

## Chapter 7

# Czechia: bargaining supplements legal protection

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The Czech Republic was formed in 1993 after the division of Czechoslovakia into two successor states, the other being Slovakia. This followed a brief period after the end of communist power in 1989 during which a legal basis for collective bargaining was rapidly created. Trade unions, inheriting mass membership from the communist period, took the initiative, pressing for the establishment of tripartite structures, bringing together government, unions and employers' organisations. The last of these existed only in embryonic form at the time, but welcomed the resulting recognition and ability to influence government. The key laws on interest representation and collective bargaining were agreed in 1990 following advice from the ILO. They subsequently underwent only relatively minor changes.

Collective bargaining takes place between recognised union organisations, which need three members for legal registration, and employers or employers' organisations. Bargaining can be initiated at the request of either side, but it is almost always unions that take the initiative. The employer is obliged to respond, but under no obligation to reach an agreement. Collective agreements, usually running for one year, have legal authority. Those signed at the industry level, meaning with employers' organisations, cannot stipulate worse conditions for employees than are provided by law. Collective agreements are binding on all employers in the organisation, even those that may leave while the agreement is in force, and they cover a wide range of issues relating to pay and conditions, but often without precise commitments. Agreements at the enterprise or organisation level cannot give worse terms to employees than those laid down in the law or in an industry-level agreement, and they tend to be more specific on pay and other issues.

Total collective bargaining coverage is not reliably recorded at a central level. Available information suggests that it fluctuated slightly from year to year between 2000 and 2017, with a reasonable estimate of a decline from 55 per cent to 50 per cent. Content also varied: bargaining in public services was limited in scope because pay and basic conditions were decided largely by parliament. In some parts of the private sector, coverage is boosted by the extension of industry-level agreements to cover whole industries. Extension requires a decision from government, which is possible only if requested by both unions and employers' organisations. It is unclear how far extensions have brought benefits to employees.

The key actors changed little between 2000 and 2017. The main functions of employers' organisations are representation and lobbying the government. Two confederations are

Table 7.1 Principal characteristics of collective bargaining in Czechia

Key features	2000	2016/2017
Actors entitled to collective bargaining	Registered trade unions, employers, employers' organisations	
Importance of bargaining levels	Sectoral (setting general points) and enterprise (more specific), but only one level applies in many workplaces	
Favourability principle/derogation possibilities	Enterprise-level agreements cannot set worse conditions for employees than sectoral agreements and neither can set worse conditions than those laid down in the law	
Collective bargaining coverage (%)	55	50
Extension mechanism (or functional equivalent)	Decided by government when jointly requested by bargaining partners	
Trade union density (%)	26	7
Employers' association rate (%)	67*	67*

Note: \* Very approximate.

Sources: See preceding text.

present in the tripartite structure, claiming together to represent 33,000 employers with 2.6 million employees in 2017. If accurate, this would represent about 67 per cent coverage of all employees. Employers' organisations that sign collective agreements, 20 in 2017 and all members of a larger confederation represented in the tripartite structures, rarely reported the numbers their members employed.

Trade union density is also difficult to measure, partly because of unreliable past claims from one of the confederations and partly because stated membership includes pensioners, who make up a significant proportion in some unions but zero in others. In addition, there are organisations that call themselves trade unions and may engage in collective bargaining, but for many of them no reliable data exist on membership. A rough estimate suggests a density level falling from 26 per cent of employees in 2000 to 7 per cent in 2017, close to the estimates presented in Table A1.H in the Appendix.

There had been early expectations that the importance of the law would fade over time as collective bargaining took on a bigger role. In fact, collective bargaining developed to a great extent as a supplement to legal protections, giving slightly better conditions but still covering the same themes. As a result, much of the activity of basic organisations involved ensuring that labour law was respected as much as negotiating, and ensuring implementation of, collective agreements. A major reason for this was a general decline in membership and weakening organisational strength in workplaces.

## Industrial relations context and principal actors<sup>1</sup>

The political changes that ended communist power gave trade unions a dominant role in creating the new framework for collective bargaining. Employers' organisations emerged only later and directors of large enterprises were more concerned with

1. The background information on Czech trade unions in this chapter comes largely from Myant (2010).

influencing government economic policies and with pursuing their personal interests through enterprise privatisation (Myant 2000). Trade unions were bequeathed near universal membership from the previous system. Rapid transformation led to fundamental changes in structure and activities, reflecting a strong rejection of the perceived centralised political control of the past.

The new union confederation, Czechoslovak Confederation of Trade Unions (ČSKOS, Československá konfederace odborových svazů), unlike the previous central body, had no formal authority over lower levels. The result was a significant fragmentation. By 2017 there were 29 industry-level unions affiliated to the Czech-Moravian Confederation of Trade Unions (ČMKOS, Českomoravská konfederace odborových svazů), the main Czech confederation that took on the roles of ČSKOS after the breakup of Czechoslovakia in 1993, and 13 affiliated to the smaller rival Association of Independent Trade Unions (ASO, Asociace samostatných odborů), formed in 1995. At least 17 independent unions played significant roles in collective bargaining (Myant 2010: 62–75). Many unions were inevitably extremely small. The biggest ČMKOS-affiliated union in 2017 was the Metalworkers' Trade Union (Odborový svaz KOVO, OS KOVO), representing metal workers, with 95,000 members.

