FACULTY OF ECONOMICS AND BUSINESS ADMINISTRATION

Social dialogue
Sociaal overleg

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1. Introduction

1. Introduction

In recent years, a new type of job has been advertised in Belgium: labour & employee relations manager, social relations manager, industrial relations manager, head of labour relations. A number of companies have realised that companies in Belgium not only need competence in managing human resources (HR), but also in managing collective labour relations.

HR managers in a medium-sized or large Belgian company are painfully aware of this. Their agenda includes monthly works council meetings, monthly health and safety committee meetings, annual and quarterly meetings on the company's economic and financial situation, infrequent meetings with trade union delegations, collective bargaining negotiations, and so on.

However, many new HR professionals and managers are ill-prepared for this part of their work. Many lack a thorough understanding of the logic, institutions and processes of social dialogue.

This course and textbook aims to fill this gap. Thus, this course aims to improve social dialogue through mutual understanding and to maintain and develop social dialogue models based on mutual recognition, respect and fundamental rights.

This course does not pretend or aim to create a conflict-free social dialogue. Conflict, as will be discussed in detail, is seen as inevitable given the divergence of interests in capitalist enterprises. However, the way in which conflict is managed and dealt with can make all the difference.

It is the premise of this course that constructive conflict management is based on a genuine understanding of the position, interests and motivations of the parties involved and a sound knowledge of the formal and informal rules of the game.

The structure of the course (and the course materials) is as follows. In a **first** part, basic frameworks and theories of social dialogue will be discussed. The aim of this part is to give students an insight into the functions of social dialogue in companies and in society, and the different visions one can have of its role. Students will be asked to critically assess their own and others' preconceptions about social dialogue.

The **second** part focuses on the different actors in social dialogue and discusses their motivations, interests and sometimes divergent identities.

The **third** part of the course is undoubtedly the heaviest part and discusses in detail the social dialogue in Belgium. A first historical overview helps the student to understand the

fundamental compromise on which the Belgian system is based and to assess some of its basic characteristics. Secondly, an overview is given of the main actors in the field. Thirdly, the formal and informal institutions of social dialogue at national, sectoral and company level are presented and discussed. The fourth part focuses more on the practice of social dialogue at company level and the fifth part gives an overview of the collective bargaining system in Belgium.

The **fourth** part of the course aims to provide students with an international context. By looking at different systems of social dialogue in other European countries, the students will be in a better position to critically assess the Belgian system and perhaps give some ideas for improvement or development.

The **final** fifth part focuses on two topics: strikes and restructuring. As strikes are quite common in Belgium, this part discusses the different types, causes and outcomes of strikes. Similarly, as restructuring and collective redundancies are an unfortunate reality, an introduction is given to the rules of social dialogue in the case of restructuring in Belgium.

The course is completed by a **glossary** of basic terms in English, Dutch and French with short explanations.

2. Frames of references

2. Frames of reference in social dialogue

2.1. Introduction

"Which left, yours or mine? No doubt you've been in situations where you're trying to explain directions, but your point of reference is not clearly defined. Do you explain it from your point of view or from theirs?

In physics, the frame of reference is very important. "Are you moving?" may seem like a simple question, but the real answer depends on who or what you're comparing it to. Your train may not be moving compared to the other train leaving the station, but it is certainly moving compared to the sun. In photography, your point of view and framing determine your perception of reality. A tree can appear huge or infinitely small, depending on how you position your camera.

The point is that your 'frame of reference' strongly influences how you perceive reality and therefore how you act. What is true of physics and photography is also true of social dialogue. Depending on how you look at social dialogue, what your assumptions and beliefs are, you'll see very different things and act accordingly.

In this section of the course, we'll look at the different 'frames of reference' that exist in relation to social dialogue and give examples. The main aim is for you to know and recognise the implicit assumptions that people (and you) have about social dialogue, and this will hopefully contribute to a better understanding of each other's positions and less conflict in the workplace.

2.2. Frames of reference

The idea of a 'frame of reference' in social dialogue was first proposed by Alan Fox (1966), who defined it as the way in which a person 'perceives and interprets events through a conceptual structure of generalisations or contexts, postulates about what is essential, assumptions about what is valuable, attitudes about what is possible, and ideas about what will work effectively'. Budd & Bhave (2008) refer to it as 'how you see the world'.

There are several important aspects to this definition. First, the definition shows that the frame of reference is built on a set of **assumptions** about how the world works and what is valuable. It shapes one's view of certain events. Secondly, a frame of reference also carries with it a set of ideas about how one can and should **respond** to events and issues. In other words, it guides the actor towards certain interventions and also limits the possible interventions that the actor might consider. A frame of reference not only colours the perception of reality, but also shapes behaviour and responses to that reality.

In 1966, Fox submitted a report to the Donovan Commission (dealing with trade union and employer issues) in the UK. In this report, Fox first identified two perspectives (unitarist and pluralist) in an attempt to better understand industrial relations issues. Fox himself later added a third perspective (the radical perspective) and most authors and textbooks still use these three frames or references. At the same time, later authors have identified more and different frames. For example, Budd & Bhave (2008) added an individualist/egoist frame of reference, Heery (2016) distinguished between hard and soft unitarism, and Cradden (2011) even identified nine different frames of reference.

In this text, we use the four frames of reference identified by Budd and Bhave (2008) because they are a good way of distinguishing between different worldviews without being too specific. In what follows, these frames are presented as ideal types of approaches to social dialogue, or in other words, as exaggerated versions of their real-life counterparts. In reality, most employees and managers will have a perspective that incorporates elements of the different ideal types in their own very personal mix.

The table below gives a rough comparison of how the frames of reference have different perceptions and assumptions about the reality of the company and social dialogue.

The most important differentiating factor is the perception of the degree of divergence (or convergence) of **interests** between employers/owners/management and employees/workers.

