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Study on Collective Bargaining in the MET industries 2023

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AUSTRIA

Some figures

- **Population**: 8.98 million (2022)
- **Number of employees in your country:** 4.49 million (Q3 2022)
- **Number of employees in the metal industry**: 134.074 (2021)
- **Collective bargaining coverage rate:** 98 %
- **Proportion of unionised workers**: 1.2 million members in the ÖGB (Österreichische Gewerkschaftsbund)
- **Main level of collective bargaining:** National sectoral collective bargaining

PRELIMINARY REMARKS

In Austria, there are no legal wage or salary increases, i.e., wages are set only on the basis of collective agreements which means that employees are regularly paid higher wages and salaries. Collective agreements ensure fair working conditions.

A collective agreement
- creates the same minimum standards for pay and working conditions for all employees in a sector,
- prevents workers from being played off against each other to their disadvantage,
- creates a greater balance of power between employees and employers, and
- ensures a level playing field between companies in an industry.

With the right to negotiate collective agreements, the State grants the bodies that are able to negotiate collective agreements the opportunity to organize themselves autonomously. The success of this system in Austria is demonstrated in particular by the comparatively low number of strikes on a global scale.

The development of collective agreements started in the 19th century. They were first negotiated at the company or local level. In Austria, the first comprehensive collective agreement for book printers was concluded in 1896. By the start of the First World War, around 500 collective agreements had already been concluded. Collective agreements were first declared to be the binding norm for all individual contracts within a certain period of validity in 1919.

1. The actors of collective bargaining

On the **employers'** side, collective agreements are mostly concluded by the organization of the Austrian Federal Economic Chamber (primarily the Fachverbände or Fachgruppen), and on the **employees'** side by the Austrian Federation of Trade Unions (ÖGB).

There are also private employers' associations, particularly for the banking and insurance sectors, which have concluded collective agreements for their member companies. These take priority over the collective agreements concluded by the Economic Chamber.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

Collective agreements are binding and directly affect the individual employment relationship. Collective agreements must be negotiated within the bounds of the law. The legal basis for collective agreements is paragraphs 2 to 21 of the Labor Constitution Act. The provisions in collective agreements may not be repealed or limited by company agreements (Betriebsvereinbarung) or by individual agreements. Additional agreements are only valid if they are more favourable to the employee or concern matters not covered by the collective agreement.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

Which collective agreement is applicable to the employment relationship depends on the employers' association to which the employer belongs. However, it is irrelevant whether the employee belongs to the trade union involved in the collective agreement. The acquisition of a business license is associated with membership in the organization of the Chamber of Commerce. An employment relationship is always subject to only one collective agreement. If an employer with multiple collective bargaining agreements has two or more businesses to which different business licenses apply, the collective agreement that best corresponds to the employee in terms of professional and local conditions shall apply.

Example:
X-GmbH operates a factory in Bruck an der Mur and a trading company. The employees of the factory are subject to an industry collective agreement and the employees of the trading company to the trade collective agreement.

If there is no organizational separation, the collective agreement to be applied is the one that corresponds to the branch of industry that has the decisive economic significance for the business.

Example:
Mr. Z operates a car repair shop with 3 mechanics and a used car dealership. The car repair shop turnover exceeds the trade business. All employees, including the sales staff, are subject to collective agreement of the car repair shop.

If there is neither an organizational separation nor a significant economic importance, the collective agreement with the largest number of employees is to be applied.

3. The topics of collective bargaining

The collective agreement regulates all important mutual rights and obligations arising from an employment relationship. These are primarily regulations relating to remuneration (minimum wages), special payments (vacation and Christmas bonuses) and working hours.

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

Negotiations take place at sectoral level. Company collective agreements (Firmenkollektivverträge) are thus ruled out in any case insofar as individual employers generally cannot effectively conclude their own collective agreements.

b- Can company agreements derogate sector agreements?

Company agreements (Betriebsvereinbarung) and employment contracts may not, in principle, contain provisions that are less favourable than collective agreements, unless a collective agreement expressly permits this.

c- Can you derogate agreements in a more favourable way to the company?

The crucial factor for the possibility of a differentiation from the collective agreement is always whether it is more favourable for the employee.

5. The application of collective agreements (erga omnes, signatory parties, others)

The collective agreement applicable to the employment relationship depends on the employer's association to which the employer belongs. However, it is irrelevant whether the employee belongs to the trade union involved in the conclusion of the collective agreement. Indeed, applying the collective agreement in Austria is mandatory which means that an employer cannot choose which collective agreement is applicable to his business or agree on this with his/her employees.

6. The duration of the agreements

A collective agreement may be concluded for a limited period of time. It then expires automatically through the passage of time. However, if it is concluded for an indefinite period, there are several ways in which the collective agreement can lose its validity. For example, by termination or dissolution by mutual agreement. Once the collective agreement has expired, its effects remain in force for the employment relationships covered by it until a new collective agreement comes into force. This is the so-called “after-effect”.

7. Social Peace

In Austria, the strike is not of any significance. The strong social partnership in Austria has so far mostly prevented strikes in the country. There is no statutory right to strike in Austria[1], and there are no principles developed by case law to compensate for this shortcoming. Assessing the consequences of a strike is always a matter of evaluating the individual case. In Austria, the strike is reduced to what it is: a question of power.

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[1] Austria does not have a legislated right to strike and there are also no principles developed by case law to compensate for this shortcoming. However, the right to strike, which has been confirmed by decisions of the European Court of Human Rights and the Constitutional Court (Verfassungsgerichtshof in Austria), should exist in principle on the basis of Art. 11 of the Human Rights Convention4 (EMRK) and Art. 28 of the Charter of Fundamental Rights5 (GRC). Yet, this has not been clearly confirmed by legal literature, and it is, thus, arguable.

BELGIUM

Some figures

- **Population**: 11.70 million (Q1 2023)[1]
- **Number of employees in your country:** 3.11 million (Q1 2023)[2]
- **Number of employees in the metal industry**: 331.130 (Q1 2023)[3]
- **Collective bargaining coverage rate:** 96% (2019)[4]
- **Proportion of unionised workers**: 49.10% (2019)[5]
- **Main level of collective bargaining:** top-down hierarchy (national ➔ sector ➔company level). Depending on the sector, the main level is either sector level, company level or a combination (the latter goes for Belgian metal industry).

PRELIMINARY REMARKS

The origin of collective bargaining in Belgium dates back to the late 19th and early 20th century, characterized by the rise of labour movements and the need to address workers' rights and working conditions during the industrial revolution. Social change was often the result of conflict (i.e. by workers and trade unions taking industrial action), rather than of dialogue between trade unions and employers and employers' organizations.

In the aftermath of World War II, the modern Belgian collective bargaining model saw the light of day with the "Draft Pact of Social Solidarity". The Social Pact heralded change: consultation on an equal footing between workers and employers was to become the norm, resulting in the use of the notion "social partners" when collectively referring to the parties involved in collective bargaining. Later legal initiatives further shaped the Belgian collective bargaining model by:

- formalizing the principles of freedom of association,
- creating joint committees for all sectors and industries: these committees bring together representatives from employers and workers to engage in social dialogue to address issues such as wages, working conditions, and other employment-related matters and to negotiate collective labour agreements ("CLAs"),
- establishing laws on the creation of social bodies (works council, health & safety committee) and union delegations on company level.

Collective bargaining remains a fundamental aspect of Belgium's industrial relations, providing a structured platform for negotiations between employers/employers' organizations and trade unions to address labour-related issues and to reach mutually agreed-upon solutions.

[1] https://statbel.fgov.be/nl/themas/bevolking/structuur-van-de-bevolking
[2] https://tools.agoria.be/WWW.wsc/rep/prg/ApplContent?TopicID=11504
[3] https://tools.agoria.be/WWW.wsc/rep/prg/ApplContent?TopicID=11504
[4] https://stats.oecd.org/index.aspx?DataSetCode=CBC
[5] https://www.ilo.org/shinyapps/bulkexplorer11/?lang=en&id=ILR_TUMT_NOC_RT_A

Collective bargaining on interprofessional level structurally occurs every 2 years. These bi-annual interprofessional negotiations constitute the framework for the different business sectors and companies and for possible further negotiations on these levels.

A remarkable characteristic of Belgian social law is the automatic wage indexation that was installed in the early 20th century to safeguard wages against inflation. The wage indexation mechanisms are ruled by CLAs on the business sector level. Opposite to the automatic wage indexation, a specific 1996 Belgian competition law strictly limits the possibilities for further wage increases by creating a maximum wage increase margin to safeguard Belgium's competition position vis-à-vis its economically most important neighboring countries (i.e. Germany, France and the Netherlands). The result of the co-existence of the automatic wage indexation and the maximum wage increase margin systems, is that the possibilities for the social partners to negotiate on the core topic of collective bargaining, i.e. wages and wage increases, is rather limited. This results in both trade unions and employers' organizations questioning whether the automatic wage indexation and/or the maximum wage increase margin should be upheld. However, employers' organizations and trade unions have different views on how the mechanisms on indexations and wage increase margins should look like in the future.

1. The actors of collective bargaining

a- Employers´ organisations

Only employers' organizations that are acknowledged as "representative" have an official role in collective bargaining. Employers' organizations are organized on interprofessional level and on professional level (also referred to as business sector level):

- On interprofessional level, the Federation of Enterprises in Belgium (FEB, *Verbond van Belgische Ondernemingen* (VBO), *Fédération des Entreprises Belges* (FEB)) is the only representative employers' organization. Its members are employers' organizations that are linked to different business sectors.
- On professional/business sector level, there are several employers' organizations. Each employers' organization is linked to a specific business sector (e.g. Agoria for metal industry, Essenscia for the chemical industry and life sciences, Comeos for trade and services, etc.). Its members are individual employers.

b- Trade unions

Only trade unions that are acknowledged as "representative" have an official role in collective bargaining.
Regarding collective bargaining, the representative trade unions are organized on an interprofessional level and a professional level (also referred to as business sector level):

- On interprofessional level, there are 3 representative trade unions. Upon their creation, these trade unions were inspired by different political views:
    1. *Algemeen Belgisch Vakverbond* (ABVV)/*Fédération Générale de Travail de Belgique* (FGTB), inspired by a socialist political view

2. *Algemeen Christelijk Vakverbond* (ACV)/*Confédération des Syndicats Chrétiens* (CSC), inspired by a Christian political view
3. *Algemene Centrale der Liberale Vakbonden van België* (ACLVB)/*Centrale Générale des Syndicats Libéraux de Belgique* (CGSLB), inspired by a liberal political view

- On professional/business sector level, the ABVV/FGTB and ACV/CSC have created separate occupational centers that are each linked to a specific business sector (e.g. ACV-CSC Metea, les Metallurgistes de Wallonie et de Bruxelles (MWB) et ABVV-Metaal for the metal industry).
  ACLVB/CGSLVB has no decentralized structure and is active on the business sector level through its centralized structure.

  ABVV/FGTB and ACV/CSC also have separate regional divisions for the servicing activities to their members (e.g. payment of unemployment benefits, legal advice).
  ACLVB/CGSLVB has no decentralized structure and provides services to its members through its centralized structure. This regional level and service activity does not have a direct role in the collective bargaining process.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

Belgian law provides a strict hierarchy amongst the different sources of labour law. As demonstrated below, CLAs are the second most important source of labour law in Belgium:

- the mandatory provisions of the law (including international treaties, international regulations, regional decrees/ordinances, royal and ministerial decrees)
- the CLAs declared generally binding in the following order:
  i. the CLAs concluded in the National Labour Council
  ii. the CLAs concluded in a joint committee
  iii. the CLAs concluded in a joint sub committee
- the CLAs that were not declared generally binding, but that the employer has signed or that were signed by an organisation of which the employer is a member, in the following order:
  iv. the CLAs concluded in the National Labour Council
  v. the CLAs concluded in a joint committee
  vi. the CLAs concluded in a joint sub committee
  vii. the CLAs concluded outside a joint committee (such as CLAs concluded on company level)
- the written individual employment contract
- the CLA that is concluded in a joint committee and that is not declared universally applicable, when the employer (although he has not signed the CLA or is not affiliated to an

organisation that has signed it) resides under the joint committee in which the CLA was concluded
- the company's work rules
- the supplementary provisions of the law
- the verbal individual agreement
- custom

b. In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

The rules of the highest source of law prevail over rules of a lower level source.

3. The matters of collective bargaining (issues of negotiation)

Collective bargaining can be done for a wide range of topics such as, but without being limited to, salary and benefits (rates, increases, premiums, bonuses, indexation, fringe benefits, occupational insurance schemes related to health and pension, …), expense reimbursements (e.g. commuting costs, occupational equipment, …), working time and organization (e.g. overtime, night work, on-call work, shift work, …), job classification schemes, vocational training, leaves and absences (e.g. working time compensation, seniority leave, additional leave, leave for private reasons, …), social relations (e.g. rights and obligations of employers and trade unions), temporary unemployment, career interruption and reduction schemes, job security.