Transformation also involved the development of a new conception of trade union activity, using advice from western European unions and international agencies, especially the ILO. Essential to this was to be a role in defending the interests of employees through collective bargaining at enterprise and industry levels, ideally with an overarching agreement in a supreme tripartite body. The first step was to establish the tripartite Council for Economic and Social Accord (RHSD, Rada hospodářské a sociální dohody) formed at the Czechoslovak, Czech and Slovak levels in October 1990. The subsequent break-up of Czechoslovakia made no substantial difference, tripartism continuing through the Czech and Slovak bodies. In 1990 the RHSD was the forum for negotiating changes to labour law, amending the Labour Code (Zákoník práce) originally set out in 1965, which were then approved by parliament.

These, and some subsequent amendments, still left employees with substantial legal protection. ČMKOS later believed that the union side had succeeded in ensuring that the law guaranteed basic protection of wage levels, ultimately safeguarded by a statutory minimum wage; health and safety; maximum working hours and minimum holiday entitlements; as well as protection against arbitrary dismissal and various forms of discrimination (cf. ČMKOS 2010b: 17). Unions also retained substantial power over ensuring health and safety at work and they were to be consulted on dismissals, redundancies, overtime, working on public holidays and other abnormal shift patterns. There was also a crucial new element, namely a framework for legally-binding collective agreements that could lead only to improvements – from the employees' point of view – to existing laws. There were frequent amendments in later years, often adding more detail to set the terms for more flexible work patterns, but for some of them approval in collective agreements was still required.

Nor did EU accession in May 2004 change very much. Rights to consultation and information were already present in Czech law and there were at the time elected

employee representatives on company supervisory boards who were usually union representatives. One contentious issue was an anti-discrimination law, which was finally passed in 2009, albeit against strong opposition from right-wing politicians who conceded only because the EU would otherwise have imposed a substantial financial sanction. Trade unions for their part resisted the creation of works councils, seeing them as a threat to unions' exclusive position as employee representatives. The law finally passed in 2006 allows for their creation, but without rights to collective bargaining, joint decision-making or protection from victimisation. It is unclear whether many have been formed. None have ever been reported playing any significant role in furthering employees' interests.

From near universal membership in 1990, trade union membership fell to a fraction of that level. ČMKOS reported 300,000 members in 2017, while ASO claimed 85,000. This latter figure is plausible, although ASO has not in the past maintained reliable records of affiliates' membership as it does not charge affiliation fees. Its published figures, however, were clearly exaggerated. Any estimate of the decline is complicated by poor reporting and changing organisational affiliations, but a reasonable estimate from unions that remained affiliated to ČMKOS is a fall in membership to 10 per cent of the 1993 level in 2017.

This decline reflected weak traditions of trade unionism after the communist period, alongside an economic transformation that led to big changes on the employers' side. This was most pronounced in private services where state-owned enterprises disappeared, to be replaced by small, domestically-owned firms and by incoming multinationals. Membership when reported in 2009 was down to, respectively, 7 per cent and 3 per cent of 1993 levels in retail and in hotels and catering. The decline was smallest where organisational structures underwent the least change, as in much of the public sector, transport, finance and parts of extractive and manufacturing industry. New manufacturing plants established by foreign multinationals also provided a base for trade unions, albeit not compensating for declining membership elsewhere.

Employers' organisations took shape in the years after 1990 as bodies representing the interests of business groups. Collective bargaining was never their central activity. Representation in the tripartite RHSD was restricted to organisations with 400,000 employees or more, restricting numbers to two confederations, the Union of Industry and Transport of the Czech Republic (SPČR, Svaz průmyslu a dopravy České republiky, formed in May 1990 by directors of big state-owned enterprises) and the Confederation of Employers' and Entrepreneurs' Unions of the Czech Republic (KZPS, Konfederace zaměstnavatelských a podnikatelských svazů České republiky, uniting eight organisations to reach the threshold size). Neither of these were involved in collective bargaining. They had a common interest with trade unions in maintaining the role of the tripartite RHSD as a means for lobbying and communication, but they disagreed with unions on many issues of economic and employment policy.

SPČR includes 33 business associations among its members, some of which are involved in industry-level bargaining, as are many of the 147 individual companies affiliated to SPČR, to all of which it gives advice and guidance. Four of those in KZPS regularly sign

industry-level agreements. They rarely publish estimates of their affiliates' employment levels. One that does is the association for the construction industry which claimed that its members employed 57 per cent of that sector's workforce.

Coverage on the side of business associations weakened through the 1990s as a result of organisational fragmentation of economic units, the disappearance of large domestically-owned enterprises and a lack of interest in collective representation on the part of some incoming multinationals. Nevertheless, if the figures provided by the two organisations represented at tripartite level are accurate, they cover about 67 per cent of employment, or 81 per cent of employment excluding public services. This is considerably higher than the figures in Table A1.G of the Appendix. Even if these figures are exaggerated, there is a clear imbalance between employee and employer organisations' coverage, leading to some diversity in the role of industry-level agreements, as outlined below.

## **Level of bargaining**

A simple early expectation on the union side was that bargaining would develop at three levels. The national level would set a very general framework. Industry-level agreements would define pay and conditions across similar employers and details would be filled in at the enterprise level. In practice, there has never been bargaining at the national level, industry-level agreements have, for the most part, provided only a general framework and the important issues are most frequently agreed at enterprise/organisation level. Clarifying the relationship between these levels requires some reference to the content of agreements, the main discussion of which is reserved for a subsequent section.

The national level is dominated by the tripartite RHSD, which evolved into a body that allowed consultation over government policies and legislation. Although less than initially hoped for by the unions, this was valued for providing direct contact with government and as a basis for consultations on policy and legislation, particularly as regards labour law and union rights. It performed the same positive role for employers' organisations, which pressed their demands, frequently for limiting progressiveness of taxation, minimum wage levels and regulation of employment conditions.