In the unitarist frame of reference, actors believe that both parties have the same, unitary interest in the company. In a pluralist perspective, different groups in organisations may have different interests, sometimes aligned and sometimes conflicting. According to the radical perspective, the interests of employees and employers are fundamentally opposed and conflicting. Finally, in the egoist/individual perspective, the possible divergence of interests is managed by market relations, which means that in the long run they are aligned.

Before discussing the frames of reference in turn, two clarifications are in order regarding the difference between a **frame of reference and an ideology**. A frame of reference is a way of seeing the world. Based on some basic assumptions, it defines your interpretation of issues and guides your future behaviour. An ideology is more about how you want others to see the world. An ideology is a set of beliefs and values that you want to propagate and live by.

Secondly, in discussing and critiquing the different perspectives, the following text does not express an opinion as to which perspective is right or wrong. In a sense, none of them are,

and all of them are. The problem is that a single perspective may leave part of reality unseen or undervalued.

Table 2.1 - Different perspectives on employment relations

	Unitarist	**Pluralist**	**Radical/Critical**	**Egoist/individualist**
Interests in the company	Unitary	Plural and mixed	Opposed	Unitary through the market
Vision on the organization	Harmonious team	Competing and cooperating groups	Capitalist monopoly	Nexus of contracts
Behaviour principle	Cooperation	Negotiation and compromise	Conflict and struggle	Competition
Employer interest	Profit maximization	Profit maximization // stakeholder value	Power and control	Profit maximization
Worker interest	Fulfilment, social identity	Voice and equity	Power and control	Income
State interest	Business friendly	Regulating and balancing	Legitimize ruling class	Laissez-faire
Employee voice	Direct participation – individual voice Open door	Indirect participation – collective voice	Worker' control	Exit
Conflict?	Not normal	Unavoidable	Necessary	Not necessary
Unions?	Unnecessary	Socially beneficial	Insufficient	Harmful

Adapted from Budd & Bhave (2008) & Kaufman (2016).

2.3. One team: the unitarist view

The first ideal type discussed is the unitarist frame of reference. The general idea here is that in a company, employees and employers have largely the same (hence unitary) interests. The image we get is of a team working towards a common goal that is a win-win for everyone. Nevertheless, everyone has a different role and position in the company, but this is only to make the organisation more effective in achieving the common goal.

The **worker's interest**, according to this perspective, is quite ambitious. In addition to earning a living, employees seek a kind of fulfilment, well-being and fulfilment through work. Work, according to this perspective, should be such that it develops the employee's competences and allows them to make the best use of their talents.

The **employer's interest** in this perspective is profit maximisation. The best way to achieve this is for all employees to work to the best of their ability, to be creative and innovative, and to provide high quality services. The employer believes in management by consent.

The direct consequence of this perspective on interests is that **conflict** is seen as abnormal, even 'deviant' or a 'pathological social condition' (Fox, 1966). Since the whole team is (or should be) working towards a common interest, conflict can and should be avoided. If there is tension or conflict, it is due to individual misunderstandings and **communication problems**. In the case of conflict, the unitarist framework says that management should increase cooperation and understanding, and try to increase fulfilment and commitment at work.

The preferred type of **worker's voice** is direct, individual communication between the employee and his or her manager. This can be done through direct consultation or open group formats (quality circles, town hall meetings). Given the common interest, employees are invited to express their views, which can be taken into account by management. In this perspective there is no need for representation as there is no need for conflict.

From this perspective, **trade unions** are seen as unnecessary because the interests are aligned. With good management, dissatisfaction will be low and employees will feel heard. Consequently, there is no point in forming or joining a union. At the same time, from a unitarist perspective, there is no one best way to deal with trade unions when they are present. One way would be to ignore them as much as possible, undermining their legitimacy without being openly confrontational. This minimises the potential for disruption without open conflict. The other way is to involve the unions and use them to better disseminate information and gain insights from the workplace in order to develop better policies in the common interest.

Exemplary of this view is this quote of the Zurich Insurance CEO in 1994: *"it is the job of the company to create an environment in which a trade union becomes irrelevant… the very nature of the unions, sitting in there in a divisive capacity, stops the employees and managers of an organization getting together as one team"* (in: Williams 2020, 13).

Power differences are unimportant because the organisations work in the common interest of all. The existing power differential is seen as necessary for an efficient work organisation. From this perspective, problems arising from power differentials are due to interpersonal relationships or poor leadership. They should be solved through management training, better human resource management and organisational design.

The role of the **state** in this perspective should be limited to protecting property and freedom of enterprise. The state should not interfere too much in the processes and outcomes of social dialogue, as these will lead to mutually beneficial outcomes given the alignment of interests.

In companies, this perspective is mostly found in the discourse of many **HR departments and HR literature**. The focus is on creating an environment that emphasises the alignment of interests by creating a job in which employees feel satisfied and fulfilled, by creating efficient, fair and equitable recruitment processes, and by creating communication methods between management and employees.

In terms of **academics**, this approach is mostly followed by industrial psychology, human resources or organisational behaviour academics. Some keywords associated with a unitarist view of the firm are: employee commitment, employee engagement and organisational trust.

Trust in research: assuming aligned interest

Trust. Without it, many social interactions and collaborations would be severely hampered. Imagine that for every promise you make, the other party wants you to formalise it and put it in writing. Not surprisingly, many studies have been devoted to the role of trust in firms and how it can be fostered. Siebert and colleagues (2015) conducted a systematic review of about 130 academic articles on the topic of trust, with a basic question: on what assumptions are the articles based? Are they based on a unitarist idea of aligned interests and trust as the natural state, or do they take a pluralist perspective in which conflict is normal and trust is a more calculative dynamic; or did they take a more general radical perspective in which low trust is assumed to be the natural state given power differentials in society?