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

Collective bargaining takes place on different levels:
- *interprofessional level*: in the National Labour Council between representative employers' organizations and representative trade unions
- *professional/business sector level*: in the joint committees and joint sub committees between representative employers' organizations and representative trade unions
- *on company level*: between employer(s) and trade union delegations (although the actual signing of a CLA can only be done by a member of a representative trade union)

b- Can company agreements derogate sector agreements?

CLAs on company level can only derogate from CLAs concluded on a higher level (i.e. interprofessional level, professional/business sector level) if and to the extent that such higher level CLAs allow this possibility (e.g. opting-out, topics not regulated on the higher level, higher CLA is a supplementary source of labour law).

c- Can you derogate agreements in a more favourable way to the company?

CLAs on company level cannot provide rules that are more favourable to employers than those provided by CLAs concluded on a higher level (i.e. interprofessional level, professional/business sector level).

CLAs on company level can provide rules that are more favourable to employees than those provided by CLAs concluded on a higher level (i.e. interprofessional level, professional/business sector level) if such higher level CLAs provide a minimum standard. If higher level CLAs provide strict norms, CLAs on company level cannot provide rules that are more favourable to employees.

5. **The application of collective agreements** (erga omnes, signatory parties, others)

A CLA is an agreement;

- concluded between contracting parties, i.e. one or more trade unions and one or more employers' organisations or one or more employers
- that defines the individual and collective relations between employers and employees in companies or in a business sector (= the normative provisions)
- that rules the rights and obligations of the contracting parties (= the obligatory provisions).

In principle, a CLA is binding for:

- the organisations that concluded the CLA and the employers that are either members of these organisations or that have entered into the CLA themselves, and this as of the date of entry into force of the CLA
- the organisations (and the employers who are members of these organisations) and the employers joining the CLA, and this as of the date of joining;
- employers who become members of a bound organisation, and this as of the date of their membership;
- all employees of a bound employer.

Nevertheless, a CLA that is concluded in a joint committee (so not a company level CLA) can be declared universally applicable (= erga omnes application) by royal decree at the request of that joint committee or an organisation represented therein.

If a CLA is declared universally binding, it is binding for all employers and employees belonging to the scope of competence of the joint committee, if and to the extent that they fall within the scope of the CLA.

The royal decree declaring the CLA to be universally binding takes effect as of the date on which the CLA enters into force, notwithstanding that the application of the CLA can never retroact more than 1 year before the publication of the royal decree.

The royal decree declaring a fixed-term CLA to be universally applicable ceases to have effect upon its expiry. If a CLA of indefinite duration or a fixed-term CLA with an extension clause is regularly terminated, the royal decree declaring the CLA to be universally applicable ceases to have effect as of the date on which the CLA ends.

6. The duration of the agreements

CLAs are concluded for:

- an indefinite period (that can be terminated by serving notice to the other parties), or
- a fixed-term. The duration of fixed-term CLAs is generally 1 or 2 years.

Upon expiry of a CLA, the individual normative provisions (= CLA-provisions that constitute rights for individual employees) in principle continue to exist as a part of the individual employment contracts of the employees that were covered by the expired CLA. This is called the "continued application" of a CLA. In such case, changes to these rights cannot be applied unilaterally by the employer but must be agreed upon with the employee individually or in a new CLA. It is possible to derogate from the principle of continued application by explicitly providing in the CLA that this principle does not apply.

7. Social Peace

Social peace is not regulated by law. It originated and still features in CLAs.

CLAs often provide a clause on "social peace". Such clause mostly provides that the signatory parties agree that the matter of the CLA is settled in that CLA and that no additional or new claims will be made in regard to that topic and that possible disputes regarding the CLA will be settled through a reconciliation procedure within the reconciliation bureau of the applicable joint committee.

In certain business sectors (such as the blue-collar metal industry), the social peace topic is ruled by a separate CLA that clearly stipulates the rights and obligations of trade unions, employers' organizations and employers, the applicable procedure to legitimately initiate industrial action and the reconciliation procedure.

However, it occurs that industrial action (strikes) take place without the reconciliation procedure being followed.

The right to take industrial action is not explicitly provided in or regulated by Belgian law (although attempts have been made) but is acknowledged based on international law. The application and restrictions on the right to take industrial action is ruled by case law.

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BULGARIA

Some figures

- **Population**: 6. 87 million (2022- according to the National Institute of the Republic of Bulgaria[6])
- **Number of employees in your country:** 3. 50 million (2022- according to the National Institute of the Republic of Bulgaria)
- **Number of employees in the metal industry**: According to official data from the National Institute of the Republic of Bulgaria as of 2020. the data is as follows:

Production of metal products, excluding machinery and equipment	55 346
Production of machines and equipment, with general and special purpose	31 988
Manufacture of cars, trailers and semi-trailers	21 783
Manufacture of vehicles, excluding cars	5 756
TOTAL	**114 873**

- **Collective bargaining coverage rate:** There are no official statistics for the metal industry. The official data from the National Institute for Conciliation and Arbitration[7] are for the entire processing industry (as of 31.03.2023):
  - Number of Collective Labour Agreements: 93
  - Employees covered: 44,419[81]
- **Proportion of unionised workers**: about 10%
- **Main level of collective bargaining:** Agreements at the sectoral level become the basis for negotiations at the company level. In case of failure of sectoral negotiations, negotiations are held at company level.

PRELIMINARY REMARKS

In the European Union, collective bargaining and the right to information and consultation were included as fundamental rights in the Treaty of Lisbon in 2007. Bulgaria, as a member of the EU, has harmonized its national legislation with EU legislation regarding collective bargaining. In the event that trade unions request to negotiate separate parameters of the labour insurance relations, the employers are obliged to respond.

[6] The National Institute of the Republic of Bulgaria (NSI)
[7] National Institute for Conciliation and Arbitration (NIPA)
[8] More information, see link

1. The actors of collective bargaining

Five employers' organizations and two trade unions are nationally representative in Bulgaria.

a- Employers´ organisations:

Businesses at the national level are represented by the Bulgarian Industrial Capital Association **(BICA),** the Bulgarian Industrial Association **(BIA),** the Confederation of Employers and Industrialists in Bulgaria **(KRIB),** the Bulgarian Chamber of Commerce and Industry **(BCCI**) and the Union for Private Economic Enterprise **(UPEE).**

b- Trade unions:

The national trade unions are the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Confederation of Labour "Podkrepa".

Collective labour agreements are concluded by enterprises, branches, industries and municipalities. The participants in collective bargaining are indicated in item 4 - Levels of negotiations.

For decades, BBCMB has maintained active and fruitful cooperation with the two trade union federations **- NSF "Metal-Electro" at CITUB and SFMM at CL "Podkrepa".** Both trade union federations are members of industriALL Europe. BBCMB is concluding collective labour agreements with them on a branch level (BCLA) according to the situation and by mutual consent.

2. The place of collective bargaining in relation to the law

The main provisions for collective bargaining are regulated in Chapter Four (Art. 50 to Art. 60) of the Bulgarian Labour Code (LC).

a- Hierarchy of the norms/place of collective bargaining in relation to the law

The hierarchy of norms is as follows:

- Labour Code
- Law on Health and Safety at Work
- Regulation on wage bargaining: this ordinance defines the principles, scope and rules of collective wage bargaining and for determining the specific amount of wages under individual labour contracts for workers and employees from all enterprises and organizations.
- Regulation on the structure and organization of the salary: the regulation determines the structure and organization of the salary, the types and minimum amounts of additional remuneration, the order and method of determining and calculating the remuneration of workers and employees.
- Regulations related to health and safety at work.
- Industry Collective Labour Agreements (ICLA) and Branch Collective Labour Agreements (BLCA)

- Collective labour agreement in the enterprise.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

The collective labour agreement is concluded in written in three copies one for each of the parties and one for the relevant labour inspection - and is signed by the representatives of the parties. The written form is necessary for the validity of the collective labour agreement. The collective labour agreement is entered in a register at the labour inspectorate in the region of which the employer's seat is located. Collective labour agreements by industry and branches are entered in the Executive Agency "General Labour Inspectorate". Copies of registered collective labour agreements are provided ex officio in accordance with the procedure determined by the Minister of Labour and Social Policy to the National Institute for Conciliation and Arbitration, which creates and maintains an information system for collective labour agreements. In the event of a dispute regarding the text of the contract, the text that is registered is authentic.

3. The topics of collective bargaining

The main sections in the collective agreement are:

- Employment
- Qualification and training
- Working hours, breaks and vacation
- Labour remuneration and benefits
- Occupational Safety and Health
- Social assistance and CSR
- Conditions for trade union activity
- Interaction between parties.

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

According to the Labor Code, there are three levels of collective bargaining:

1) Enterprise
2) Industry and/or branch
3) Municipality.

At the level of industry and branch, as well as in enterprises, only one collective labour agreement can be concluded. At the municipality level, more than one collective agreement can be concluded: for example, Municipal CLA for education, Municipal CLA for health care.

A Collective Labour Agreement in the enterprise is concluded between the employer and a trade union organization. In the collective labour agreement in the enterprise, all trade union

organizations can participate and be a party to the collective labour agreement, without a requirement for representation (they are not required to be members of a nationally representative organization of workers and employees). The draft collective labour agreement is prepared and presented by the trade union organization. When there is more than one trade union organization in the enterprise, they present a common project. A party to the collective labour agreement can only be a legitimate trade union organization. When there is more than one trade union organization, they present a common project.

Parties to the collective labour agreements at the branch and branch level are the relevant representative organizations of workers and employers for the branch or branch. The representative organizations of the workers and employees prepare and present to the representative organizations of the employers a general draft for the Industry Collective Labour Agreements (ICLA) or Branch Collective Labour Agreements (BCLA). Collective labour bargaining at the industry or branch level by agreement between the parties may cover one or more activities from the Classification of Economic Activities.

Collective labour agreements by municipalities for activities financed from the municipal budget are concluded between the representative organizations of workers, employees and employers. The local divisions of the representative organizations of workers and employees submit common projects for collective labour agreements to the local divisions of the representative organizations of employers.

b. Can company agreements derogate sector agreements?

The collective labour agreement of an enterprise **cannot contain clauses less favourable** than those agreed in the industry collective labour agreement and branch industry collective agreements, nor can agreements at the industry and branch level be cancelled. With collective labour agreements in the enterprise, the agreements in industry collective labour agreements and branch collective labour agreements are upgraded.

5. The application of collective agreements (erga omnes, signatory parties, others)

Collective Labour Agreement in the enterprise: collective labour agreements are valid for the workers and employees in the enterprise who are members of the trade union organization / trade union organizations /, party to the contract.
Workers and employees who are not members of a trade union organization that is a party to the contract may join the collective labour agreement concluded by their employer with a written application to him or to the management of the trade union organization that concluded the contract.
The terms and conditions of membership, including the payment of a monetary membership fee, shall be determined between the parties to the contract so as not to contravene the law or circumvent it or offend good morals.
Membership is on an individual basis; it cannot be collective and is possible only in compliance with the provisions of the Labour Code and agreements in the Labour Code.

Membership takes effect from the moment the application is submitted and after fulfilment of the membership conditions stipulated in the contract.

Industry Collective Labour Agreements (ILA) and Branch Industry Collective Agreements (BCLA):
Industry collective labour agreements and branch industry collective agreements are effective for workers and employees who are members of the relevant representative organizations of workers and employees for the branch or industry that have signed the contract. At the general request of the parties to the collective labour agreement concluded at the industrial or branch level, the Minister of Labour and Social Policy may extend the application of the contract or its individual clauses to all enterprises of the industry or branch after express written consent from all organizations of workers and employers recognized as representative at national level. The extended collective labour agreement or its individual clauses are valid for workers and employees who work in enterprises covered by the relevant industry or branch. The extension of the collective labour agreement or its individual clauses is carried out by order of the Minister of Labour and Social Policy, which is published in the unofficial section of the "State Gazette". The extended collective labour agreement or its individual clauses are published on the website of the Executive Agency "General Labour Inspectorate" within three days from the publication of the order. The effect of the industry collective labour agreements or branch industry collective agreements , concluded between an organization of employers and trade union organizations, is not terminated in relation to an employer who suspended his membership in the organization of employers after its conclusion.

6. The duration of the agreements

According to Art. 54 of the Labour Code, the collective labour agreement enters into force from the date of its conclusion and is considered to be concluded for a period of one year, insofar as no other period is agreed upon in it, but for no more than two years. Negotiations for the conclusion of a new collective labour agreement begin no later than three months before the expiry of the current collective labour agreement.
These provisions are in force for all levels of bargaining.

