall cover the years [X, Y, Z: *three years preceding the year of implementation in national law*] and shall be submitted by [1 October YY: *one year after implementation in national law*]. Member States may omit statistics and information not available before [*date of implementation in national law*].

The Commission may request Member States to provide it with additional information on a case-by-case basis if it considers such information necessary to monitor the effective implementation of this Directive.

3. Member States shall ensure that information relating to minimum wage protection, including collective agreements and the wage provisions contained therein, is transparent and publicly available.
4. The Commission shall examine the data provided to it by the Member States in the reports referred to in paragraph 2 and shall report annually to the European Parliament and the Council.
5. The Employment Committee established under Article 150 of the TFEU shall, on the basis of a report from the Commission, examine annually the extent to which collective bargaining on wage-setting is enforced in the Member States and assess its adequacy.

Article 11

16. **Right to redress and protection against adverse treatment or consequences**

1. Without prejudice to the specific forms of redress and dispute resolution provided for in collective agreements where appropriate, Member States shall ensure that workers, including those whose employment has ended, have access to effective and unbiased dispute resolution and to the right to redress, including adequate compensation, where their rights in respect of legal minimum wages or minimum wage protection under collective agreements have been violated.
2. Member States shall take the necessary measures to protect workers, including their workers' representatives, from any adverse treatment by the employer and adverse consequences arising from a complaint lodged with the employer or from any proceedings brought to enforce rights relating to legal minimum wages or minimum wage protection under collective agreements.

Article 12

17. **Sanctions**

Member States shall establish penalties for infringements of the provisions of national law. The penalties established shall be effective, proportionate and dissuasive.

CHAPTER IV

18. **FINAL PROVISIONS**

Article 13

19. **Implementation**

Member States may delegate the social partners to implement this Directive if the social partners jointly request it. In such a case, Member States shall take all necessary measures to ensure that the results required by this Directive are guaranteed at all times.

Article 14

20. Dissemination of information

Member States shall ensure that national measures implementing this Directive in national law, together with the relevant provisions relating to the subject matter referred to in Article 1 which are already in force, are communicated to workers and employers, including small and medium-sized enterprises.

Article 15

21. Evaluation and review

The Commission shall carry out an evaluation of the Directive within [*five years from the date of implementation* in national law].

The Commission shall then submit a report to the European Parliament and the Council on the review of the implementation of the Directive and, where appropriate, propose legislative amendments.

Article 16

22. Prohibition of a reduction in the level of legal protection and more favourable provisions

1. This Directive shall not be a valid ground for reducing the general level of protection already afforded to workers in the Member States.

2. This Directive shall be without prejudice to the right of Member States to apply or adopt laws, regulations or administrative provisions which are more favourable to workers or to encourage or allow the application of collective agreements which are more favourable to workers.

3. This Directive shall be without prejudice to any other rights conferred on workers by other legal acts of the Union.

Article 17

23. Implementation

1. Member States shall adopt the provisions necessary to comply with this Directive by [*two years from the date of entry into force*]. They shall forthwith inform the Commission thereof.

These provisions adopted by the Member States shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 18

Entry into force This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 19

24. **Designation**

This Directive is
addressed to the
Member States.

In Brussel, on

*On behalf of the
European
Parliament*

*On
behalf
of the
Council*