Their analysis showed that the vast majority of studies took a unitarist perspective, in which trust is seen as the normal state and conflict as the result of misunderstandings, or in other words, a pathology. Only a few studies referred to possible differences of interest leading to

an (understandable) lack of trust, and even fewer referred to possible negative effects of trust.

A common **criticism** of this frame of reference is that it is not realistic. A five-minute experience of real corporate life will teach you that conflict is a daily reality and not all of it can be attributed simply to interpersonal relationships or miscommunication. The unitary frame of reference ignores differences in interests and power (Van Buren et al., 2011). Worse, it serves the agenda of the powerful in the organisation, namely management.

Secondly, the unitarist view has a very individualistic streak in that it ignores the existence of any kind of collective interests of workers (Heery, 2016, p. 34). Workers are seen as individuals with their individual interests and concerns. However, workers as a collective (class) or as groups (gender, ethnicity, sexuality, age, etc.) may have separate collective interests that are not taken into account in the unitarist perspective.

Third, the unitarist framework and the fact that much of the thinking is based on psychologically influenced approaches ignores the influence of context and institutions. The institutional embeddedness and collective regulation of employment relations often goes unnoticed in both research and proposed solutions (Heery, 2016, p. 34).

Fourth, in the unitarist view, the main initiating actors are management and the employer. Little agency is given to the workers who (as individuals or collectively) could shape the employment relationship, not to mention the influence of the state, civil society or communities (Heery, 2016, p. 35).

In summary, from an HRM perspective, the unitarist view can be seen as a 'useful fiction' because it makes any discussion of the limits of managerial prerogative unnecessary (Moore & Gardner, 2004).

Example: Scientific management

An example of a unitary view of the firm is the 'scientific management theory' developed by Taylor (1913). This theory is based on the idea that there is a 'one best way' of organising production and the firm. This way is therefore in the mutual interest of employees and employers. However, given the difference in competences between workers and managers, it is the managers who will design this best way of doing things and the workers who will carry out these prescribed tasks. Problems and issues should be reported to management who will find the best solutions for them.

Application: Ford

Henry Ford is known as the inventor of the assembly line and the birth of mass production. While much can be said about his industrial and social legacy, the focus here is on his frame of reference for social dialogue and industrial relations. According to Kaufman (2016), Ford had a typically unitarist view of industrial relations. Some examples of this can be found in this biography (1924), where he states: "*It is utterly foolish for capital and labour to think of themselves as groups. They are partners. If they pull and drag against each other - they only injure the organisation in which they are partners and from which they draw support*" (p. 117). This shows his belief in the mutual interests of both parties. This belief is formalised in his policy of providing job security, relatively high wages and a fair degree of employee voice. At the same time, Ford has a clear contempt for unions. They would 'exploit discontent' for their own interests.

Example: Human resource management

A second example of a unitarian approach is human resource management. This approach is based on the belief that through good procedures and work organisation, employees can find fulfilment and satisfaction in their work. Corporate communication, the assertion of shared values, team-building exercises and the like emphasise the common purpose. An 'open door' policy signals that employees can always communicate their concerns, to which a professional, fair and just HR department will respond.

Application: Google

"Don't be evil" was one of Google's slogans and part of its code of conduct. Alphabet, the conglomerate that now owns Google, has a similar slogan: "Do the right thing". Working at Google is the dream of many young tech workers. The offices are sleek and modern and have some amazing perks like a pool and catered meals. The pay is good and there are benefits such as a generous parental leave policy. The company has long been a symbol of a soft HR approach, embracing the idea of fulfilment through work. This is exemplified by the title of a book written by former HR managers: 'Work Rules!' (Bock, 2015). Google gives its employees a great deal of autonomy and fosters a strong internal culture. The idea is that in such a high-trust environment, this policy prevents conflict. However, it should be noted that even these policies have not prevented the emergence of conflict and collective organisation at Google.

2.4. Two teams, the pluralist view

The ideal type pluralist perspective starts from the observation that in any group there are subgroups with sometimes similar and sometimes divergent interests. In the case of a company, employees and management work together towards common goals, but at the same time have issues where their interests are clearly different. Both parties want efficient and profitable companies, but some divergence of interests is inherent in the trade-offs between wages and profits, between security and flexibility, or between speed and safety (Budd & Bhave, 2008).

Pluralism: pushed to the margins by unitarism

It may seem strange to contemporary students of social dialogue, but for a long time the pluralist perspective was the dominant approach to work and social dialogue. In the post-war period, the idea that there was a degree of conflict of interest between employers and employees was a natural starting point for both practitioners and academics in their exercises to manage this 'structural antagonism'. It is only in recent decades that this approach to work has become much more marginalised and the emphasis has shifted to the unitarist approach and the desire to balance interests and resolve conflicts on an individual basis (Dundon et al., 2017, pp. 14–19).

According to the pluralist perspective, workers' **interests** go beyond simply having an income. Employees also want to be **heard** in the decision-making process. Procedural justice is equally important, so employees collectively want to have a say in the decisions that are made and want them to be fair.

The **employer's interest** in the pluralist perspective is more broadly defined as stakeholder creation. This means creating value (more than just profit) not only for shareholders but also for employees, customers, suppliers and communities.

Consequently, this perspective sees some degree of **cooperation** and **conflict** as inevitable in organisations. In some ways, conflict is necessary because it brings grievances to the surface and pushes managers to find innovative solutions (Abbott, 2006, p. 193). The challenge is to manage and balance cooperation and conflict in a way that serves the interests of both parties while being efficient.

Given the plurality of interests and the presence of conflict, employee **voice** in this perspective should primarily be organised **collectively**. In unequal power relations with divergent interests, individual voice will not enable employees to speak freely and (legitimately) defend their interests. For this reason, several **institutions** are created to channel dissatisfaction, such as works councils, trade union meetings and the method of

collective bargaining. The main adagio of this perspective is the "institutionalisation of conflict" through the creation of various institutions that provide checks and balances on the authority of management.