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DENMARK

Some figures

- **Population**: 5.88 million (2022)
- **Number of employees in your country:** 2.93 million (2022)
- **Number of employees in the metal industry**: 326.066 (2022)
- **Collective bargaining coverage rate:** 82%
- **Proportion of unionised workers**: 68.4%
- **Main level of collective bargaining:** Sectoral collective agreements

PRELIMINARY REMARKS

Since the September settlement in 1899 collective agreements have been the primary way of regulating employment relations in Denmark. The legislator does not interfere, generally, in the matters concerning labour law as a matter of respect for the social partners.

1. The actors of collective bargaining

a- Employers´ organisations:

The national umbrella organisation is the Confederation of Danish Employers, where sectoral employer's organisations are members, such as the Confederation of Danish Industries.

b- Trade unions:

The national umbrella organisation is the Danish Trade Union Confederation, where sectoral trade unions are members, such as the Danish Metalworkers' Union.

c- Collective agreements are solely negotiated by the sectoral organisations.

The main role of the umbrella organisation is that of coordination during the collective bargaining process.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

There are few laws regarding Danish labour law, and most of them contain options to derogate from collective agreements.

b-In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

Employees can only be covered by one collective agreement. Therefore, disputes regarding coverage are settled by labour arbitration.

3. The topics of collective bargaining

All matters regarding employment law are on the negotiating table, i.e. wages, working hours, paid maternity leave, paid free time, sick pay and so on.

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

Negotiations take place primarily on a sectoral level. There are a few companies with company level collective agreements, however this is a limited part of the Danish labour market.

b- Can company agreements derogate sector agreements?

Yes, company agreements can derogate sector agreements using local agreements. The degree of derogation depends on the collective agreement.

c- Can you derogate agreements in a more favourable way to the company?

The possibility to derogate agreements in a more favourable way to the company depends on the collective agreement. The largest collective agreement (The Industrial Agreement) contains a broad ability to derogate from issues such as working time through local agreements with an elected shop steward.

5. The application of collective agreements (erga omnes, signatory parties, others)

The collective agreements are only applicable to the signatory parties. There is no general applicability of collective agreements, nor are there erga omnes collective agreements in Denmark.

6. The duration of the agreements

Currently the duration of collective agreements is from 2020 to 2023. However, the period of duration of the agreements is always subject to negotiation.

7. Social Peace

During the period of duration of the collective agreement, strikes, lockouts and other industrial action are prohibited, with very few exceptions.

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FINLAND

Some figures

- **Population**: 5.54 million (2022)
- **Number of employees in your country:** 2.76 million (2022)
- **Number of employees in the metal industry:** 195. 000 (2022)
- **Collective bargaining coverage rate:** 60 -80 %
- **Proportion of unionised workers:** 70 – 80 %
- **Main level of collective bargaining:** Sectoral level

PRELIMINARY REMARKS

During the Winter period of the War (1939 – 1940) the social partners started a co-operation process and opened discussions about working conditions. As a result, the first collective agreements for the metal sector were reached in 1945. Since then, collective agreements have had a major influence on the development of working conditions over the decades and have also influenced labour legislation.
Historically, collective bargaining has been very centralised, but since a few years Finland is now moving towards more flexible working conditions and more flexible salary settlements. As a matter of fact, the export industry is competing in the global market and there is a great need for more flexibility to gain productivity and competitiveness.

1. The actors of collective bargaining'

a- Employers´ organisations

The MET sector employer´s organisation is **Technology Industry Employers of Finland.**

b- Trade unions

The trade union organisations are the following:

Industrial union blue collar works
Trade Union Pro white-collar employees
The Federation of Professional and Managerial Staff YTN white-collar employees.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

The hierarchy of the norms is as follows:

- Law, statutory provisions
- Provisions of the law, which may be derogated by national collective agreements
- Collective agreements, statutory provisions
- Collective agreements, provisions which may be derogated by local agreement
- Provisions of the law, which may be derogated by individual employment contract

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

If a company is member of an employer association, it is obliged to comply with the sectoral Collective agreement to which the employer association is a party. The collective agreement is then what is typically referred to as binding. Membership of an employer´s association is thus a decisive issue.

If a company is not member of any employer association, it is obliged to comply with the sectoral collective agreement A of the company´s main operation, if the collective agreement for the sector is universally binding. The collective agreement is universally binding when the majority of employees are employed by companies which are members of the employer organisation.

3. The topics of collective bargaining

The topics of collective bargaining are the following:

- Salary / wage increase. Remuneration
- Working time and annual holidays
- Work assignments and compensation
- Occupational health and safety and labour protection
- Social regulation: incapacity to work, maternity and family leave, temporary childcare leave
- Termination of employment contract and employee layoff
- Employee representatives, local collective negotiations, and settlement of disputes
- Use of external labour

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

Negotiations take place at sectoral level.

b- Can company agreements derogate sector agreements?

Yes, company agreements can derogate sector agreements. There are dozens of provisions in the blue-collar collective agreements which give local social partners the right to derogate collective agreements by local agreement.

c- Can you derogate agreements in a more favourable way to the company?

Yes, it is possible to derogate agreements in a more favourable way to the company by local agreement.

5. **The application of collective agreements** (erga omnes, signatory parties, others)

Collective agreements apply to the signatory parties and if the collective agreement is universally binding (see above point 2.b.) it applies to all the companies and employees in the sector.

6. **The duration of the agreements**

Collective agreements usually last for two years.

7. **Social Peace**

Social peace is agreed by collective agreements mainly on the sectoral level.

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FRANCE

Some figures

- **Population**: 68 million (January 2023)[9]
- **Number of employees in your country:** 20.83 million of employees (4th quarter 2022)[10]
- **Number of employees in the metal industry**: 1.5 million of employees[11]
- **Collective bargaining coverage rate:** 98 % (2018)[12]
- **Proportion of unionised workers**: 10.3 % (2019) (18,4 % in public sector and 7.8% in private sector)[13]
- **Main level of collective bargaining:** sector and company levels (with a trend towards decentralisation at company level)

PRELIMINARY REMARKS

Since the beginning of the 20th century, the social partners of metal industry have sought, through collective bargaining, to bring together the respective interests of employees and companies, with a shared conviction: only a strong and competitive industry can create jobs.

The metal industry, which represents 1.5 million employees and 42,000 companies, has made a major contribution to the construction and development of the French social model. Much of the progress made in the metal industry have become fundamental achievements for all the sectors of the economy. Recently, during the covid-19 crisis, the metal sector was the first to sign an agreement aimed at setting up a long-term short-time work scheme accessible to all employees.

Since the 2000s, profound changes in the industrial environment, whether technological, organisational, linked to globalisation or ecological transition, have reinforced the need for uniform collectively agreed rules at sectoral level. In industry as elsewhere the working environment has changed considerably.

The globalisation of the economy, a factor of ever more demanding competition, requires companies and their employees to constantly adapt their organisation and to be able to respond to the rapid evolution of jobs and skills.

Our collective agreements, whose structure has not been reviewed since the 1970s, are partly no longer in phase with this reality and no longer meet the expectations of companies and employees in terms of quality of life and working conditions. Therefore, in 2016, the social partners took their

[9] Insee (French National Institute of Statistics and Economic Studies) (Population au 1er janvier | Insee)
[10] Dares (Department in charge of statistics for the Labour ministry) L'emploi salarié | Dares (travail-emploi.gouv.fr)
[11] Observatoire paritaire de la métallurgie
[12] ILO Statistiques sur les négociations collectives - ILOSTAT
[13] Dares (Department in charge of statistics for the Labour ministry) Léger repli de la syndicalisation en France entre 2013 et 2019 : dans quelles activités et pour quelles catégories de salariés | Dares (travail-emploi.gouv.fr)

responsibilities to address together, through social dialogue, these new challenges. As a reminder our current collective bargaining system includes:

- 25 national collective agreements on different topics, such as VET;
- 76 local collective agreements;
- one national collective agreement for engineers and managerial staff;
- one national collective agreement for steel industry.

Despite various obstacles due to the brutal evolution of the economic and social context, the social partners of the metal industry have pursued constructive discussions for more than five years, in a spirit of responsibility, demonstrating once again the vitality and quality of the social dialogue in our sector.

On 7 February 2022 and after more than 5 years of negotiations, UIMM and three trade unions out of four (CFDT, CFE-CGC and FO – CGT refused to sign the agreement) signed the new national collective agreement for the metal industry, which will be applicable as of 1st January 2024 (Provisions on supplementary social protection are in force as from 1st January 2023).

The new social framework resulting from the negotiations relies on a “common base" of rules and principles nationally applicable, **in the form of a single agreement**, applicable to all companies and employees in the metal industry.

The system of collective agreements in the metal industry is thus based on a new national collective agreement supplemented by autonomous national agreements on employment and training, health and quality of life at work, on the governance of a new supplementary social protection scheme for the sector, as well as autonomous local agreements on some specific issues.

1. The actors of collective bargaining

a- Employers´ organisations

Any employers' organisation can negotiate and conclude collective agreements, but these will normally only have effect for the signatories (the employers' organization, as well as the employers who are members of this organisation or who adhere to the agreement). However, if the employers’ organisation is recognised as representative, the collective agreement can be “extended” so that it applies to all companies in the sector, even if they are not signatories to the agreement or members of the signatory employers’ organisation.

At national and cross-industry level:

The Law 2014-288 dd. 5 March 2014 laid down the rules on the representativeness of employers' organisations, defining the criteria according to which this representativeness is assessed.

According to Article L. 2151-1 of the Labour Code, the representativeness of the employers' organisations is determined according to the following cumulative criteria:

- Respect for republican values
- Independence
- Financial transparency
- A minimum of two years' seniority in the professional and geographical field covering the negotiation level
- Influence
- Audience, which is measured according to the number of member companies or their employees and, depending on the level of negotiation. The audience criterion is the central one for an employers' organisation to be recognised as representative.

At cross-industry national level, there are three representative employers' organizations:

- **Medef** (Mouvement des Entreprises de France),
- **CPME** (Confédération des Petites et Moyennes Entreprises) (Confederation of SMEs)
- and **U2P** (Union des Entreprises de proximité) (representing VSE-SMEs in the craft, local trade and liberal professions sectors).

In the metal industry, **UIMM** (Union des Industries et Métiers de la Métallurgie) La Fabrique de l'Avenir is the employers' organisation for industrial companies in the metal industry. It represents 1.5 million employees and 42,000 companies of all sizes, from various sectors of activity: metallurgy, metal processing, mechanics, automotive, shipbuilding, aeronautics, space, rail, electrical, electronics, nuclear and household equipment. It is supported by a network of 59 local associations and 10 trade federations (**with economic competence whereas UIMM deals with social and training issues**).

When a company carries out an activity that falls within the field of the metal industry, it can join a UIMM local association. Membership can be done at any time of the year, and on a voluntary basis.

Negotiations in the metal industry take place **at both national and local level**.

b- Trade unions

The representativeness of a trade union is the criterion for assessing its capacity to negotiate a collective agreement. Only trade unions that have demonstrated their representativeness, and hence their legitimacy to represent employees, can validly sign a collective agreement.

At national and cross-industry level Law No. 2008-789 dd. 20 August 2008 laid down 7 legal criteria for determining the representativeness of a trade union:

- Respect for republican values
- Independence, particularly financial independence
- Financial transparency
- A minimum of two years' seniority in the professional and geographical field covering the negotiation level
- Influence as characterized by activity and experience

- Membership numbers and membership fees
- The number of votes obtained in professional elections held in companies, measured every four years. The trade union must have obtained at least 8% of the votes expressed, by aggregation of the votes, to be representative at national and interprofessional level.

Every four years, trade unions must prove their representativeness in the terms of the statutory criteria mentioned above.

The introduction of legal criteria for representativeness has led to the disappearance of the irrevocable presumption of representativeness that was applicable before. The French system has thus moved from presumed representativeness to proven representativeness in the context of professional elections.

At **national and cross-industry level**, five trade union organisations are considered representative:

- **CFDT** (Confédération Française Démocratique du Travail)
- **CGT** (Confédération Générale du Travail)
- **CGT-FO** (Confédération Générale du Travail – Force Ouvrière)
- **CFE-CGC** (Confédération Française de l'Encadrement – Confédération Générale des Cadres) (representing managerial staff)
- **CFTC** (Confédération Française des Travailleurs Chrétiens).

The audience measurement is carried out every four years. At national and cross-industry level, the first audience measurement took place in 2013, the next one in 2017 and the last one in 2021.
The five trade union organizations mentioned above are recognized as representative for the 2021-2025 cycle.

In the metal industry

The audience of the trade unions was also measured at sectoral level, the last measurement having been carried out in 2021. A distinction should be made between the national and local levels:

At national level: the score of the trade union organizations constitutes the aggregation of the scores achieved in the field of all the territorial collective agreements of the metal industry, the national collective agreement of the steel industry and the national collective agreement of engineers and managers.