Individual employers, particularly larger ones, frequently had alternative means of influencing politicians. For many individual unions, however, the tripartite RHSD was the best means of access to the centres of power and they used it to press employment issues specific to their sectors, such as pay in the public sector or working hours in transport and retail. All of these affected employment conditions in ways, and to an extent, that collective bargaining with employers could not, often because not all employers were involved in collective bargaining. They thereby set a context within which bargaining developed at industry and enterprise level.

The industry, referred to in Czech as 'higher-level', agreements carried a degree of higher status as they had to be lodged with the Ministry of Labour and Social Affairs. They could only improve employees' conditions relative to the law and were binding on all members of the employers' organisation, including any that chose to leave during

the period of the agreement's validity. Scope can also be further extended by means described below. This binding nature meant that employers were often willing to agree only to very general points, leaving the details to be settled in enterprise agreements. These too could not lead to less favourable conditions for employees than either the law or industrial agreements. There is no requirement for an enterprise-level agreement when an industry agreement exists. In fact, there often cannot be enterprise-level agreements as in many cases there is no enterprise-level union. Thus, it is possible for an employee to be covered only by an enterprise agreement, only an industry agreement or by both, with the enterprise agreement giving detailed meaning to the industry agreement. This complicates the meaning and interpretation of figures on bargaining coverage discussed in the next section.

## Extent of bargaining

There is no central register of all agreements and, in view of the fragmentation of unions and inconsistent overlap between bargaining levels, it is not possible to give a definite figure for bargaining coverage. Table 7.2 shows the coverage recorded by ČMKOS-affiliated unions. The available data do not allow a precise estimate of the number of employees covered by an industry-level agreement who are also covered by an enterprise-level agreement. In view of the industries concerned, including parts of retail, hotels and catering, it is reasonable to assume that a significant proportion will not be covered twice. Those covered by extensions are very unlikely to be covered also by enterprise-level agreements. The total figure for ČMKOS coverage for 2013 is therefore between 42.4 and 52.6 per cent. Agreements signed by ASO and independent unions, taking account of the industries covered, probably increase this by up to 5 percentage points. A rough guess points to total coverage falling from around 55 per cent in 2000 to around 50 per cent in 2017, slightly above the estimates in Table A1.A in the Appendix. This decline is much less marked than the decline in union coverage and is subject to more fluctuations because of variations in the numbers covered by extensions of industry agreements. The coverage of enterprise-level agreements varies much less, while showing fairly consistent decline, from an estimated 80 per cent coverage when collective bargaining formally began, and, as will be indicated, this is the level likely to have the greatest impact on employment conditions.

Table 7.2 Bargaining coverage for ČMKOS-affiliated unions (% of employees), 2006–2017

	Industrial	Of which extension	Enterprise
2000	16.4	4.4	39.8
2007	24.9	9.2	37.0
2013	16.4	6.2	36.2
2015			34.0

Source: Calculated from ČMKOS and Trexima (2016), pp. 5, 35.

Industry agreements, recorded by the Ministry of Labour and Social Affairs, followed a clear downward trend in the late 1990s. They are conspicuously absent from some industries with dominant foreign ownership, notably motor vehicles, as many, but not all, inward investors preferred to negotiate individually, if at all. They are more common in industries with long-term organisational continuity, such as chemicals, agriculture, mining and textiles. Industry agreements met continual hostility from some employers and from some on the right of the political spectrum. The main target was the legal power of the Ministry of Labour and Social Affairs to extend their scope to non-signatory firms, a power that could be exercised when formally requested by both sides. This extension provision was used extensively in the years up to 1995, not at all after that until the Social Democrats came to power in 1998, and quite widely in the next few years, apart from 2004, as explained below. The union side is more enthusiastic, but employers often agree when there is a long tradition of collective bargaining: it may often be an ‘unwritten’ part of the bargaining process that both sides will unite in submitting a request (Brádler *et al.* 2010: 43).

Opposition to extension culminated in a referral to the Constitutional Court, which ruled the practice unconstitutional, insisting that it be ended in 2004 (Tröster and Knebl 2014: 13–18). The judgment did not oppose extension in general, but identified problems in the failure to ensure representativeness of agreements and in the difficulty of making an appeal to courts on the part of employers who claim they are wrongly included. Amendments to the law were passed that satisfied these objections and extensions were approved again from July 2005. For the period 2009–2016 they were agreed, as in the past, for textiles, urban and other road transport, construction and glass and ceramics. Extensions were also approved for the first time for paper and agriculture.

Further information on total coverage comes from the survey on wages conducted annually over all enterprise sizes from 2011 by the Czech Statistical Office and the Ministry of Labour and Social Affairs.<sup>2</sup> This includes a question on whether wages are set by collective bargaining. The figures show substantial fluctuations, suggesting inconsistency in sampling methods, ranging between 38 per cent and 47 per cent. This is somewhat below estimates of coverage derived from other data, but rather high when set against the reservation that, as demonstrated below, bargaining may not even cover, let alone set, pay levels.

It can be added that these data also show collective bargaining leading, on average, to pay about 10 per cent above the level achieved without bargaining. This is highly suggestive, but cannot be taken as conclusive evidence of a positive effect for employees, as it may be a result of better qualifications and larger workplaces coinciding both with higher pay and with collective bargaining. Analyses by trade unions also show higher pay where collective agreements are reached, with a gap of 15 per cent in an analysis of KOVO experience in 2005 (Souček 2006) and a range of further benefits, some of which are referred to below. It is possible that other factors determined pay and benefit levels.