From this perspective, **trade unions** are the preferred institutions for defending workers' interests. They are legitimate structures that give substance to the collective voice of workers. It is recognised that trade unions have different, but equally legitimate, interests from management. The role of management is to negotiate, bargain and compromise between the interests of both parties.

The **power** balance is perceived to be unbalanced in favour of the employer. However, workers can redress some of this power imbalance through collective organisation. This creates an alternative source of authority in the company, which is perceived as beneficial in the long term because it serves the interests of all stakeholders.

The interest and role of the **state**, in this perspective, is to facilitate dialogue between different groups in society and thereby promote equitable outcomes. In other words, the state has the right and the duty to intervene in the process and outcomes of social dialogue in order to balance power relations and make outcomes equitable and fair. This means that the state should regulate and promote works councils, support employers' and workers' organisations and create social security structures that contribute to the decommodification of work.

In this perspective, the role of **HR** is to manage conflicts and differences of interest. HR has to make sure that representative voice institutions function well, that issues are addressed and that negotiations between management and trade unions are organised.

In companies, this perspective is most common in large industrial companies with a legacy of a strong trade union presence. There is often quite intense dialogue and negotiation about industrial relations.

In academia, this frame of reference is mostly associated with industrial relations research and institutionalist labour economics. This literature is concerned with the functioning of works councils and the activities of trade unions in organisations..

Institutionalizing conflict at TEC

TEC (Transport en commun) is the public transport operator in the Walloon region of Belgium. Faced with very regular strikes (more than 20 in 2008 and 2009), a plan was drawn up to restructure the social dialogue institutions in order to institutionalise the conflict. The plan included clarifying the status of the unions and the different levels of dialogue, setting up a works council for the whole group and introducing specific procedures

to prevent or resolve conflicts. The group's philosophy was not to avoid social dialogue or to prevent the union from doing its job, but rather to discuss issues before they became conflicts (Lo Guidice, 2016).

Institutionalized conflict with team spirit at Volkswagen

The Volkswagen Group is a global giant. In 2015 it had more than 100 production sites in over 30 countries. Trade unions and social dialogue play a central role in the management of the company. In Germany, where the company is headquartered, works councils and board-level employee representatives naturally play a major role, but Volkswagen's practice goes beyond the law. At a global level, Volkswagen has a 'Labour Relations Charter' which aims to institutionalise social dialogue throughout the Volkswagen Group. This charter states, for example (Article 2.2.): "*Participation in the spirit of cooperative conflict management requires that the form of cooperation be such as to enable stable industrial relations"*, thus accepting the existence of conflict while seeking to structure it. At the European level, it was one of the first companies to establish a European Works Council (Whittall et al., 2017). It should be noted that such a close relationship between management and unions can also lead to problems, as was the case at Volkswagen in 2005, when the chairman of the works council was implicated in a corruption scandal involving expensive trips to luxury brothels abroad (Gow, 2008).

This perspective is also **criticised** from different sides. One criticism is that it focuses too much on creating (inefficient) structures and institutions that should (but cannot) institutionalise conflict. By creating all these meetings and methods to reconcile the different interests of employers and employees, the common goal (earning a living) may suffer.

From the other side, the pluralist perspective is criticised for being too optimistic about the possibility of balancing the interests of both groups through trade unions and collective bargaining. According to this critique, the power differentials in society are of such magnitude that they cannot be easily bridged and such an assertion may be counterproductive for workers (Williams, 2020, p. 15).

A third line of criticism is directed at what might be called the 'institutional fetishism' of the pluralist literature. The focus on structures and rules is so dominant that human agency is relegated to the background (Heery, 2016, p. 47).

2.5. An unfair game, the radical/critical view

In the ideal type radical/critical perspective, the **interests** of employers and employees are perceived as fundamentally opposed. In this perspective, the employment relationship is characterised by very sharp antagonistic conflicts of interest between fundamentally unequal groups. The image is of a team strictly divided into two groups: a group of highly paid and powerful management and a group of lower paid, hard-working employees (Kaufman et al., 2020). Both parties are engaged in a zero-sum game in which the gain of one group means the loss of the other. The problem is that the playing field is skewed in favour of one party, the employer. In other words, the game is rigged and unfair.

The Lordstown syndrome: pluralism is not enough

Until the 1970s or so, the pluralist perspective had the upper hand. Companies engaged in lengthy negotiations and set up all sorts of representative institutions, leading to collectively agreed (and better) working conditions. At the same time, workers in industrial companies were not necessarily happy. During a strike at GM's Lordstown plant in 1972, the media coined the term 'Lordstown syndrome' to refer to the high turnover, alcoholism, strikes and general unhappiness at the plant. The highly prescriptive nature of the work led to real worker alienation (Dundon et al., 2017, p. 16). Pluralist institutions provided no answers.

Workers' interests in this perspective are defined as control and power. In addition to earning a living, employees want to be able to control what they do and how they do it, and therefore want to reduce management's power over the work as much as possible.

From this perspective, the **employer's interest** is equally defined as power and control. More than just maximising profits, the employer wants to remain in the advantageous position of power in which it finds itself. Indeed, given the choice between more profits and sharing some of the power, the employer in this perspective is likely to choose power over profits. Corporations exist not only to defend their own interests, but also the interests of the ruling class as a whole.

Control over profit: Amazon fires its best employee

An Amazon employee working at a facility near Lyon was named 'Employee of the Year' in 2020 for his amazing productivity and motivation to improve work organisation. However, in June 2021, the same employee was fired for so-called subordination after posting critical messages on an internal social platform (Nguyen, 2021). This example shows that for some companies and managers, control and power are more important than simply maximising profits.