It should be noted that in the case of the CFE-CGC, which represents only one category of employees, this calculation is carried out within a categorical perimeter.

From 2024 onwards, there will in principle be only one national collective agreement in the metal industry, which will replace the local agreements that will disappear.

In the metal industry, 4 trade unions are representative at national level: CFDT, CGT, CGT-FO & CFE-CGC.

These nationally representative organizations will be the only ones entitled, from 2024, to negotiate agreements in the metal industry, which may be national or local in scope.

At the local level: as at the national level and according to the same rules, particularly with regard to the CFE-CGC, the signature weight of each trade union organization has been calculated.

In companies
According to article L. 2122-1 of the Labour Code, trade union organizations meeting the above criteria and having received at least 10% of the votes in the first round of the most recent elections for members of the works council, irrespective of the number of voters, are representative in the company or plant.
The representativeness of trade union organizations is thus assessed at each election of the works council, i.e. in principle every four years.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

The hierarchy of norms in France is as follows, the weakest norm having to respect that of the higher level (the highest is the Constitution and other related fundamental texts): Constitution / Laws / Regulations (e.g. decrees) / contracts and collective agreements

In Labour law, the right to collective bargaining is based on a constitutional principle. Collective bargaining is therefore very important in French law.

There are three levels of collective bargaining:

- The national level (national and cross industry collective bargaining)
- The sectoral level
- the company level

At national and cross-industry level, Article L. 1 of the Labour Code provides for prior consultation of the social partners (trade unions and employers' organisations) for any social reform (labour law, employment and vocational training). In fact, it is a matter for the social partners to engage in negotiations on the issues mentioned above, as soon as a reform in this area is foreseen.

At sectoral and company level, there are various statutory provisions that **impose an obligation to negotiate on different issues**. These two levels of negotiation are intended to interact; for example, regarding wages, the sector sets minimum wages, but negotiations on actual wages are mainly carried out at company level.

The hierarchy of laws, regulations and agreements in France follows some fundamental principles.

In any case, "public order" must be observed: the collective agreement may not derogate from provisions that are of public order, i.e. insofar as they guarantee workers minimum benefits, which may not be removed or reduced under any circumstances.

This principle of "respect for public order" was traditionally linked to a "principle of favourability" allowing lower standards (notably collective agreements) to replace legal provisions, provided that they include provisions that are more favourable to employees, on condition that they do not derogate from those that are of public order.

However, for several years now, this principle of favourability has been reduced, in favour of a new hierarchy which no longer proceeds by derogation. Indeed, since Law No. 2016-1088 dd. 8 August 2016, the Labour Code is organised on the model of a triptych, which is as follows:

- Provisions of public order
- Scope of collective bargaining
- Suppletive statutory provisions

Statutory provisions thus become applicable in the absence of a collective agreement. The collective agreement may be less favourable to the employees than the statutory provisions on these subjects.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

The French collective bargaining landscape can lead to conflicts of standards between the different levels of collective bargaining, which are governed by various principles.

Traditionally, the articulation between agreements at different levels was based on the application of two principles:

- the "hierarchical principle": the collectively agreed standards of the higher level took precedence over the standards of the lower level (i.e. the sectoral agreement took precedence over the company agreement);
- the "principle of favourability": in the presence of two agreements with the same subject matter, the provision that was more favourable to employees should be applied.

The principles for coordinating collectively agreed standards have undergone major changes in recent years, giving an increasingly important place to the company agreement. Thus :

In the event of a **conflict between a sectoral agreement and an agreement with a wider territorial or professional scope**, the subjects for which the sectoral agreement expressly provides for the higher-level standard to take precedence must be respected. Thus, a sectoral agreement or a professional agreement may not contain provisions that are less favourable to employees than those applicable to them under an agreement covering a wider territorial or professional field, provided that this is expressly provided for in the text.

In the event of a **conflict between a company agreement and a sectoral agreement**, three blocks of rules divide the roles between the sector and the company:

- Block 1: subjects where the sectoral agreement takes imperative precedence over company agreements concluded previously or afterwards;
- Block 2: subjects where the sectoral agreement may decide to take precedence over company agreements concluded afterwards;
- Block 3: subjects where the company agreement takes precedence over the sectoral agreement concluded earlier or later.

In the event of a **competition of collective agreements at the same level**, in the absence of explicit stipulations governing the situation, the principle of favourability applies. In this case, the provisions with the same purpose must be compared objectively and the most favourable one must be applied.

3. The topics of collective bargaining

Cross-industry level:

The Labour Code (Article L. 1) provides that any reform project considered by the Government that deals with individual and collective labour relations, employment and vocational training and that falls within the scope of national and cross-industry negotiations shall be subject to prior consultation with the representative trade unions and employers' organisations at national and cross-industry level with a view to the possible opening of negotiations.
To this end, the Government shall send them a policy document presenting the diagnostic elements, the objectives pursued and the main options.

Sectoral level:

The Labour Code (Articles L. 2241-1 et seq.) provides for certain compulsory negotiation topics at the sectoral level. **Indeed, the organisations bound by a sectoral collective agreement shall meet, at certain intervals, to negotiate:**

- 1° on wages (at least once every four years)
- 2° on measures to ensure professional equality between women and men and on measures to tackle inequalities observed, as well as on the provision of tools to companies to prevent and act against sexual harassment and sexist behaviour (at least once every four years)
- 2° bis on measures to facilitate work life balance of employees who are carers (at least once every 4 years)
- 3° on working conditions, forward planning of jobs and skills, and on taking into account the effects of exposure to some occupational risk factors listed in the labour Code (at least once every 4 years)
- 4° on measures for the professional integration and retention of disabled workers (at least once every 4 years)

- 5° on priorities, objectives and means of vocational training for employees (at least once every 4 years)

- 6° on the examination of the need to revise jobs classifications, taking into account the objective of professional equality between women and men (at least once every five years)

- 7° on the establishment of one or more inter-company savings plans or inter-company collective company retirement savings plans when there is no agreement concluded at this level on the matter (at least once every five years).

At company level:

A distinction should be made between negotiations not imposed by law and those imposed by law:

- **Negotiations not-imposed by law:** the parties (employer and employees) are, in principle, free to enter into negotiations. Similarly, they are free to choose the topics for negotiation and the level of negotiation.
- **Mandatory negotiations:** as an exception, the legislator has provided for topics that must be addressed in the framework of negotiations at company level:
  1/ negotiations on pay, working time and the sharing of added value ;
  2/ negotiations on professional equality between women and men and the quality of life at work;
  3/ negotiations on the management of jobs and career paths (only in companies and groups of companies with at least 300 employees and Community-scale companies and groups).

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

There are **three main levels of collective bargaining** in France:
- **Company level:**
Agreements are negotiated at company level, between the employer and the representative trade union organisations in that company, with a view to adapting the rules of the Labour Code to the specific characteristics of the company. There are also compulsory negotiations on certain topics when certain conditions are met.

- **sectoral level:**
The various sectors of activity are divided into professional sectors. There is a distinction between collective agreements which are intended to cover a range of subjects relating to all occupational categories and those which cover one or more specific subjects. They are signed between companies' representatives and one or more representative trade unions within a sector. The purpose of such collective agreements is thus to define rules adapted to a given professional activity.
Note: The scope of a sector is defined by the collective agreement concluded by the employers' representative organisations and trade unions.

- **national cross-industry level:**
At national level, the so-called ANIs (National cross-industry Agreements) are negotiated. These agreements, like any collective agreement, deal with specific points of labour law, such as the reform of unemployment insurance. They are intended to apply to all sectors of activity represented at national level by employer's organisations and trade unions present at the time of negotiation. These ANIs may create rights for employees or for companies. Sometimes these ANIs are taken up by the government, and they are then sometimes the forerunners of laws.

The successive reforms of labour law in France, in particular the Labour Law dd. 8 August 2016 and the ordinances of 22 September 2017, have deeply reshaped collective bargaining, giving more and more weight to company bargaining. Thus:

- Since Law No. 2004-391 dd. 4 May 2004, it has been possible for a company agreement to derogate from a sectoral agreement in a way that is not favourable to employees, with certain exceptions;
- Since the laws n°2008-789 dd. 20 August 2008 and n°2014-288 dd. 5 March 2014, the representativeness of collective bargaining actors has been reformed, with the aim of increasing their legitimacy at different levels;
- -Since the Act No. 2016-1088 dd. 8 August 2016 and the ordinances dd. 22 September 2017, a triptych of : public order > collectively agreed provisions > suppletive legal provisions has been introduced into the Labour Code, the precedence of company agreements over sectoral agreements has been established in many areas of labour law and the negotiation procedures in small companies have been made easier.

b. Can company agreements derogate sector agreements?

The successive reforms of social dialogue in France have marked a significant change in the rules of articulation between company and sectoral agreements.

Traditionally, the articulation between sectoral agreements and company agreements was based on the application of two principles:
- the "hierarchical principle": the collectively agreed standards of the higher level took precedence over the standards of the lower level (i.e. the sectoral agreement took precedence over the company agreement);
- the "principle of favourability": in the presence of two agreements with the same subject, the provision that was more favourable to employees should be applied.

From now on (see the successive reforms above), a large number of rules provide for the principle of precedence of the company agreement over the sectoral agreement. A company agreement can therefore, to a very large extent, derogate from a sectoral agreement. The rules applicable to the articulation between sectoral agreements and company agreements are then specified by the Labour Code, which groups the various negotiation topics into three blocks dividing the roles between the sector and the company:

- Block 1: topics where the sectoral agreement takes imperative precedence over company agreements concluded previously or afterwards;
- Block 2: subjects where the sectoral agreement may decide to take precedence over company agreements concluded afterwards;
- Block 3: subjects where the company agreement takes precedence over the sectoral agreement concluded earlier or later.

c. Can you derogate agreements in a more favourable way to the company?

The current framework of collective bargaining in France allows a company agreement to derogate unfavourably from higher-level standards, provided that various principles are respected:

- It is necessary to respect "rules of public order", i.e. rules that cannot be derogated from in a less favourable way.
- It is necessary to identify the subjects expressly identified as imperative by sectoral agreements, and agreements covering a wider territorial or professional field. It is not possible to derogate from these issues in a way that is unfavourable to employees.
- It is advisable to refer to the rules on the relationship between sectoral agreements and company agreements laid down in the Labour Code, and to identify, on the one hand, the subjects where the collective agreement takes imperative precedence over company agreements concluded previously or afterwards, and on the other hand, the subjects where the collective agreement may decide to take precedence over company agreements concluded subsequently ("locking clauses") (see above 4. b.).

5. The application of collective agreements (erga omnes, signatory parties, others)

The law requires the negotiators of collective agreements to include a preamble in their collective agreement, as well as the procedures for monitoring and reviewing their text. This is intended to facilitate the interpretation and therefore the application of the agreement.

If the agreements are not applied, the signatory parties, as well as the employees to whom they apply can take legal action to enforce the agreement.

Under French law, collective agreements have a particularity: they have "erga omnes" effects, i.e. they apply to the signatory parties as well as to the employees, even if they are not members of the signatory organisations.

6. The duration of the agreements

The Labour Code (Article L. 2222-4) provides that the agreement is concluded for a fixed or indefinite period. It is therefore up to the parties, whatever the level at which the agreement is concluded, to stipulate the duration of the agreement. As an exception, for certain agreements, the law stipulates that they must necessarily be for a fixed term.

In addition, it is stipulated that in the absence of a stipulation on the duration of the agreement, the duration is fixed at 5 years.

Finally, when the agreement expires, the agreement ceases to have effect.

The duration of the agreement should not be confused with the frequency of negotiation: indeed, negotiation must take place at certain intervals as laid down by law, regardless of the duration of the agreement.

7. Social Peace

This concept is not regulated in French law.

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GERMANY

Some figures

- **Population**: 84.3 million (2022)
- **Number of employees in your country:** 45.56 million working population in 2022 (employees and self-employed)
- **Number of employees in the MET industry**: 3.9 million employees (2022)
- **Collective bargaining coverage rate:** According to the German Federal Office for Statistics, in 2021, 54% of all employees in Western Germany were directly covered by collective agreements (sectoral collective agreements and company collective agreements). In the Eastern part of Germany, 45% of employees were directly covered by collective agreements. Among the companies in the membership of Gesamtmetall, 1.83 million. employees fall under the collective agreements, 0.6 million. employees do not (2021).
- **Proportion of unionised workers**: In 2021, the German Trade Unions Federation represented 5.73 million employees. In 2022, IG Metall (Trade Union of German MET industry) represented 2.14 million employees, 1.5 million of them (70%) are in-house. Because IG Metall represents more sectors than the MET industry, the adjusted degree of organization is around 25-27%.
- **Main level of collective bargaining:** Sector level

PRELIMINARY REMARKS

In Germany, the collective bargaining autonomy is constitutionally protected. Within the collective agreements, working conditions are agreed between the social partners independently of the state. On the one hand, this system ensures negotiation parity between the employee and the employer side. On the other hand, the working conditions that are the right ones for the specific industry are determined. The conditions are thus precisely tailored to the specific sector.
For companies, collective agreements mean planning security and well-balanced conditions for workers. For workers, they mean security and an adequate and balanced system.