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2. <https://www.czso.cz/csu/czso/predbezna-data>

Failure to reach an agreement, as occurs for over one-fifth of employees of companies at which there are trade unions, often reflects poor economic conditions in the enterprise, such that a favourable agreement might never have been possible (ČMKOS and Texima 2016: 37). Thus, albeit with some reservations, there are indications of a likely positive effect for employees from collective bargaining.

## **Security of bargaining**

The legal framework agreed in 1990 sets the conditions for the trade union role in collective bargaining, including protection against victimisation, conditions for participation in collective bargaining and the right to strike.

Elected trade union representatives are given additional employment security, but there is no automatic right to representation or bargaining. These are voluntary matters between a trade union and an employer. In the early 1990s, trade unions were carried forward from the past and recognition and acceptance as a partner for bargaining was broadly automatic. That was less true after the transformation and fragmentation of inherited organisations and the emergence of many new, small or foreign firms. Many of these were hostile to union organisation and had no interest in collective bargaining. Particularly in the case of German multinational companies in manufacturing bad publicity, and especially the threat of bad publicity at home, was enough to persuade them to accept a union as a partner. They therefore transferred the broad outlines of their home-country practice, if not the details (Bluhm 2007; Krzywdzinski 2011).

This was more difficult in other sectors, but gaining recognition as a bargaining partner was often possible after a trade union had been established. The union representing retail workers, Union of Commercial Employees (OSPO, Odborový svaz pracovníků obchodu), facing foreign-owned chains, claimed some success in winning recognition from an employer after setting out only very modest demands and gaining support also from union confederations in the company's western European home (Myant 2010: 49). Despite this, OSPO in 2009 still reported fewer than 2,000 members out of 60,000 employees of foreign-owned retail chains. Employer hostility undoubtedly was an issue but, as reported by many union activists both in services and manufacturing, it was often matched by lack of employee interest. Past history has reduced the extent to which trade unions are seen as an essential protector of employees' interests.

The legal framework contains some oddities as regards participation from the union side in collective bargaining, which could give immense power to very small unions. A law passed early in 1990, without union involvement, specified that a trade union could register with the Ministry of the Interior, provided it had three members. The subsequent law on collective bargaining specified that a valid agreement required the signatures of all unions operating in a workplace. A small union can therefore block any agreement until its particular demands are met. This might also seem like an invitation to management to create 'yellow' unions, but that has only very occasionally been suspected from the union side.



The existence of multiple unions in collective bargaining can be followed thanks to an annual survey of agreements (MPSV 2006–2017), which shows plurality on the union side in around 20 per cent of cases in the enterprise sphere (private sector plus state-run enterprises). The normal case is an agreement by one union with one employer and even where there is more than one union they nearly always come to an agreement between themselves.

One exception is the railways, in which a number of unions, representing specific groups of employees, have existed alongside one dominant union, the Railway Workers' Union (OSŽ, Odborové sdružení železničářů). Nine unions signed the collective agreement for 2017. The power of a smaller union was demonstrated most emphatically by the Federation of Locomotive Drivers of the Czech Republic (FS ČR, Federace strojvůdců České republiky), independent from its foundation in May 1990. In 2005 it refused to sign the collective agreement with the railway employers for six months, pressing for a pay increase above that of other unions. That meant that no agreement could be signed for any employees until its demands were met (Myant 2010: 39).

Following this, and earlier experiences, the OSŽ was particularly vocal in calling for a change in labour law to make it possible to sign an agreement with the approval of trade unions representing the largest number of union members with that employer. Thanks to ČMKOS backing, this was included in amendments to labour law in 2006, but it was removed in April 2008 after being found unconstitutional by the Constitutional Court on the grounds that 'majority' was inadequately defined.<sup>3</sup>

Discussion of the employment law changes in 1990 ended before a general agreement on a law on strikes could be reached. A draft outlawing political strikes was condemned by the union side in June 1990 as 'bizarre and ridiculous' (Pleskot, *Práce*, 21 September 1990) in view of the importance of two brief general strikes in the political changes at the end of 1989. No subsequent government was able to fill this gap.

As a result, the only references to strikes come under the Law on Collective Bargaining (Zákon o kolektivním vyjednávání) of 1991 which sets severe restrictions, including requirements that they cannot be held while an agreement is under negotiation or after its adoption, prior to an effort at mediation or without the support of two-thirds of the votes, with 50 per cent participation of the employees affected by the issue in dispute. There has been no case of a strike following this procedure. A very few strikes have been possible where there was no prior collective bargaining or agreement. A week-long railway strike in February 1997, by far the largest and most important case of sustained industrial action in the Czech Republic's short history, had legal protection because negotiation of a collective agreement had ended after being blocked by a small union, incidentally suspected by the OSŽ of being a management creation. Two short work stoppages in the Škoda car manufacturer in 2005 and 2007 were linked to collective bargaining, but in neither case did the trade union follow the letter of the law which, it claimed, would have made a strike practically impossible.

3. [http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-83-06\\_1](http://nalus.usoud.cz/Search/GetText.aspx?sz=Pl-83-06_1)

The paradoxical result of the wording of the law, periodically confirmed by court judgments, was that strikes not linked to collective bargaining were legal in view of the Charter of Human Rights, approved by parliament on 8 February 1991, which takes precedence over all Czech law. This asserts the right to strike in general terms, unless specifically qualified by other laws. The freedom to strike has been demonstrated in short national protests called by ČMKOS, notably in 1994 and 2008. There have also been one-hour and one-day strikes over pay in public services, called by the unions representing employees in schools, health care and state administration. In these cases, formally there is no bargaining over pay. The total wage bill, and hence any pay increase, is set in the state budget. Unions can try to influence the allocation of financial resources through the state budget by putting pressure on members of parliament and the government, sometimes effectively negotiating with the latter, but this does not qualify formally as collective bargaining and does not end in a collective agreement. Strike action is therefore not restricted by the law.