As a result, **conflict** is seen as **inevitable** and ever-present. The working relationship is perceived as fundamentally exploitative, with very little room for common or mutual interests. The opposition of interests means that any cooperation means that the weaker group is working against its own interests with the stronger management group.

Power is a central issue in this perspective as it observes a fundamentally skewed inequality of power between the actors in the employment relationship. The employment relationship is a struggle for power and control between competing groups. Whereas the pluralist approach argues that the power imbalance can be partially corrected through collective organisation, bargaining and compromise, the radical perspective assumes that all bargaining and cooperation means making concessions to management. The only possible correction of the power imbalance is to reverse it.

Thus, collective voice institutions such as works councils, collective bargaining or **trade unions** are seen as deliberately constructed by the dominant group to maintain power. They should be distrusted because they would reduce the revolutionary power of the working class. The critique of (current versions of) trade unions is based on a twofold argument. First, it is argued that full-time paid union officials have different (less radical) interests than their rank-and-file members. Secondly, trade unions would be far too inclined to compromise given their role in a variety of institutions (Heery, 2016, p. 75).

Critical, radical or Marxist?

Often this radical/critical perspective is also referred to as the 'Marxist' perspective, not only because not a few of the proponents of this approach were openly affiliated with various communist and Marxist organisations (Heery, 2016, pp. 70-73). This Marxist vision is obviously reflected in the notion of exploitation, alienation and the need to challenge the idea of the employer's right to manage (or own).

The role of the **state** in this perspective is seen as a tool and instrument of the ruling class. It's the Marxist view that the state serves the political and economic interests of the ruling class by defending property rights.

In practice, this approach is found mainly on the workers' side and in some trade unions. Obviously, employers and managers are unlikely to adopt such an approach to social dialogue. The closest one can come is in worker takeovers and cooperatives, where the role of the employer is eliminated and the workers (at least in theory) organise themselves.

In terms of academics, this frame of reference is mostly to be found among radical, heterodox scholars in sociology, economics and industrial relations.

Application: Amazon mechanical Turk

The name of the crowdsourcing site Amazon Mechanical Turk (AMT) refers to an 18th century so-called automatic chess machine. The machine was fake because there was a person hidden inside. Similarly, AMT feels like a machine, but is powered by human labour. What this crowdsourcing website does is to collect and assign (very) small tasks that freelancers ('Turkers') can do for very few people. The tasks are small translations, writing descriptions, answering questions or tagging video content. Like the tasks, the pay is very low and almost no skills are required. Workers compete for these mini-tasks and are perfectly replaceable by any other worker. In this way, the employer has complete control over how the work is done, there is no discretion or skill required of the worker, there is a lot of competition for the jobs and therefore low pay.

Example: worker take over

If you need companies for your livelihood, but the bosses are predestined to exploit you, the obvious solution is to become your own boss. Not by becoming self-employed, but by taking over the company you work for or organising yourself in a cooperative. According to Azzellini (2015), in 2015 there were about 15,000 workers in about 350 'recuperated companies', companies that at some point were occupied and taken over by the workers who worked in them. Just like capitalist organisations, most of them did not succeed in the long term, but quite a few continue to exist and put workers' control into practice.

Application: Free Kazova – Pull-overs without bosses

In 2013, the 94 employees of the Turkish textile company 'Kazova' worked overtime. At the same time, they hadn't received their wages for weeks, but that's not unusual in the sector. The wages would follow, but first the delivery had to be completed. But the wages did not follow. The employer evacuated the machinery and finished products and disappeared. While many workers simply looked for other jobs, some decided to occupy the factory and demand their wages. After a few months of occupation, they decided to start producing shirts and jumpers as their own collective. After a long legal battle, they became the legal owners and continued as 'Free Kazova-Özgür Kazova', a workers' cooperative. The cooperative was successful for a few years, but after several setbacks it shrank to a very small operation in 2018 (De Spiegelaere, 2018).

Of course, this perspective is also subject to some **criticism**. On the one hand, it is not really seen as constructive and, according to some, even cynical (Heery, 2016, p. 95). All initiatives, even those that appear to be in the interests of workers, are always perceived to be aimed at

further exploitation of the worker. Most collective agreements, even those that might be seen as containing clear social advances, are seen as compromising and counterproductive.

Second (and related), this perspective tends to exaggerate exploitative and degrading conditions. It therefore tends to focus on the (worst) margins of the labour market, where exploitation is clear and rampant. While this has obvious value, one should be wary of drawing general conclusions from these studies.

Third, the critique of collective bargaining as a compromise turns a blind eye to the obvious improvements in working conditions that follow such bargaining. It also downplays the fact that regulation can support workers' voice and their ability to organise and defend their interests in companies.

2.6. No team, the egoist/individualist view

The final frame of reference is the **egoistic** or **individualistic** frame of reference. It has been added to the three traditional frames by Budd and Bhave (2008) in order to better distinguish between all the different approaches that used to fall under the banner of unitarism. This perspective is based on the assumption that all actors in the employment relationship are rational agents pursuing their self-interest. It is therefore rooted in neoclassical economic thinking.

According to this view, the main **interest** of **workers** is income and survival. Employees go to work for income and expect little more from the workplace than fair compensation for the time and effort they put in under the authority of the employer.

The **employer's interest** is defined as profit maximisation. Reducing costs and increasing benefits. The way in which this profit maximisation is to be achieved, according to the individualist perspective, is through market-based relationships with their employees. Easy and quick hiring and firing of employees and a sacred prerogative of management.

The egoist/individualist frame of reference acknowledges that the interests of employees and employers may be different, but assumes that the best way to reconcile the two is to let **market relations** play out. In such a case, employers and employees will come to a (contractual) agreement in which the interests are aligned.