1. The actors of collective bargaining

The actors of collective bargaining are the:

- Employers´ organisations or the employer itself (in which case it is not a sectoral collective agreement but a company collective agreement)
- Trade unions

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

Collective agreements must be within the framework of the law. However, they apply directly and compulsorily to the related employment relationships, that means they have the character of a norm for these relationships. Employment relationships belong to a collective agreement if the employer is bound by the agreement and the employee is a member of the trade union.
In this case, working conditions may only deviate from the applicable collective agreement if they are more favourable or if the collective agreement itself permits this.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

Collisions of collective agreements are differentiated according to collective bargaining plurality and competition.
In the case of conflicting collective bargaining, employment relationships are covered by different collective agreements. This can happen when there is both an association collective agreement and a company collective agreement. These cases are resolved according to the principle of speciality. According to this principle, the collective agreement that is geographically and technically closest to the company applies.
In the case of collective bargaining plurality, collective agreements of different trade unions apply to different employment relationships within a company. This can happen if different trade unions have members in the enterprise and the employer is bound by two collective agreements. The decisive factor is which union had the most members at the time the last collective agreement was concluded.

3. The topics of collective bargaining

The main issues of collective agreements are working time and pay. Today, however, many other working conditions are also regulated in collective agreements, such as holidays, Christmas bonuses, qualification and pension schemes. A lower limit, such as the minimum leave, is partly prescribed by law, but collective agreements deviate upwards from this.

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

Both negotiations at sectoral and company level are possible. However, employers' organisations usually negotiate at sectoral level.

b- Can company agreements derogate sector agreements?

In principle, company agreements cannot regulate areas that are usually covered by collective agreements. An exception to this is if there is an opening clause for works agreements in the collective agreement.

c- Can you derogate agreements in a more favourable way to the company?

The decisive factor for the possibility of deviating from the collective agreement is always whether it is more favourable for the employee or whether the collective agreement allows it. Whether a deviation is more favourable for the company is irrelevant.

5. The application of collective agreements (erga omnes, signatory parties, others)

A collective agreement applies directly and compulsorily only to those employment contracts where the employer is bound by that collective agreement (which means, he is member of the signatory employers' association) and the employee is in the trade union that concluded that collective agreement.
However, employers bound by collective agreements usually apply the applicable collective agreement to all employment relationships.
In employment contracts, the application of a collective agreement can also be agreed individually.

6. The duration of the agreements

The duration is specified in the individual collective agreements. Both a fixed-term contract and an open-ended contract with a date of earliest termination are conceivable.
When a collective agreement ends, there is usually a legal after-effect. This can be terminated by another agreement (at sector, company or employment level). However, the after-effect can also be excluded in the collective agreement itself.

7. Social Peace

Collective bargaining autonomy ensures negotiating parity with the institution of coalitions as contracting parties. The right to take industrial action, which is also protected by the constitution, makes it possible to negotiate at the same level.
Once a collective agreement has been concluded, there is a peace obligation for the areas covered by the agreement for its duration. This gives companies planning security.
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ITALY

Some figures

- **Population**: 59.03 million (January 1st 2022)
- **Number of employees in your country:** 19.43 million (September 2022 official data)
- **Number of employees in the metal industry**: 1.61 million (September 2022 official data)
- **Collective bargaining coverage rate:** 79.2% of workers (Federmeccanica - 2020)
- **Proportion of unionised workers**: 25.8% (Federmeccanica - 2020)
- **Main level of collective bargaining:** National and company level

PRELIMINARY REMARKS

Within the Italian collective bargaining system, as it will be explained below, Federmeccanica plays an important role. It represents metal companies before the sectoral Trade Unions.

In Italy, there is no national or subnational statutory minimum wage but wage floors are fixed at sectoral level via collective agreements between trade unions and employers organisations. This system goes back to the early 20th century when the first company or territorial level collective agreements were introduced in manufacturing and agriculture while the first nationwide sectoral agreement was signed immediately after World War I. Currently, more than 900 sectoral collective agreements are signed at national level covering practically all private and public sector employees in Italy. The associations of Confindustria, only, have signed 57 National Collective Agreements.

These figures prove that in Italy bargaining made by the most representative organizations, should be the only one to be promoted, to the detriment of collective bargaining made by non-representative organizations, which often gives rise to contractual dumping, at the expenses of the protection of workers and unfair competition between companies.
For this reason, in absence of a Law on Representativeness, the social partners have felt the need to give greater strength to collective bargaining through an intersectoral agreement - the so-called Testo Unico on collective bargaining of 10 January 2014 - signed by almost all the trade unions operating in Italy which, in fact, tends to define as "good" the collective bargaining put in place by those negotiating parties whose legitimacy rests on the certified extent of their representation. This intersectoral agreement was the beginning of a path that aims to ensure that the signing of national collective agreements takes place, following an objective principle, by effectively representative trade union and employer organizations.

1. The actors of collective bargaining

The actors of collective bargaining, on the trade union side, entitled to sign collective agreements, have to be qualified on the basis of the consolidated criteria of "compared major

representativeness." As it has been recently agreed upon, most likely the first certification of the trade union representation should be carried out in July 2024.
The measurement of union representation at the national level is carried out by an average between the associative data (number of workers' subscriptions to unions) and the electoral data (votes cast in the election of the RSU[14] at company level, Unitary Union Representative).
Also the employers´ organisations feel the need to measure their representation as well as to define the perimeters of collective bargaining.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

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b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

In Italy, the hierarchy of norms establishes that the collective bargaining system is subordinated to the law because of its non-institutionalized approach. In fact, the Italian system, since 1993, has been based on a lot of intersectoral agreements as a kind of "contractual soft law" that identifies guiding principles that allow social partners the possibility of choosing how and when to proceed in the indicated direction by intersectoral agreements.

In the event of conflict, with no consensual agreement, appealing to the court's decision is the only solution.

3. The topics of collective bargaining

In 2018, a two-level bargaining structure was confirmed (national and company level) in order to avoid overlaps. The first one defines the national economic and normative treatment (minimum wage level, varying index of inflation and "comprehensive" wage level, including welfare benefits) valid for all workers of the same sector aimed at safeguarding the wage purchasing power.
Economic and labour market trends, competitive comparison and specific sectoral trends must also be considered in a perspective of a fair competition among companies.
Collective bargaining at the company level determines performance-related pay, workers rewarded efforts and the achievement of pre-determined objectives as key factors of competitiveness.
Furthermore, collective bargaining at the plant level, can be the subject of references both from the law and/or the national collective agreement (working time, remote work, corporate welfare, etc..).

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

The negotiation is at a national level between Confindustria and Unions to set general principles for all the industrial sectors (like i.e. the rules of representativeness). Then there is a specific national sectoral level between Federmeccanica and Unions to sign the national collective agreement (NCA)

[14] the in-company representatives elected to work councils.

applied to MET employees. Finally, there is a company level negotiation: at this level, as mentioned before, specific agreements on performance bonuses, welfare etc. are signed and applied to company's employees.
Industry-wide negotiations between employers and unions that establish the main issues of the employment contract, mostly take place at national level, need to be renewed every three years and effectively set base salaries for each job category and level of seniority. On top of this they also define, among other things, the working hours and holidays, health and safety, training and the use of temporary workers.
Company-level negotiations take place between the employer and the in-company representatives elected to work councils (RSU) and can modify only selected items of the nationally negotiated contracts, where explicitly allowed by the latter (so-called escape clauses). This is the level at which performance premia are usually defined, on top of company-specific conditions.
There is also the possibility to sign agreements between social partners at territorial level (i.e.., between Assolombarda and Unions), especially on training and welfare. These agreements can be applied in companies where there are no in-company representatives of workers (RSU).

b- Can company agreements derogate sector agreements?

Company-level agreements can exploit selected escape clauses determined in sector contracts but are not allowed to overrule base salaries set at national level. However, company-level agreements do allow for productivity bonuses which can top up base salaries and, at least in principle, are aimed precisely at anchoring more firmly total compensation and output per worker.

c- Can you derogate agreements in a more favourable way to the company?

Specific modification agreements of one or more institutes ruled by the national collective agreement can be made, even on an experimental or temporary basis. These agreements are defined at company level with the unitary union representatives (RSU – in-company representatives of workers) in agreement with the territorial structures of unions and employers' associations.
These agreements can be done to promote economic and employment development through the creation of conditions useful for new investments or to contain the economic and employment effects deriving from companies' crisis situations.
The amending agreements cannot modify the minimum wages, the periodic economic increases linked to seniority as well as the individual rights deriving from mandatory law provisions.
The amending agreements must specify the objectives to be achieved, the duration, the references to the articles of the national collective labour agreement subject to modification, the methods to guarantee the enforceability of the agreement.

5. **The application of collective agreements** (erga omnes, signatory parties, others)

Formally, a collective agreement in Italy applies only to workers of the signatory parties, i.e. to workers members of the signatory union(s) and firms members of the signatory employers' organisation(s). No formal extension mechanisms of the terms set in collective agreements to workers in firms not member of an employers' organisation is present in Italy. However, in Italy minimum wages fixed in national collective agreements are used by labour courts as a reference to

determine if the company complies with the Article 36 of the Italian Constitution which states that "workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence". Base wages in national collective agreements are therefore functional equivalent of sectoral minimum wages for all workers to which all firms must comply. In practice, labour courts have considered the base salaries defined in the national collective agreements as the benchmark for minimum fair pay, effectively extending their validity to all workers. Collective agreements are therefore the most relevant wage setting institution in Italy and employers apply the national collective agreement even if they are not a member of the employers' association that signed it.

The collective agreements at company level are effective and enforceable for all personnel in force, following the rules established by Intersectoral Agreements, if approved by the majority of the members of the unitary trade union representatives (RSU – in-company representatives of workers).

6. The duration of the agreements

The national collective agreements lasts 3/4 years while the company level agreements last more frequently for a year or 3 years on specific subjects.

7. Social Peace

According to the national collective agreement , unions undertake not to promote and to intervene to avoid actions or claims aimed at modifying, integrating, innovating the subjects of agreements at all levels.

During the six months preceding and, in the month following the expiry of the NCA and in any case for a total period of seven months from the date of presentation of the renewal unions' requests, the social parties will not take unilateral initiatives or proceed to direct actions (strikes).

Regarding collective bargaining at company level, during the two months from the date of presentation of the unions' requests and for the month following the expiry of the agreement and in any case for a total period of three months from the date of submission of the requests, the social parties will not take unilateral initiatives or take direct action.

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NETHERLANDS

Some figures

- **Population:** 17.8 million (2022 according to Institute for Statics [15])
- **Number of employees in your country:** 9.60 million (2022, according to the Institute for Statistics), including 1.20 million self employed
- **Number of employees in the metal industry:** 162.760 (Metalektro in figures)
- **Collective bargaining coverage rate:** ± 80% (AWVN[16])
- **Proportion of unionised workers:** ± 17% in the Netherlands; in metal industry ± 22%
- **Main level of collective bargaining:** in metal industry: sectoral level; in the Netherlands: both sectoral level and company level.

1. The actors of collective bargaining

a- Employers´ organisations

FME is the employer organisation for the technology industry.

b- Trade unions

The trade union organisations are: FNV Metaal, CNV Vakmensen, De Unie, VHP2

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

In the Netherlands, the law prevails. The collective agreement may derogate from the law in described specific situations.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

In the case of conflict between different collective agreements, almost always employers organisations and the trade unions try to find a solution

3. The topics of collective bargaining

The topics of collective bargaining include wage increase and working hours.

[15] Institute for Statics (the Netherlands) - CBS
[16] General Association of Employers in the Netherlands (AWVN)

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

In the metal industry negotiations take place at sector level.

b- Can company agreements derogate sector agreements?

Yes, company agreements can derogate sector agreements, under special conditions mentioned in the collective agreement.

c- Can you derogate agreements in a more favourable way to the company?

No. The collective agreement in the metal industry is a minimum agreement. Derogation is only possible in a more favourable way for the employees.

5. The application of collective agreements (erga omnes, signatory parties, others)

The collective agreement in the metal industry is applicable to all employees in the sector.

6. The duration of the agreements

The duration of the agreement runs, mostly from 18 to 24 months.

7. Social Peace

During the duration of the collective agreement in the metal industry unions are not allowed to strike.