## **Depth of bargaining**

Demands for items in collective bargaining overwhelmingly follow initiatives from the union side. In industry bargaining, individual employers often resist items in a proposed agreement, particularly detail on pay increases, leading to a certain vagueness of content. Depth on the employers' side therefore tends to limit the scope of agreements. Individual employers are more likely to use managerial power to impose changes, using collective bargaining only to achieve their aims for specific issues where this is required by law, such as the flexible work accounts discussed below.

Union demands in enterprise-level bargaining are presented to management by a union delegation. There is no obligation for wider consultation or to refer back to the membership, but the negotiating team may seek demonstrations of support from members if negotiations are making little progress. They may also come under pressure from the emergence of new trade unions, often around complaints that the existing leadership is not being aggressive enough in pressing demands.

The nature of union demands partly reflects local conditions and issues, but is strongly influenced by ideas from outside. The Škoda car manufacturer has been a pace-setter on pay since 1993, which others seek to emulate. ČMKOS has also provided general guidance and has been important in broadening issues beyond pay. An example is its decision in 2004 to push the issues of equal opportunities and opposition to discrimination, taking up an issue on which the government was dragging its feet and on which not all union activists were enthusiastic. The impact is discussed in a subsequent section. ČMKOS also takes up issues from EU-level agreements, for example on teleworking (2002) and harassment in work (2007) (ČMKOS and Trexima 2016: 90). The agreements were translated into Czech, but there was little explicit take-up in enterprise agreements.

In 2015 ČMKOS embarked on an active public campaign aimed at changing the atmosphere of collective bargaining (Myant and Drahokoupil 2017). After several years of low, or zero, nominal wage growth, the target was to be 'an end to cheap labour'

and affiliates were urged to press for wage increases of 5–5.5 per cent wherever an enterprise's economic position did not make this impossible. Reports from unions show a significant change only in some industries. A new government that seemed favourable to the aims of the campaign took a positive approach to social dialogue at national level. It raised the minimum wage by 9.9 per cent in January 2015 and by a further 6.7 per cent in January 2016 and this was seen by unions in some industries as making bargaining easier. The union representing hotels and catering referred to management reacting 'less hysterically' to talk of a pay increase (ČMKOS and Trexima 2016: 80).

Despite the limited use of strike action, unions occasionally declare a 'strike alert', a tactic used in the period 2003–2015 during negotiations on three industry and 52 enterprise agreements. More commonly, difficult negotiations are resolved with the help of a mutually-acceptable mediator, a method used in 11 industry agreements and 112 enterprise agreements in the same period. The disputed issue was almost always linked to pay, even in the few cases in the public sector, and the result was usually an acceptable compromise. In a few cases no agreement was reached. An alternative method, used in one industry and 11 enterprise agreements over that period, is acceptance by both sides of an arbitrator, whose decision is binding (ČMKOS and Trexima 2016: 90–101).

## Degree of control of collective agreements

Signing an agreement does not guarantee its implementation. That depends on the available means for monitoring and enforcement. Control over the implementation of agreements should ultimately be ensured by their legally binding status, meaning that the Labour Inspectorate (Inspektorát práce, full title at national level Státní úřad inspekce práce, State Labour Inspection Office) and ultimately the courts can be involved if one side is felt to have broken an agreement. If such cases have occurred, they have not received publicity. No references to any such cases appear in reports of the Labour Inspectorate, although these, and also union, sources confirm that there are frequent cases of breaches of both the law and the terms of collective agreements, especially on overtime and working hours. Only one-third of collective agreements in the 'enterprise sphere' contain references to means to ensure implementation, including consultation commissions (MPSV 2007–2017: Table A19).

The greatest doubts over enforcement relate to industry agreements and their extension, leading to coverage of large numbers of workplaces without a trade union. In hotels and catering industry-level agreements were signed in 1992–1994 and again from 2004,<sup>4</sup> but detailed enforcement must be a challenge for a union with only 666 active members out of the industry's 119,700 employees in 2009.

Where extension of agreements is required by law, a study for the SPČR concluded that employers generally leave any enforcement to the union side, meaning in practical terms that little is likely to happen in workplaces without a trade union. They noted no cases of complaints to the labour inspectorate that a non-member firm was not implementing

4. <https://bit.ly/2DxAoHG>

an agreement (Brádlér *et al.* 2010: 44), which suggests that extensions achieved nothing beyond making unions appear more successful in collective bargaining by ‘an improvement in statistical estimates’ of the coverage of industry agreements (Brádlér *et al.* 2010: 46). This verdict needs to be set against further evidence on the content and results of industry-level agreements in the next section.

## Scope of agreements

The themes covered in industry- and enterprise-level agreements are fairly similar, albeit with more detail and precision at the enterprise level. Industry agreements are seen by unions as establishing goodwill: almost all contain some commitments on issues such as working space for a trade union and set out a framework. They often include references to familiar themes that appear in employment law – notably pay, notice periods, working hours, overtime rules, night rates, conditions for weekend working, extra holidays, further supplements, health and safety, social conditions at work, training and insurance – but often only to indicate that negotiators at enterprise level are invited to negotiate improvements over the legal minimum.