In this sense it is similar to the unitarist frame of reference in that it sees the interests of all those involved in organisations as fundamentally aligned in the longer term. It differs from the unitarist frame in the way in which these mutual benefits are to be achieved. Where the unitarist frame states that cooperation, teamwork and harmonious relationships will enable the achievement of common goals, the egoist/individualist frame states that market relationships are the best way to achieve the mutual interests of all parties in the longer term. In other words, where the unitarist framework believes that making your employees happy will result in them doing a good job, for the egoist/individualist the job is to take or leave and companies should not be concerned with pampering their employees.

This means that in the long run there should be **no conflict**. Market relations will lead to a solution or combination for all parties. In the short term, however, conflicts may arise, but they should be resolved by simply stopping the cooperation between the employer and the employee. Just as if you don't like your kitchen knife, you should be able to throw it away and buy a new one until you find one that suits you. The invisible hand of the market is there to resolve any potential conflict.

The **voice** of employees is not really taken into account either. Since employees and employers are in a voluntary contractual relationship, dissatisfied employees can express their dissatisfaction by simply leaving the company.

Trade unions are viewed very negatively from this perspective, as they interfere with market relations in terms of wages, job security and voice in the workplace. Consequently, unionisation of the workforce should be avoided at all costs.

From the egoist/individualist perspective, there is no real difference in **power** between employers and employees. Both are free to choose to cooperate or not.

The role of the **state** in the egoist/individualist framework is limited to protecting property rights and enforcing contracts that have been freely entered into.

In the **academic** world, this model is most often adhered to by neo-classical and neo-liberal economic analyses.

Example: the management ideology behind union busting

Union busting refers to a range of actions taken to prevent or disrupt union organising. These practices are based on a particular management ideology that has much in common with the 'egoist/individualist' frame of reference. Dundon et al. (2006) argue that this ideology is based on a deep-seated belief in the absolute and sole right of the employer to manage the company. Ownership is equated with control. When unions seek to challenge, limit and control this management right to rule through collective action, this is seen as a flagrant infringement of their right and leads to harsh intimidation of organisers, avoidance of any form of collective bargaining and suppression of the collective voice.

Application: Ryanair

No frills" is Ryanair's policy when it comes to both its services and its human resources management. Flying with Ryanair and working for Ryanair is back to basics. Staff are paid low wages, have little control over their working hours and receive little or no support from the company. In order to align the interests of the company and its employees, strong performance-related pay schemes based on in-flight sales will be introduced. Employees who are unhappy are free to leave the company and those who are underperforming are quickly removed from service. The company uses various methods to avoid collective bargaining (such as employing workers through third party companies), explicitly discourages unionisation attempts and openly retaliates against workers who do organise. To channel some of the existing dissatisfaction, Ryanair has set up a number of obscure 'employee

representation councils', the functioning of which is strictly controlled by management (De Spiegelaere, 2020b).

Application: Working at Amazon

While half of Europe's economy ground to a halt and millions of workers faced (at least temporary) unemployment or were condemned to work from home during the COVID-19 pandemic, the richest man in the world - and probably in history - got richer. And not just a little, but a lot. This man is the owner of Amazon, Jeff Bezos. Once an online bookstore, Amazon is now a huge company whose activities range from selling and distributing seemingly everything under the sun online, including food, to developing apps and software, providing cloud computing infrastructure, and even launching rockets into the sky. It employs nearly a million people around the world, almost none of whom are unionised. In the book The Cost of Free Shipping. Amazon in the Global Economy' (Alimahomed-Wilson & Reese, 2020), the reader is given a bleak picture of human resources policies and social dialogue in Amazon's distribution centres (also known as fulfilment centres).

A selection of methods: paying a little more than the competition to attract workers, second-by-second surveillance through all kinds of technology, reducing social contact between workers to avoid them feeling like a collective, outsourcing parcel services to companies so small that they have no worker representation, using technology and redirecting orders to make strikes ineffective, offering a regular exit offer (pay to leave) to encourage dissatisfied workers to leave the company rather than voice their concerns, union avoidance and busting, etc.

Amazon is also careful about where it locates it's fulfilment centres, choosing areas with high unemployment. This allows them to get good terms from local governments, but also ensures that the workforce is vulnerable and not demanding (Williams, 2019: 32).

This perspective has been **criticised** from various quarters because some of its assumptions are contested. For example, it is not known that the market always provides the best solution, there are clear power differentials in society and people are far from being rational agents.

Secondly, it can be disputed that employees (and employers) engage in economic activity solely for monetary reward. Many other issues (equity, voice, status, social interaction) also play a role.

Third, the view of labour as a commodity is contested from a humanist perspective. Since a worker derives income, status, social interaction and skills from employment, it shouldn't be the sole and unregulated decision of the employer to terminate the employment or not.

2.7. Conclusion

How you perceive the world shapes how you act in the world. The frame of reference you have will in part determine what you will do in the event of a conflict or problem. But because it also guides the actions of others, it is essential to know and understand the frame of reference of others. This chapter has provided you with an analytical framework that you can use when faced with conflict in the workplace to better understand your own perspective and that of the other parties, and therefore to find common ground more quickly.

Pluralist society, unitarist companies.

One of the few studies to look at how managers think about social dialogue was conducted in New Zealand (Geare et al., 2006). A survey was used to measure the ideological orientation of managers, distinguishing between unitarist and pluralist perspectives. The researchers also separated statements about society in general from statements about their own specific workplace. The study found an interesting pattern: most managers had a pluralist view of society in general, but a unitarist view of their own workplace. They observed divergent interests in other companies, but were convinced of a unitary interest in their own company.

In a follow-up study, Geare et al. (2009) also surveyed employees and found that they had a similar view to managers (pluralist in society and unitarist in their own company), but were slightly more likely to hold the pluralist view. Interestingly, trade union members were more likely to hold a pluralist view, but the difference was rather small.

Different frames, more conflict?