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PORTUGAL

Some figures

- **Population**: 9.77 million (2022)
- **Number of employees in your country:** 4.66 million (2022)
- **Number of employees in the metal industry**: 198.000 (2nd quarter 2022)
- **Collective bargaining coverage rate:** 76.6% (2020)
- **Proportion of unionised workers**: 7.2% in 2019
- **Main level of collective bargaining:** National sector/industry level

PRELIMINARY REMARKS

In Portugal, collective bargaining is a "recent" phenomenon which has emerged from a long-lasting conservative dictatorship (that ruled out independent unions) a little more than 40 years ago. Collective bargaining in the private sector in Portugal takes place at two levels – industry level and company level.

Negotiations at industry level, between employers' associations and the unions, are the most important element in Portugal's collective bargaining arrangements. Company level agreements cover many fewer employers.

There have always been a number of company- or holding-level agreements in the private sector, but largely concerned single firms or groups of firms that had previously been part of the public sector and were subsequently privatised.

The reduced company-level bargaining in Portugal reflects the strict application of the favourability principle that reduces incentives for company-level bargaining: in case of diverging standards in different agreements covering the same workers, it is the most favourable conditions across all agreements that apply to employees. Its strict application is itself a consequence of the strong legalistic tradition in labour matters, also shaped by many years of high inflation, which excluded the possibility of deviating downwards from sectoral standards in company-level agreements, unless there was a view that, overall, the new terms would be more favourable to (incumbent) workers. On the other hand, strong competition between the two main union confederations, combined with low levels of membership and lack of trust from employees towards potential union representatives, effectively reduced the scope for companies to engage in company-level bargaining.

1. The actors of collective bargaining

By law, the negotiating parties in Portugal are the unions and the employers, either individually or in employers' federations.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

Application of the favourability principle: in the case of diverging standards in different agreements covering the same workers, it is the most favourable conditions across all agreements that apply to the employees.

3. The topics of collective bargaining

Agreements concentrate on pay rates and increases, but they also cover other issues. According to the green paper, the most frequently covered topics are working time, night work, health and safety, overtime, temporary transfers, geographical mobility, occupational training, shift rates, exemption from fixed working hours (normally for more senior staff), arrangements for ending or revising agreements, flexibility and additional social benefits.

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

Collective bargaining in the private sector takes place at two levels – industry and company level.

b- Can company agreements derogate sector agreements?

Yes, in case of diverging standards in different agreements covering the same workers, it is the most favourable conditions across all agreements that apply to employees.

c- Can you derogate agreements in a more favourable way to the company?

Yes. See b.

5. The application of collective agreements (erga omnes, signatory parties, others)

Agreements are applied to the members of the signatory parties but industry level agreements are frequently extended by government decision upon request of the signatory parties.

6. The duration of the agreements

Negotiations on pay traditionally took place every year and lasted for 12 months. However, there are some which last longer.

7. Social Peace

The signatory parties of collective agreements are not bound by the peace obligation.

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SPAIN

Some figures

- **Population:** 48,34 million of inhabitants.
- **Number of employees in your country:** The number of people employed reached 21.26 million workers in the third quarter of 2023, according to data from the Labor Force Survey (EPA) published by the National Institute of Statistics.
- **Number of workers in the Metal sector:** The number of workers in the Metal sector affiliated to the General Social Security Scheme, according to data from the National Institute of Social Security, is 1.31 million. The number of unemployed EPA in the Metal Industry in the third quarter of 2023 reached 42,700 people.The total number of companies that can be included in the Metal Industry and Services Sector, according to their main activity, is approximately 221,350, of which 90.66% have less than 10 workers; 8.64% have between 10 and 100 workers; and 0.70% have more than 100 workers. Large metal companies with more than 500 workers account for 1.09% of the total number of large companies in Spain.
- **Collective bargaining coverage rate:** 99% of the total.
- **Proportion of unionized workers: Approximately between 10% and 15%.**
- **Main level of collective bargaining:** The structure of collective bargaining is dominated by agreements at a higher level than the company: by sectoral agreements (provincial, regional and state). In the Metal Industry and Services Sector, by provincial and national sectoral agreements

PRELIMINARY REMARKS

The structure of collective bargaining in the Metal industry, unlike other productive sectors, is made up of a set of agreements (state, provincial and company) which, in general, are relatively homogeneous given the heterogeneity of the different subsectors and activities that make up the MET industries.

The State Collective Agreement for Industry, New Technologies and Services in the Metal Sector (CEM) was signed for the first time in 2016 by Confemetal, CC OO-Industria[17] and UGT-FICA[18].

In the conventional structure of the Metal Industry Sector, the greatest specific weight corresponds, as mentioned above, to the provincial[19] sectoral collective bargaining agreements, that add up to 62, of which: 7 are of the single-province Autonomous Community[20], 2 of the Autonomous Cities and the remaining 42 have the province as their functional scope of application.

In addition, 11 other collective bargaining agreements that are negotiated for activities generally

[17] CCOO-industry (Trade union confederation of workers- industry branch)
[18] UGT-FICA (General union of workers – industry branch)
[19] Provincia /province: administrative division
[20] Comunidad autónoma/ Autonomous Community: regional entitty

included in the functional scope of the Metal Industry agreements, have been given specific and autonomous regulation within the Metal Sector as sub-sector activities.

In addition to these, there are about 600 company-level collective bargaining agreements.

1. The actors of collective bargaining

In general, the parties entitled to negotiate a collective bargaining agreement in any economic sector depend on the scope of the agreement: the company or the sectoral scope (state or provincial).

Spanish law provides for three types of entitlement to negotiate collective bargaining agreements: initial, full and decisional.

- Initial legal standing: a representative body of a trade union or a business organization is entitled to appoint representatives, in the appropriate proportion, to the negotiating committee:

a- In company agreements:

- On the part of trade unions: the works council or, where appropriate, the employee delegates or, alternatively, the trade union sections with a presence on the works council and the most representative trade union sections of the trade unions have initial legitimation.

b- In company group agreements:

- On the part of trade unions: those with at least 10% of the members of the company works council or employee delegates in the scope of the group of companies and the most representative trade unions at state/national level.
- On the part of companies: the legal representation of the companies that make up the group has legal standing.

c- In sectoral collective bargaining agreements (provincial, autonomous region and national):

- On the part of trade unions: those that accredit their status as the most representative at the State level, the unions that are affiliated to a more representative union and form part of the scope of the agreement, and those that accredit their status as the most representative at the autonomous community level, by accrediting a representativeness equal to or greater than 10% of employee delegates and members of the works council in the geographical and functional scope of the agreement.
- On the part of companies: the initial legal standing to be part of the negotiating committee is held by the business associations which, within the geographical and functional scope of the agreement, that account for at least 10% of the companies and provided that they

employ at least the same percentage of the workers concerned.

In addition, even if they do not exceed the minimum requirement of number of companies, the associations that employ at least 15% of the workers concerned within the scope of the agreement also have initial legal standing.

Also, subsidiarily, in the absence of business associations with sufficient representativeness, state-level associations covering 10% or more of the companies, as well as Autonomous Community associations with a minimum of 15% of the companies or workers in the Autonomous Region, have legal standing.

In addition, associations which, within the scope of the agreement, employ at least 15% of the workers concerned also have initial legal standing, even if they do not exceed the minimum number of companies.

- Full legitimacy: this occurs when the trade unions and employers' representatives on the negotiating committee are represented by an absolute majority of those initially legitimized.

The negotiating committee is validly constituted when the unions, federations or confederations, and the employers' associations with initial legitimacy represent, respectively, at least the absolute majority of the members of the works councils and employee delegates, if any, and companies employing the majority of the workers who fall within the personal scope of the agreement.

In the case of a company-level agreements, full legal standing does not apply and is not necessary, since the company and the works council or employees delegates are already involved.

With the establishment of the negotiating committee, both parties recognize that they have standing to negotiate the collective bargaining agreement.

- Decision-making legitimacy: this is the quality of the parties who, representing the trade union organizations and employers' associations in the negotiating committee, have the capacity to adopt agreements, which only become effective if they are endorsed by the favorable vote of such representatives.

In the Metal Industry and Services Sector, the following parties negotiate:

- At state/national level, the business association and the trade unions that have the necessary legitimacy: CONFEMETAL on the part of the companies, since it covers at least 10% of the companies and 10% of the workers in the Sector, and CC OO and UGT on behalf of the trade unions. Also, the Autonomous Community trade unions ELA[21], LAB[22] and CIG[23] are legitimized since they are considered the most representative at the level of their Autonomous Community.

[21] País Vasco
[22] País Vasco
[23] Galicia

Also, in collective bargaining agreements at the state level, the unions that have 10% of the members of the works councils or employee delegates in that geographical and functional area may negotiate.

At the provincial level, business associations with at least 10% of the employers in the provincial and functional scope of the agreement are entitled to negotiate, provided that they employ the same percentage of the workers concerned, as well as business associations that employ at least 15% of the workers concerned in the provincial and functional scope.

On the trade union side, provincial agreements may be negotiated by the most representative unions at the Autonomous Region level and trade unions with at least 10% of the works council members or personnel delegates at the provincial level.

The Metal Sector, as defined in the State Collective Bargaining Agreement for Industry, New Technologies and Services in the Metal Sector (CEM), is conventionally structured in the following areas and levels of negotiation:

1º State/National scope. This covers the entire Spanish territory. The CEM applies to all companies and workers within its functional and personal scope.

2º Territorial and subsectoral scope. This scope of negotiation includes the following collective bargaining agreements (mentioned in the preliminary remarks):

a) The sectoral Agreements currently existing at the provincial level.
b) The sectoral agreements that may be established within the framework of an autonomous community that replace the provincial agreements.
c) The subsectoral Agreements currently existing, included in the functional scope of this Agreement.

3º Company scope. This includes collective bargaining agreements or agreements of general effectiveness, currently in force or that may be agreed upon in a company or group of companies.

- In company agreements, on the employer's side: the employer or his representatives, and on the workers' side: either the works council or the employee delegates, or the trade union representatives of the most representative trade unions at state or Autonomous Community level and of those represented in the works council or the employees delegates.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the regulations/place of collective bargaining in relation to the law

The most important legislation applicable to labour relations in Spain is the Workers' Statute (Estatuto de los Trabajadores, ET), which regulates the rights and obligations of employees and employers in the labour field. The ET has a higher hierarchical rank than collective bargaining

agreements and individual employment contracts, and therefore, in the event of a conflict between these rules, the provisions of the ET must be applied.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

The purpose of the rules of concurrence between agreements is to clarify and determine which agreement is applicable when there are two or more agreements that can claim a certain scope of negotiation at the same time.

The Law establishes that a collective labor agreement, during its term, cannot be affected by the provisions of agreements of a different scope unless otherwise agreed, negotiated by state or Autonomous Region labour and business organizations, which may, by means of inter-professional agreements, agree on clauses on the structure of collective bargaining, establishing, if so agreed, rules for resolving conflicts.

The regulation of the conditions established in a company agreement, which may be negotiated at any time during the term of collective bargaining agreements of a higher scope, has priority of application with respect to the state, autonomous community or lower-level sectoral agreement in the following matters:

a. The payment or compensation of overtime and the specific remuneration for shift work.
b. The schedule and distribution of working time, the shift work regime and the annual planning of vacations.
c. The adaptation to the scope of the company of the professional classification system of the workers.
d. The adaptation of the aspects of the modalities of hiring that are attributed by this law to the agreements of company.
e. Measures to promote co-responsibility and conciliation between work, family and personal life.
f. Any others provided for in collective agreements and collective bargaining agreements at state/national and autonomous region level.

Collective bargaining agreements for a group of companies or a plurality of companies linked by organizational or productive reasons and identified by name will have the same priority of application in these matters.

Unless otherwise negotiated, trade unions and employers' associations may, within the scope of an autonomous region, negotiate agreements or collective bargaining agreements that affect the provisions of state-level agreements, provided that such decision is supported by the majorities required to set-up the negotiating committee in the corresponding bargaining unit.

In this case, and unless a different regime is applicable, established by means of an agreement or collective bargaining agreement at state/national level, the probationary period, hiring modalities, job classification, maximum annual working hours, disciplinary regime, minimum occupational risk

prevention standards and labour geographical mobility will be considered non-negotiable matters at the level of an autonomous community.

In the metal sector, the clauses contained in collective labour agreements at lower bargaining levels (provincial or company), which regulate the matters of exclusive state/national competence listed in section 3 of this Report, must be understood as not having been agreed and, therefore, lacking effect unless they are company agreements and refer exclusively to matters in which these agreements have been assigned by law priority in their application.

3. The matters of collective bargaining (issues of negotiation)

The negotiating parties are free to establish the regulatory content of the collective bargaining agreement, except for the rules on priority of application of company agreements over state or autonomous community agreements.