Industry-level agreements can sometimes be a means for the union head office to start pressing new issues into collective bargaining. Thus the industry-level agreement for the period 2012–2016 between the union representing banking, finance and insurance employees and the 20-member employers’ federation strongly emphasised opposition to discrimination, adding nothing to the existing law, but indicating a commitment to taking that law particularly seriously.<sup>5</sup>

Negotiations are most difficult over pay issues, sometimes resulting in a failure to reach an agreement at all. There are often references to minimum pay levels, for example in the agreement in banking, finance and insurance set at 20 per cent above the legal minimum wage. Commitment to a specific increase in nominal pay is very rare. There is almost always at least one significant employer who expresses opposition. Commitment to a definite increase in the real wage has occurred only in agreements between the KOVO union and the association representing the aerospace industry, an established sector with 37 members, many of them quite small.

More usually, employers agree to try to prevent a decline in real wages or to maintain their level, or to support negotiation at enterprise level of an increase in wages if justified by productivity, the cost of living and the financial conditions of an enterprise. This offers little in cases, such as hotels and catering, where trade unions are absent from much of the sector. In exchange for stubbornness on pay, employers claim to have been happier to grant other benefits or include newer themes, a move that apparently lightens the atmosphere after the tension over wages (Brádlér *et al.* 2010: 26). The extent of such benefits, however, declined markedly during the crisis without any signs of an early recovery (ČMKOS and Trexima 2016: 27).

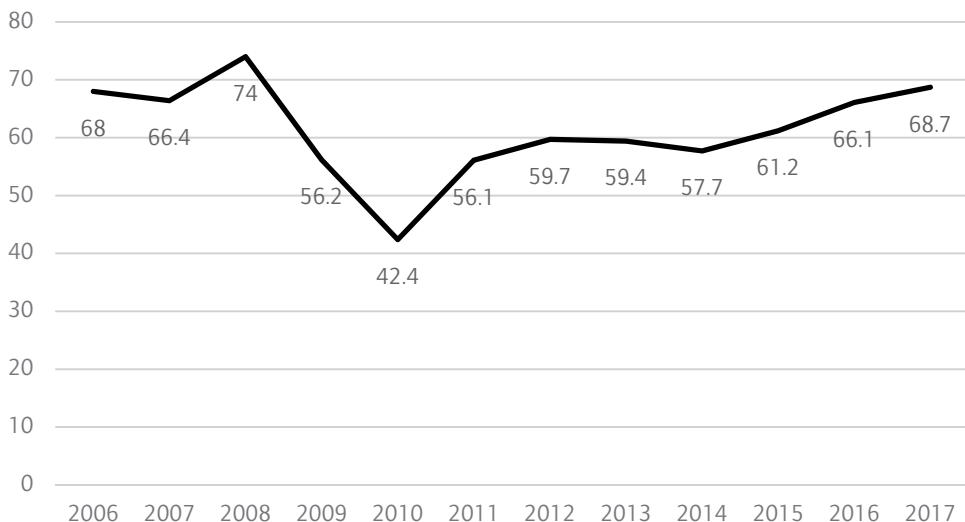
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5. <http://www.osppap.cz/stanovy-os/>

Enterprise-level collective agreements are usually signed annually, albeit typically taking forward a great deal from the previous year's agreement. There is no central record of all agreements, but an annual analysis has been conducted since 1993. Detailed results covering ČMKOS-affiliated and some other major unions have been made publicly available since 2006 (MPSV 2006–2017). Results are not precisely comparable between years as there are variations in the numbers of agreements covered. The total included is large, however, reaching 1,737 in 2017, 1,318 of them in the 'enterprise sphere' (private sector plus state-run enterprises) and 419 in public services and administration, signed by 27 trade unions and covering in all over 20 per cent of Czech employees.

The number of issues that can be included is enormous. The MPSV analysis includes 31 pages of tables with further subdivisions within those broad themes, and broadly follows topic areas in the Labour Code, indicating when there is an improvement on the minimum laid down by law. The main trend was a worsening in the results from bargaining from the trade union point of view, as the effects of the economic crisis were felt. This was followed by recovery in some, but not all, areas. There were visible improvements mostly where the cost to the employer was negligible. An example was the number of agreements on time off for union work, which increased from 34 per cent to 54.2 per cent of the total in the enterprise sphere between 2007 and 2017. There was also an increase from 16 per cent to 30.9 per cent in the number of agreements including commitments to opposition to all forms of discrimination covered in the law. This, as indicated, followed initiatives from ČMKOS. Somewhat fewer agreements also took up other recommended themes linked to equal opportunities, such as time off to look after children in case of need.

Figure 7.1 Percentage share of enterprise agreements including some reference to a pay increase, 2006–2017

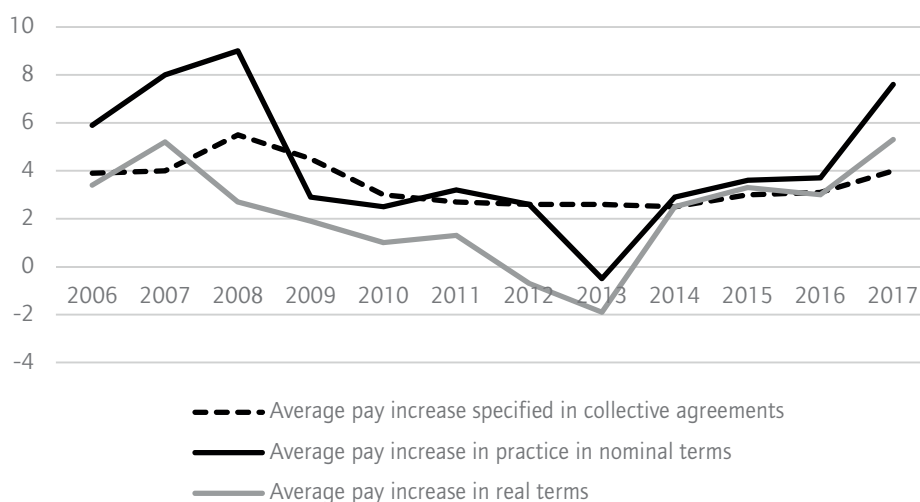


Source: MPSV 2006–2017.