According to Budd et al. (2021), it is not only the frame of reference of managers and employees that matters, but also whether or not the two views are compatible. If both employees and employers see largely the same interests, conflict may be reduced. However, if the frames of reference diverge and employees see diverging interests and the organisation does not, there will be more scope for friction and conflict.

2.8. Summary

- The unitary perspective believes that the interests in a company are fundamentally aligned. Problems can be solved by good HR and unions are unnecessary.
- The pluralist perspective assumes that while interests are sometimes aligned, on some issues there are multiple groups with legitimate but divergent interests. The challenge is to organise conflicts of interest in the company.
- The radical perspective believes that the interests of employers and employees are fundamentally opposed and that any compromise plays into the hands of management. Cooperation should be avoided.
- The egoist/individualist perspective believes that the market is the best instrument for reconciling potentially conflicting interests in the long term and that any interference with the normal functioning of the market should be actively avoided .

3. Theories

3. Theories about social dialogue and employment relations

3.1. Introduction

In 2016, Accent interim sent a strange email to its staff. If no one stood as a candidate in the upcoming social elections, all employees would receive a smartphone and an extra day off. Accent interim believes that social dialogue through a works council or a health and safety committee adds little value. On the contrary, it is very time-consuming. So if this waste of time could be avoided, employees would be rewarded for it.

Do you agree with Accent interim's analysis that social dialogue is mostly detrimental to the company or not, and why?

This chapter of the course addresses this question from a theoretical and conceptual point of view. As the reader will notice, the theories and conceptual frameworks presented tend to differ quite significantly in terms of what is analysed (unions, representation), the level of analysis and the type of argumentation used.

The following text does not claim to be exhaustive. The aim of this section is to provide an overview of some of the main frameworks that focus on explaining the general function (or dysfunction) of employee representation and trade unions in companies and society at large.

As the reader will also note, most of the theories discussed here are not typically 'unitarist' or 'individualist'. The reason for this is that the theories selected are those that explicitly address the issue of representation or unions. In the unitarist perspective, trade unions are generally seen as superfluous, so they are often treated implicitly, marginally or not at all in these theories..

3.2. The three methods of trade unions: the Webbs

The Webb's in brief:

- Main authors: Sidney Webb & Beatrice Potter/Webb
- Focus: The role of trade unions in the economy
- Principal publications: History of Trade Unionism (1894) Industrial Democracy (1897)

Beatrice Potter and Sidney Webb are among the most prominent writers on industrial relations and British trade unionism. Commonly known as 'the Webbs', they were both members of the Fabian Society, which sought to promote democratic socialism. Prolific writers, the Webbs produced many ideas and theories.

Here we will focus on their ideas about the methods trade unions use to counter the power of employers. The main aim of unions (according to them) is to **control the labour market** and prevent workers from competing with each other through undercutting (Elvander, 2002). According to the Webbs, unions do this through three main mechanisms: (1) controlling the supply of labour, (2) setting standard rates, and (3) providing mutual insurance (Knotter, 2018):

1. Controlling the **supply of labour**[1]: Strongly influenced by the guild system, some craft unions try to limit the number of people who are legally allowed to do a particular job. By limiting the supply of labour, working conditions can be improved and wages increased. Access to 'trades' (now mostly referred to as professions) is channelled and limited through compulsory apprenticeships (training) and some groups are simply excluded from certain professions (mostly women) (Farnham, 2008).
2. Setting **standard rates**: As an alternative to controlling the supply of labour, unions try to control the labour market by setting (minimum) wages for workers doing similar work in similar sectors. This prevents unemployed workers from offering to work for a lower wage and puts downward pressure on wages. The standard rate refers not only to wages, but also to the length of the working day, health and safety regulations, new technology, etc. There are two main instruments for setting standard rates:
    1. **Collective bargaining**: through negotiations between employers and trade unions, standard rates are set for companies or industries.

[1] In the words of the Webbs "the Device of Restriction of Numbers" (Webb & Webb, 1897a, p. 704)

2. **Legislation**: legislation and policies set minimum standards at national, regional or sectoral level.

3. Providing **mutual insurance**: The third method of union control of the labour market is mutual insurance. If unemployed workers do not face poverty or starvation, they are less likely to accept low-quality jobs. For this reason, trade unions organise mutual insurance funds that provide benefits in the event of unemployment or illness.

In their detailed study of the birth of modern trade unionism in Britain, the Webbs' work is one of the first clearly structured studies of what trade unions do. Their distinction between the main mechanisms and instruments used by unions to control the labour market provides an analytical tool for looking at trade union action.

According to the Webbs, the importance of the first (control of labour supply) and third (mutual insurance) methods has declined in favour of the second method of setting standard rules through collective bargaining or legislation. This shift in importance was also reflected in the increase in political action by trade unions and, according to the Webbs, was likely to increase further over time (Oyelere, 2014).

While the Webbs were mostly praised for their thorough analysis, they were also criticised. Alan Flanders, for example, felt that the Webbs focused too much on the confrontational role of unions and collective bargaining as a means of raising wages at the expense of employers and profits. According to him, unions could also, through collective bargaining, help the employer to increase productivity by establishing common rules that all workers should follow (Flanders, 1969). It should also be noted that the Webbs focused their analysis on Britain. Given that the trade union landscape in the UK is very different from that in other countries (such as Germany, Belgium or the Netherlands), and much more based on 'craft unions', their theory cannot simply be transposed to continental Europe.