With regard to the issues of negotiation, the Worker´s Statute provides that the negotiating parties may regulate "matters of an economic, labour and union nature and, in general, any others affecting employment conditions and the scope of relations of the workers and their representative organizations with the employer and the business associations, including procedures for resolving discrepancies arising during the consultation periods; the arbitration awards that may be issued for these purposes will have the same effect as the agreements in the consultation period, being subject to appeal in the same terms as the awards issued for the resolution of disputes arising from the application of the agreements" and the rest of the issues: measures for the promotion of equal treatment and opportunities.

In accordance with the provisions of the Worker´s Statute and Chapter II of the CEM, related to the bargaining structure of the Metal Sector, the following are matters of exclusive competence reserved to the state bargaining level:

- Probationary period.
- Modalities of hiring.
- Job classification.
- Maximum annual working hours.
- Disciplinary regime.
- Minimum standards for occupational risk prevention.
- Labor geographical mobility.

Furthermore, CEM signatory parties have agreed to reserve the following common matters for negotiation at the national/state level:

- Functional scope.
- Sector bargaining structure.
- Competition rules.
- Training and professional qualification.
- Internal rules of the Metal Foundation for Training, Qualification and Employment.

- Regulations of the Joint Bodies for Occupational Risk Prevention.
- Training programs and specific contents on occupational risk prevention for workers in the Metal Sector and for workers in the Sector who work on construction works.
- Form of accrediting the specific training received by the workers of the Metal Sector and workers of the Sector that develop their activity in the construction sector, in the topic of prevention of labor risks. Homologation.
- Design, execution and assurance of Professional Cards of the Metal Sector: (TPM-TPC)
- Extrajudicial procedures for conflict resolution.

4. The levels of negotiation

a. At which level do negotiations take place? At sector level? At company level?

Negotiations take place at the national, regional, provincial and company levels.

b. Can company agreements derogate sector agreements?

Company agreements cannot derogate sectoral agreements. See section 2.b) of this report.

5. Application of collective bargaining agreements (erga omnes, signatory parties, others)

In Spain, collective bargaining agreements in all economic sectors have general or "erga omnes" personal effect: this applies to both the Metal National Agreement and other statutory collective bargaining agreements. This means that they are binding on all employers and workers included in their territorial and functional scope, even if they do not belong to the employer or union organizations that signed the agreement.

The normative legal effect of collective bargaining agreements entails their automatic and mandatory application to the companies and workers concerned, which excludes the possibility of negotiating an employment contract that establishes conditions contrary to those established therein or waivers by the workers or other conditions subject to individual acceptance mechanisms. The non-compliance of these conditions on the part of the workers and individual employers entails a legally enforceable liability for the latter.

6. Duration of collective agreements

It is up to the negotiating parties to establish the duration of collective bargaining agreements, and different terms may be agreed for each subject or homogeneous group of subjects within the same agreement.

Unless otherwise agreed, collective bargaining agreements are extended from year to year unless expressly denounced by the parties. The validity of a collective bargaining agreement, once it has been denounced and the agreed validity has expired, is in accordance with the terms established in the agreement itself.

During the negotiations for the renewal of a collective bargaining agreement, in the absence of an agreement, the agreement will remain in force, although the contractual clauses waiving the right to strike during the validity of the agreement expire upon its termination. The parties may adopt partial agreements for the modification of part of its content in order to adapt it to the conditions in which, after the termination of the agreed validity, the activity in the sector or in the company is developed. These agreements will have the validity determined by the parties.

If one year has elapsed since the termination of the collective bargaining agreement without a new agreement having been agreed, the parties must submit to the mediation procedures regulated in the interprofessional agreements at state or autonomous community level, in order to settle existing discrepancies.

Likewise, provided that there is an express, prior or contemporaneous agreement, the parties will submit to the arbitration procedures regulated by such interprofessional agreements, in which case the arbitration award will have the same legal effect as the collective bargaining agreements and will only be subject to appeal in accordance with the procedure and on the grounds established by law.

Without prejudice to the development and final solution of the aforementioned mediation and arbitration procedures, in the absence of an agreement, when the negotiation process has elapsed without reaching an agreement, the collective bargaining agreement will remain in force.

7. Social Peace

Article 82.2 ET states that collective bargaining agreements "may regulate labour peace through the obligations agreed upon".

In practice, this possibility is not used, since it implies for the signatories of the agreement a temporary commitment not to use the right to strike during the validity of the agreement.

Labor peace agreements are agreed between the employer and the workers (or their representatives) with the aim of preventing strikes during a temporary period, in exchange of an economic compensation.

Social peace or union peace clauses are rare in Spanish collective bargaining. These are binding clauses which only bind the signatories of the agreement and are not individualized in the employment contracts. These clauses do not imply the possibility of waiving the right to strike, since the recognition of this right is constitutional. The right to strike is individual in nature, but its exercise is necessarily collective.

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SWEDEN

Some figures

- **Population**: 10. 45 million (31 December 2021)
- **Number of employees in your country:** 5. 10 million (Q3 2022)
- **Number of employees in the metal industry**: 299. 200 (note that Teknikföretagen's member companies employ 330.000)
- **Collective bargaining coverage rate:** 90 % (November 2022)
- **Proportion of unionised workers**: 65 %
- **Main level of collective bargaining:** National sectorial collective bargaining

PRELIMINARY REMARKS

The Swedish labour market model means that the social partners have the primary responsibility for regulating wages and other terms of employment. The social partners are responsible for wage formation, and they also have a central responsibility for the other conditions on the labour market. The legislation supports this, for example through rules on rights of association and negotiation and the right to take industrial action. The major reason for employees and employers' organisations to enter into collective agreement is to obtain industrial peace.

The Swedish model on the labour market can be summarised as follows:

- The legislation in large part constitutes a framework within which the labour market parties have a great deal of freedom to regulate the precise conditions in collective agreements.
- Many of the legal regulations can be replaced with collective agreements.
- There is no legislation on minimum wages or the universal application of agreements.
- Collective agreements are applied to most of the employees in the labour market.
- Disputes are resolved in the first instance through negotiation.

1. The actors of collective bargaining

There are more than 100 organisations in the Swedish labour market, approximately 55 employer organisations and 50 trade unions. Together they sign around 650 agreements on wages and general conditions.

a- Employers´ organizations

The employer's organisation in the private labour market consists mainly of the national sectoral employers' organisations, such as **Teknikföretagen** (MET Industry), Almega (service sector), Transportföretagen (transportation and logistics), Svensk Handel (commerce), Visita (hospitality), Industriarbetsgivarna (mining and steel) to mention a few.

Teknikföretagen gathers 4 300 member companies with around one million employees, whereof one third in Sweden, and is one of several members of the Confederation of Swedish Enterprise (Svenskt Näringsliv).

The Confederation of Swedish Enterprise is an umbrella organisation for the Swedish employers' and industry associations representing 60 000 Swedish companies. It gathers 49 trade and employers' associations, with a total labour force of 1 900 000 employees covering 70 % of the Swedish private sector. A number of employer organisations in the private sector are not members of the Confederation of Swedish Enterprise, such as the Banking Institute Employer Organisation (BAO), Fastigo; the Real Estate Employer's Organisation, the Fremia Employer Organisation and the Employers' Alliance.

The employers in the public labour market consists of two major employers' organisation, that are: SKR (regions and municipalities) and Arbetsgivarverket (government employers).

Trade unions

Teknikföretagen's counterparts are IF Metall, Unionen, Sveriges Ingenjörer and Ledarna.

For employees working as blue collars/wage earners in member companies of Teknikföretagen the most common trade union for membership is IF Metall. **IF Metall** has over 300 000 members at nearly 13 000 workplaces, affiliated to 34 local branches. Its members work in the mechanical, engineering and plastics industries, the building component industry, the mining sector, the ironworks sector, the textile and clothing industries and more.

For employees working as white collars/salaried employees in member companies of Teknikföretagen, **Unionen** is the most common employee organization. Unionen organizes employees in companies that operate in areas such as IT, telecom, construction, manufacturing and R&D, but also have many members in the distribution, trade, retail and public sectors. Unionen has around 700 000 members. Sveriges Ingenjörer, another white-collar union, is the Swedish Association of Graduate Engineers. An engineering degree is required to become a member of this employee organization. Its members work both in the private and the public sectors. **Ledarna** is the employee organisation for people working as managers and recruits' members in various areas. Ledarna is also a white-collar union.

The trade unions are in most cases members of one of the three central organisations, LO, TCO or Saco. IF Metall is part of LO – The Swedish Trade Union Confederation, a central organisation for 14 trade unions for blue-collar employees and has around 1.2 million working members. Unionen is part of TCO – The Swedish Confederation of Professional Employees, a central organisation for 14 trade unions for white-collar employees. The association has about 1.1 million working members. **Sveriges Ingenjörer** is part of Saco – The Swedish Confederation of Professional Associations, comprising 23 trade and professional unions. Together they organise just over half a million working members.

Ledarna is not a member of any of the above-mentioned central employee organisations. However, together with Unionen and Sveriges Ingenjörer and several other employee organisations in the private sector it is part of PTK, The Council for Negotiation and Co-operation. PTK has 27 member organisations, representing 700 000 salaried employees in the private sector.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

The legislation in large part constitutes a framework within which the labour market parties have a great deal of freedom to regulate the precise conditions in collective agreements. Collective agreements have an important function in regulating the Swedish labour market. The collective agreements fill out the laws by more detailed regulation regarding inter alia wages and salary, working hours, other compensations, forms of employment, notice periods to just mention a few. Many of the statutes of the Swedish labour legislation can be derogated to various extent through collective agreements. When this is possible it is stipulated in the beginning of each individual law. In such cases, the social partners are more or less free to agree on terms and conditions that deviate from the law in question.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

The collective agreement applies to the employee's performing the work tasks that are covered by the collective agreement. Blue and white collars are as a rule covered by different collective agreements. In case an employer is bound by two collective agreements applicable to the same work, i.e., "competing collective agreements", the employer, as a rule, must apply the first signed collective agreement. There is no statutory regulation on this matter, but it follows from case law. The "most favourable principle" does not apply in the Swedish context.

3. The topics of collective bargaining

Basically, most terms and conditions for employees and the relationship between employers' organisations/employers and the trade unions are a matter of collective bargaining, such as employment forms, working hours, salary/wages/other remuneration, leave, vacation, pension, insurance (work accident, transition and skill development), parental leave supplement, employee's inventions, non-compete restrictions, short-term work schemes, posting of workers, traineeships and certain termination of employment rules.
There are also so-called negotiating procedure agreements, which is a collective agreement in which the parties in certain industries have agreed on the forms that negotiations on new collective agreements for wages and general conditions should take, including the right to appoint mediators. Collective agreements can also regulate co-determination on the workplace, e.g., in which cases and under which procedures the employer should consult with the trade unions.

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

There are collective agreements at three levels:

- General national agreements covering either the private or public labour market (e.g., pension and insurance schemes, non-compete restrictions, employee's inventions etc.)
- National industry-wide agreements (entered between sectorial industry organisations, such as Teknikföretagen, and govern terms and conditions on employment, including salary and wages)
- Local agreements (regulating matters between the employer and the trade union, may also in certain cases deviate from the national industry-wide agreements).

b- Can company agreements derogate sector agreements?

Yes, company agreements can derogate sector agreements when it is allowed according to the general national agreement or the national industry-wide agreement. The agreement regulates the terms under which deviation can take place.

a. Can you derogate agreements in a more favourable way to the company?

Yes, it is possible to derogate agreements in a more favourable way to the company, when it is allowed according to the general national agreement or the national industry-wide agreement. The agreement regulates the terms under which deviation can take place, in most cases when such deviation is allowed, the local parties are more or less free to deviate in the way they find feasible.

5. The application of collective agreements (erga omnes, signatory parties, others)

A collective agreement must be written down and govern the employment conditions of employees or the conditions in general between employers and employees. The parties to the agreement are an employer or employer organisation on one side and a trade union on the other.

Signatory parties:

- General national agreements, signed by the umbrella organisations, such as the Confederation of Swedish Enterprise, LO, PTK.
- National industry-wide agreements concluded by sectoral industry organisations (such as Teknikföretagen) and IF Metall, Unionen, Sveriges Ingenjörer to mention a few.
- Local agreements concluded by the employer and the local trade union branch.

The erga omnes principle does not apply to Swedish collective agreements.

6. The duration of the agreements

The duration of the general national agreement is usually indefinite including a notice period of six/twelve months in case of termination of either party.

National industry-wide agreements normally run on a one-to-three-year basis, and sometimes with a possibility to terminate the agreement in advance.

The duration of local agreements, is usually indefinite, including a notice period of three/six/twelve months in case of termination of either party.