The areas of maximum contention were pay, other benefits and working-time flexibility. Figure 7.1 shows the percentage of agreements that included a reference to a pay increase, showing the peak in 2008, the fall in 2009 and 2010 and the subsequent gradual recovery, such that 2017 was the second highest in the period. Thus although the crisis did not lead to a significant fall in the number of agreements reached, it altered their content as the union side was prepared to accept less in terms of pay in the hope of maintaining employment levels. This was sometimes made explicit in agreements, but commitments on job security are not followed in the published analyses.

As indicated in Figure 7.2, actual wage increases also diverged from levels set in collective agreements. There were several different ways of agreeing a pay rise. A weighted average for the two principal forms, an increase in the average nominal wage and an increase in the pay scales, shows the highest level in 2008 at 5.5 per cent, followed by decline to a low of 2.5 per cent in 2015 and then recovery to 4.0 per cent in 2017. The second of these methods does not include all payments, so it does not guarantee an increase in final pay. In fact, actual average pay increases were generally above the levels agreed by collective bargaining in good times and below in bad times. Thus, in the latter case collective bargaining only offers protection against wages falling too far. In the former case wages may be pulled up above the levels of collective agreements by the effects of labour market conditions, the flexibility built into collective agreements and the effects of pay movements in industries without collective bargaining. These effects were important in explaining the 2017 outcome when money wages rose by 7.6 per cent, following more aggressive bargaining from the union side, government decisions to increase public sector pay and the minimum wage, arguably also influenced by trade union pressure

Figure 7.2 Average pay increases in collective agreements, actual pay increases in nominal and real terms, 2006–2017



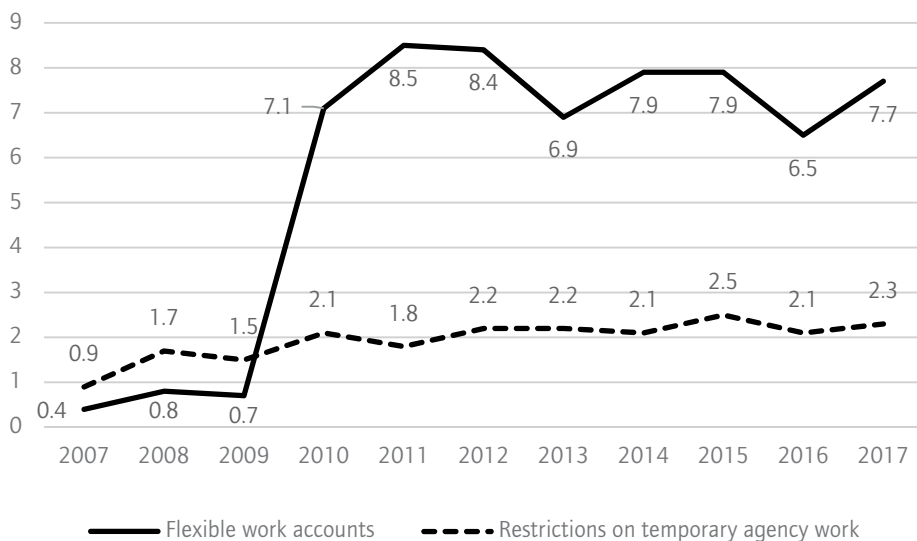
Source: MPSV 2006–2017 and Czech Statistical Office.

(Myant and Drahekoupil 2017), and growing labour shortages. This year saw a 5.3 per cent increase in real wages, the largest since 2003.

Disappointment over pay could have been compensated by improvements in other benefits. Some of these were also restricted during the crisis, although often by very little. Various forms of social and recreational funds, often funded by the equivalent of 2 per cent of the wage bill, increased between 2007 and 2016, from 40 per cent to over 50 per cent of agreements, with unions retaining joint decision-making rights in about 30 per cent of agreements. Additional holidays were very common in agreements, increasing from 79.3 per cent in 2006 to 87.6 per cent in 2017. The average length of the extra holidays fell after 2008, however, and was yet to recover fully by the end of the period.

Flexibility was the main area for new employer initiatives, although also one on which employees could seek to include new issues. Figure 7.3 sets out references in collective agreements to two themes. The first, flexible work accounts, was a major concern of German multinationals, modelled on the 'Flexikonto' used in German manufacturing. Under this system working hours can be added up over a longer time period so that downtime when demand is low can be set against compulsory extra hours when demand is high. This makes flexibility cheaper for the employer as there is no need to pay workers when they are idle through no fault of their own or to offer bonuses for working extra hours when required. It became possible in Czechia under a law effective from September 2007 with a maximum of 52 weeks for summing total hours and approval in a collective agreement required to allow this period to exceed 26 weeks. Inclusion in

Figure 7.3 Percentage of collective agreements in the 'enterprise sphere' including flexible work accounts and restrictions on agency work, 2007–2017



Source: MPSV 2007–2017.

agreements appeared on a significant scale in 2010, the year employees were keenest to obtain commitments on employment security, almost always with the accounting period close to one year. Half of the agreements were in metalworking. There was also good representation in mining and railways.

A flexibility issue raised by the union side is the use of temporary agency workers, usually with a demand for an upper limit on their share in the total workforce. Their use increased in the years up to the crisis, fell rapidly and then recovered. The total number of temporary agency workers in 2014 was recorded at 6.9 per cent of the total labour force, spread over many different industries (Kuchár and Burkovič 2015: 4). There were much higher figures in some enterprises, such as up to 25 per cent in Hyundai (Drahokoupil *et al.* 2015). In such cases employers were not so much seeking greater flexibility as finding cheaper labour prepared to accept what generally were lower wages, poor benefits and worse working conditions.

Trade unions have often accepted the use of agency workers as protection for a core workforce, but the scale of the phenomenon has led some to seek its restriction. These concerns were supported by ČMKOS advice, referring to problems of unequal treatment, lack of training in health and safety, lack of respect for rules on overtime for agency workers and a threat that the core workforce would be reduced and trade unions weakened, to the detriment of all employees. The low level shown in Figure 7.3 suggests that only a few trade unions were successfully pressing the issue and 24 of the 30 agreements including this theme in 2016 were in metalworking.

In the ‘budget sphere’ (public sector excluding state-run enterprises), in which pay levels are largely set by parliament, the focus of much of union activity was on influencing government decisions. From the agreements included in the analyses it is clear that a pay increase was rarely discussed. Working time and flexibility issues rarely appeared as they, too, were frequently set by law. Conditions for union work were usually covered, as in the ‘enterprise sphere’ (private sector plus state-run enterprises). On other issues, too, the public sector seemed only slightly different from the ‘enterprise sphere’. For example, 83.3 per cent of agreements were signed by only one union in 2017 and there was a growing interest in including provisions to combat discrimination, which was dealt with in 20 per cent of agreements in 2017. Another matter covered was the provision of funds for social and recreational activities, which was included in 87.4 per cent of agreements in 2017.

## Conclusions

Clegg in his classic study of trade union behaviour in a number of developed countries postulated that unions were significantly shaped by the development and forms of collective bargaining (Clegg 1976: 4–5). He accepted that this could not be a general theory of union behaviour as in many countries aims were pursued by different means, especially by political action. Modern Czech experience suggests that these two broad methods for furthering employees’ interests have worked in combination. The development of collective bargaining was dependent on, and shaped by, trade unions’ political influence.



Following the logic of a historical order, trade unions, with a degree of political influence, came first and then set about developing the preconditions for collective bargaining.

The first steps, however, only established a legal framework and a broad conception on the trade union side for future development. The form and importance of collective bargaining was then influenced by an economic transformation that brought different kinds of employers onto the scene. Some were happy to continue from the beginnings of social partnership and hence collective bargaining. Where economic transformation brought completely new employers onto the scene there was often no place for unions or for collective bargaining, although larger multinational companies often accepted unions as negotiating partners without visible complaint. Indeed, they saw benefits in using collective agreements to achieve objectives in relation to flexible working hours, not least because that was required by the law.

Partly because of the effects of economic transformation and some employer hostility, but also because of their weak roots in the emerging society, unions underwent rapid membership decline. This was accompanied by a significant, but much smaller, decline in bargaining coverage. Despite this apparent imbalance, the content of enterprise-level agreements does not demonstrate a substantial reduction in unions' bargaining strength. Organisational weakness may nevertheless have contributed to a continuing dependence on employment law as the best means of protecting employees' interests. Hopes that collective agreements would become more important than the legal framework have been fulfilled only to a small extent and only by the negotiation of improvements slightly above the prescribed legal minimum. Moreover, many industry-level agreements include very few specific commitments beyond what is guaranteed by law and implementation must be questionable in cases where they cover enterprises with no union presence.

This course of development has been similar to that of other countries of central and eastern Europe. Slovakia is the most similar (see Chapter 25), with the same union structures and legal frameworks inherited from the old Czechoslovakia before its break up in January 1993, and then similar courses of economic development. Differences then followed from specific political decisions over employment law and from differing court judgments. There are somewhat larger differences from others in central and eastern Europe. The role of employees' councils is more substantial in Hungary (see Chapter 14), where there was an effort to follow aspects of German experience. The presence of one confederation for much of the Czech union movement gives a clearer political voice than can be heard, for example, from the divided unions in Poland. That gives more force to united union campaigning, such as the attempt to press for widespread pay increases around the slogan of 'An end to cheap labour'.

In all, the system of collective bargaining in the Czech Republic is relatively well-established. It is limited in depth and scope, so that employment law remains an important protection for employees. It is likely to remain significantly different from the systems found in western European countries and similar to those of other central and eastern European countries, which have gone through similar economic and political transformations after similar histories.

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All links were checked on 2 December 2018

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## Abbreviations

<b>ASO</b>	Asociace samostatných odborů (Association of Independent Trade Unions)
<b>ČMKOS</b>	Českomoravská konfederace odborových svazů (Czech-Moravian Confederation of Trade Unions)
<b>ČSKOS</b>	Československá konfederace odborových svazů (Czechoslovak Confederation of Trade Unions)
<b>FS ČR</b>	Federace strojvůdců České republiky (Federation of Locomotive Drivers of the Czech Republic)
<b>KZPS</b>	Konfederace zaměstnavatelských a podnikatelských svazů České republiky (Confederation of Employers' and Entrepreneurs' Unions of the Czech Republic)
<b>OS KOVO</b>	Metalworkers' Trade Union (Odborový svaz KOVO)
<b>OSPO</b>	Odborový svaz pracovníků obchodu (Union of Commercial Employees)
<b>OSŽ</b>	Odborové sdružení železničářů (Railway Workers' Union)
<b>RHSD</b>	Rada hospodářské a sociální dohody (Council for Economic and Social Accord)
<b>SPČR</b>	Svaz průmyslu a dopravy České republiky (Union of Industry and Transport of the Czech Republic)