7. Social Peace

The right to take industrial action (strike, lockout, blockade, etc.) is protected by the constitution and can only be restricted by law or agreement. This protection also covers employees in the public sector. In general, the right to take industrial action is very extensive, and is not limited by any assessment of the industrial action's proportionality or appropriateness.

The law contains few restrictions on the right to take industrial action, the restrictions are however primarily set out in the Employment (Co-Determination in the Workplace) Act. A no-strike rule applies to the parties bound by the collective agreement. In other words, industrial action is prohibited in the following situations:

• Industrial action cannot be taken if the action has not been duly ordered by the organisation that entered into the collective agreement.
• Industrial action cannot be taken if the action breaches a collective agreement containing a no-strike rule that is more extensive than the law.
• Industrial action also cannot be taken if the action is taken for any of the following purposes:
to exert pressure in a legal dispute, to effect a change in the agreement, to realise a provision that is to be applied since the agreement has ceased to apply, or to provide support for someone else (known as sympathy action) who is not able to take industrial action themselves.

It is important to note that a sympathy action is consequently also permitted if the party taking the action is bound by collective agreement, provided that the action is taken to support a permitted industrial action.

Further, a trade union is allowed to take industrial action against an employer already bound by a collective agreement in support of a claim in a matter governed by the employer's collective agreement only under the following conditions:
• the industrial action must have been decided by the employee's trade union organisation in a duly qualified order,
• the aim of the industrial action must be to bring about a (further) collective agreement,
• the trade union organisation must first have negotiated with the employer or its organisation about the claims being presented and

• there must not be a requirement from the trade union organisation that the agreement that it wishes to achieve shall displace the employer's existing collective agreement.

The most important consequences of a collective agreement are that the members are bound by the agreement made and that there is a no-strike rule during the term of the agreement.

Agreements cannot be made that are in breach of the collective agreement. With regard to wages, the vast majority of the 670 or so central collective agreements require wage negotiations to take place locally. Such negotiations may relate to the size of the scope for wage increases or how this will be allocated between the employees covered by the agreement, or both. As the central collective agreements entail a no-strike rule, the local negotiations are conducted without the possibility of industrial action.

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SWITZERLAND

Some figures

- **Population**: 8.82 million (2022)
- **Number of employees in your country:** approx. 4.7 million (2022)
- **Number of employees in the metal industry**: 321.000
- **Collective bargaining coverage rate:** na
- **Proportion of unionised workers**: na
- **Main level of collective bargaining:** na

PRELIMINARY REMARKS

1. The actors of collective bargaining

a- Employers´ organisations:

There is only one employer organisation in the Metal, electric and Machinery Industry (MEM) collective employment agreement (CEA), and this is ASM (Association of Swiss Engineering Employers (also called Swissmem).

b- Trade unions:

There are 5 trade unions representing employees in the MEM CEA: Unia, Syna, Employee Switzerland (AS), Swiss Leaders and Association of commercial employees (ACE).

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

Any provision in a collective bargaining agreement takes precedence over applicable law to the extent that it is more favourable or equivalent to statutory provisions.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

If in a respective area a so-called general binding collective agreement exists, then the rules of this general binding collective employment agreement are applicable if they are more favourable than the respective rule in the collective agreement. All general binding collective employment agreements have to be approved by the government.

3. The topics of collective bargaining

The topics of collective bargaining include: Minimum salary, working hours, minimum vacation, salary payment in case of illness, accident, pregnancy, military, etc., education, rights of the employee representatives and procedures between the parties (employer associations and trade unions).

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

Collective bargaining in the MEM CEA takes place between the employer association and the trade unions.

b- Can company agreements derogate sector agreements?

The provisions of a company agreement take precedence over an applicable collective employment agreement to the extent that these are more favourable or equivalent to the provisions in the collective employment agreement.

c- Can you derogate agreements in a more favourable way to the company?

Yes, it is possible to derogate agreements in a more favourable way to the company as long as it is not in disfavour of the employees.

5. The application of collective agreements (erga omnes, signatory parties, others):

The collective employment agreement applies only to those companies which submit themselves to the CEA by adhering as members to the ASM. There is no obligation to adhere to ASM. If a company applies the CEA all employees defined in accordance to art. 1 of the CEA fall within the scope of application of the CEA. Higher management is in general exempted from the application of the CEA.
Signatory parties are the parties mentioned in question 1.

6. The duration of the agreements.

The collective employment agreement in the MEM Industry has a duration of 5 years in general. However, the duration period is part of the negotiations.

7. Social Peace

The MEM collective employment agreement has the following rules: The contracting parties acknowledge the importance of industrial peace and undertake to maintain it unreservedly and to bring influence to bear on their members to do likewise. Consequently, any kind of industrial action is precluded, even where matters not covered by the CEA are concerned. This absolute industrial peace shall also be binding on the individual employer and employee.

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TURKEY

Some figures

- **Population**: 84.68 million (2022)
- **Number of employees in your country:** 16.16 million (2022)
- **Number of employees in the metal industry**: 1.91 million (2022)
- **Collective bargaining coverage rate:** 17.68% (Non-official rate, no public statistics available)
- **Proportion of unionised workers**: 14,42%
- **Main level of collective bargaining:** Workplace Level

PRELIMINARY REMARKS

The right of employees and employers to form and join unions and the right to conclude collective agreements are Constitutional Rights.

To protect and promote their economic and social rights and interests in labour relations, employees and employers are free to establish unions as well as upper-level union organizations without having to obtain any prior permission.

Workers and employers have the right to conclude collective agreements to regulate their economic and social situations and working conditions. The procedure and rules for concluding collective agreements are regulated by a special act.

Social dialogue efforts to bring Turkey's Labour relations legislation into conformity with ILO freedom of association norms occupied Turkey's legislative agenda for a long time. As a result of continued social dialogue efforts and after more than ten draft proposals; Act no. 6356 has been adopted on 7 November 2012 as the new Unions and the Collective Agreement Act, which meets the international norms on freedom of association and free collective bargaining.

Collective agreements have many functions in the modern industrial relations such as protecting workers, providing order by setting standard working conditions in the enterprise, ensuring social peace etc.

1. The actors of collective bargaining

a- Employers´ organisations:

According to Turkish legislation, Employers' organisations are defined as legal personality to carry out activities in a branch of activity formed by the association of at least seven employers in order

to protect and and promote their common economic and social rights and interests in labour relations.

b- Trade unions:

In the same way as employers' organisations, according to Turkish legislation trade unions are defined as legal personality to carry out activities in a branch of activity formed by the association of at least seven employers in order to protect and and promote their common economic and social rights and interests in labour relations.

Accoding to Turkish legislation, collective agreements can be concluded between a trade union and an employers' organization or with an employer who is not a member of an employers' organization. Therefore to establish a collective bargaining agreement, the existence of a competent trade union is required. However, employers' organisations are not necessarily a mandatory party, because the employer can be a party to the collective bargaining agreement. But if the employer is a member of an employer organization, then as a general rule, the employer shall not have the competence to conclude a collective agreement until they resign from the membership of the employers' organization.

2. The place of collective bargaining in relation to the law

a- Hierarchy of the norms/place of collective bargaining in relation to the law

In principle, the normative provisions of collective agremeents are binding like the rule of law on making, contents and ending of employment contracts. As a result, the employment contracts cannot be contrary to the collective agreement unless otherwise provided in the relevant collective agreement. The violating provisions of the employment agrements shall be replaced by the provisions of the collective agrement. In the case that a collective agreement contains provisions contrary to the employment contract, the provisions of the employment contract that are in favour of the employees shall prevail.

Even though the right to conclude collective agreements is a constitutional right; according to Act No. 6356 on Unions and Collective Agreements; collective agreements can not include regulations contrary to the Constitution and the binding provisions of the laws.

b- In the event of conflict between different collective agreements applicable to an employment relationship, what rules apply?

According to Turkish legislation; only one collective agreement can be concluded and be applicable in the same workplace for the same period. This principle aims to avoid conflicts and hesitations that may arise from the overlapping of various collective agreements in the workplace. Therefore it is not possible for different collective agreements to conflict to an employment relationship for the same period.

3. The topics of collective bargaining

Collective agreements contain provisions on the making, contents and ending of the employment contracts. They may also contain other stipulations like mutual rights and obligations of the parties, application and inspection of the agreements and the means for the settlement of the disputes.

Although the bargaining and negotiations revolve around wage and other monetary issues; working time (flexible working conditions etc.), leaves (annual leaves, leaves for excuse, sick leaves etc.) bonus payments, absenteeism, additional social benefits, trial periods, shift work premiums etc. can be subject to bargaining and debate from time to time.

These issues are negotiated by the parties of the collective bargaining agreement to protect and improve social peace in the workplace. The parties may make all kinds of arrangements and make binding provisions on the issues they have agreed, provided that they are not contrary to the Constitution and the laws.

4. The levels of negotiation

a- At which level do negotiations take place? At sector level? At company level?

In accordance with Turkish legislation; it is possible to conclude workplace level, enterprise level and branch level (group collective agreements) collective agreements.

The basic unit accepted for collective bargaining agreements in Turkish law is the workplace. Pursuant to Article 34 of the Act No. 6356 on Trade Unions and Collective Labour Agreements, a collective bargaining agreement may cover one or more workplaces in the same branch of activity.

An enterprise collective bargaining agreement is an agreement that covers more than one workplace in the branch of activity belonging to a natural or legal person or a public institution.

A group collective bargaining agreement is an agreement concluded between a trade union and an employers' organisation, covering the workplaces and the enterprises established in the same branch of activity belonging to more than one employer.

b- Can company agreements derogate sector agreements?

As a result of abovementioned “only one collective agreement can be concluded and be applicable in the same workplace for the same period” rule; a company can either conclude a workplace/enterprise level agreement or they can be included in a group collective agreement (branch level agreement). So, when a company is included in a group collective agremeent, that company cannot conclude a separate company level agreement for the same period.

The companies included in a group collective agreement are bound by the provisions (both monetary and adminstrative ones, including wage increases) of that group collective agreement.

c- Can you derogate agreements in a more favourable way to the company?

See explanation above.

5. The application of collective agreements (erga omnes, signatory parties, others)

According to Turkish legislation, workers who are working in a workplace covered by a collective agreement who are members of the signatory Trade Union shall benefit from that agreement. It is possible to exclude some worker groups (in practice administrative staff, white collar workers etc.) from the scope of collective agreements subject to the consensus of the parties.

Workers who are not members of the trade union that is a party to the collective agreement at the date of signature can benefit from the collective agreement signed at the workplace by paying a solidarity fee. The consent of the trade union shall not be required in this matter.

According to Act No. 6356, extension of a collective agreement is possible within a branch of activity at the request of any of the social partners concerned or at the request of the Minister of Labor and by the decision of the President. The President can take the extension decision after receiving the advisory opinion of the Supreme Arbitration Board.

The collective agreemet to be extended shall be concluded by the trade union having the largest number of members in the branch including the workplaces subject to extention.

The collective agreement can be extended either in whole or in part, or after making necessary changes to all or some of the workplaces not covered by any collective agreement within the same branch of activity. The extension order shall indicate why the decision has been taken.

The extension order shall expire automatically upon expiry of the extended collective agreement. The President may cancel an extension order by indicating the reasons for it. Provisions on the rights and obligations of the parties and on the right to recourse to private arbitration of a collective agreement cannot be extended.

6. The duration of the agreements

Collective bargaining agreements can be arranged for a minimum of 1 year and a maximum of 3 years. After the conclusion of a collective agreement, the parties cannot extend or reduce the duration of the agreement or terminate it before the expiration date.

7. Social Peace

The most important function of a collective agreement is peace. Once the bargaining parties conclude a collective agreement; this generally means that the socio economic issues between the

parties are resolved and the workplace peace has been gained. As a result of this; the parties are under the obligation of fixing the conflicts which may be encountered during the course of the agreement by mutual negotiations or by judicial process, without starting any collective industrial action (such as strike, lock-out or resistance etc.) once the collective agreement has been concluded. This is called the peace obligation. This obligation is not clearly stated in Turkish legislation but its finds its source in the objective and characteristics of collective bargaining.

As a result, collective agreements are the important part of the social dialogue mechanism in Turkey. Today in Turkey, the broadest applicability of social dialogue is in the process of collective bargaining and concluding collective agreements.

There are various mechanisms of dialogue between workers and employers through certain boards and commissions created by collective labour agreements, which themselves are a major form of bipartite social dialogue and practiced in workplaces in Turkey.

The parties of collective agreements fulfil their obligations to uphold this concept, which is expressed to ensure and protect an environment of harmony and tolerance between the employer and the employee.

In addition to this, the State is one of the parties to the labour peace. Through the legal regulations and institutions in place, the protection of profits is guaranteed, contributing thus to the establishment of labour peace. Determining the minimum wage and enacting legal regulations regarding working life are important in terms of ensuring social peace.

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