Exercise:

- In learning about social dialogue in the future of this course, try to think about what the employer organizations are trying to do and whether it fits one of the categories of the Webbs.
- Read about some workers' organizations that only organise a specific profession (e.g. air traffic controllers, doctors, psychologist) and analyse how they try to control the labour market

3.3. The two faces of unionism? Freeman & Medoff

The two faces of unionism in brief:

- Main authors: Freeman & Medoff
- Focus: what do unions do in companies and in the economy?
- Main publication: What do unions do? (1984)

The seminal analysis of Freeman & Medoff (1984) starts from a simple observation and question:

> *"For over 200 years, since the days of Adam Smith, economists and other social scientists, labor unionists, and businessmen and women have debated the social effects of unionism. Despite the long debate, however, no agreed-upon answer has emerged to the question: What do unions do?"*

According to Freeman & Medoff (1984) there are two faces or roles of unions in companies: (1) collective voice and (2) labour monopoly.

The **collective voice** face of unionism (or representation) is generally seen as the positive, productivity-enhancing role that unions can play in companies. Freeman & Medoff draw on the exit-voice-loyalty model proposed by Hirschman (1970). According to this model, when faced with a frustrating situation, consumers (and in this case employees) can react in four general ways, which can be placed on two axes ranging from constructive to destructive and from active to passive (see figure below).

- **Exit** (active & destructive): Faced with an unsatisfactory situation, employees may choose the exit option, i.e. to leave the company. This strategy is active (the employee does something) but also destructive because the problem is not solved. The source of dissatisfaction remains and could affect other employees. In addition, the company does not have the opportunity to address the problem and faces additional costs to replace the employee.
- **Loyalty** (passive & constructive): Employees can also remain loyal and wait for better times. Without speaking out, the employee will continue to carry out his or her duties. This strategy is rather passive as the employee does not take the initiative to solve the source of dissatisfaction. It is constructive because the employee is not directly harming the company. However, because the employee does not speak up, the company has no opportunity to solve the problem and other employees may be affected by the same problem.

- **Neglect** (passive, destructive): A third way is for the employee to withdraw from the job. Faced with a frustrating situation, the employee decides to disinvest and neglect work tasks. This strategy is passive (the employee does not try to solve the problem) and destructive because the implicit aim of the neglect is to harm the organisation.
- **Voice** (active, constructive): last but not least, the employee can choose to give voice to his dissatisfaction and tell the employer about his frustration. This strategy is active and constructive because the employee wants to solve the problem at hand. It also gives the company an opportunity to learn about the problems and sources of dissatisfaction and to ensure that they are resolved or neutralised.

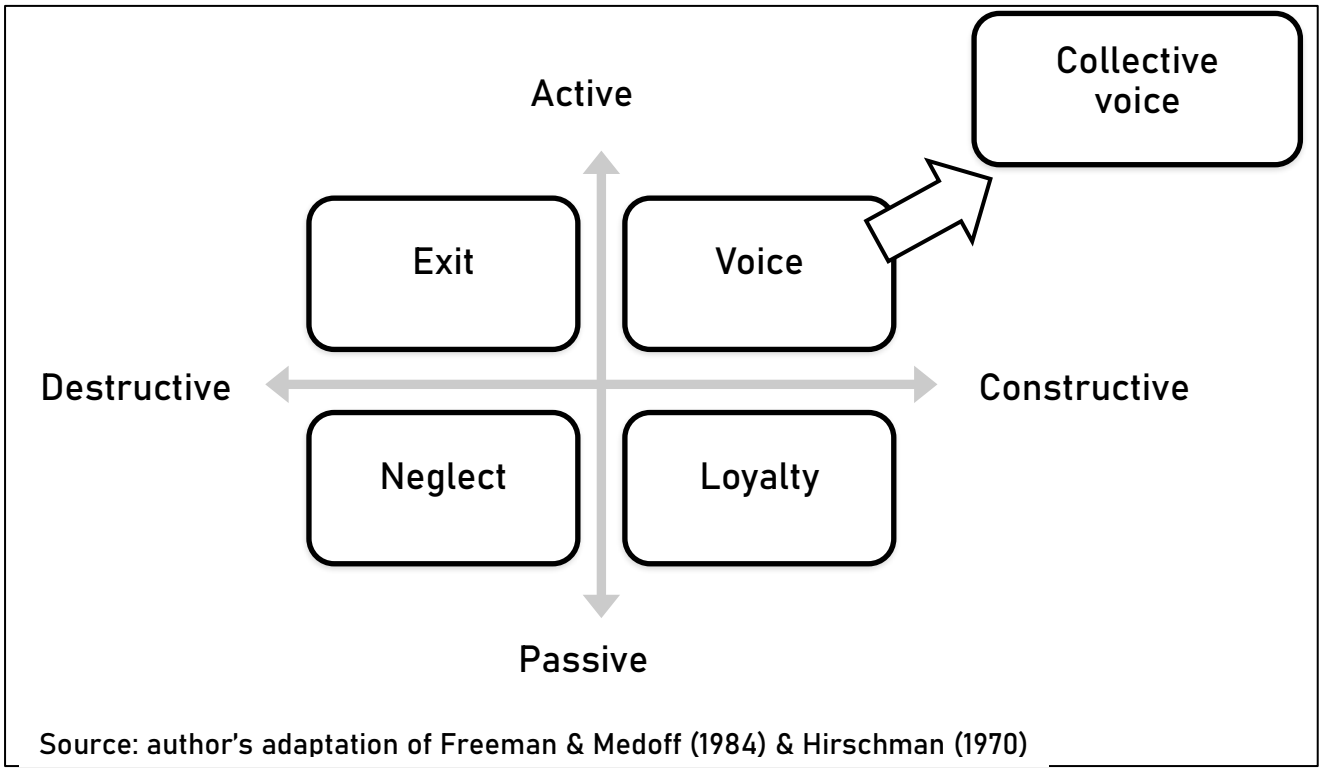


Figure 3.1: Collective voice

Voice is definitely the strategy that companies, employees and society at large would prefer over the others. It is an active and constructive strategy that aims to resolve the sources of dissatisfaction without alienating the consumer/worker.

However, it is not an easy strategy because it may involve direct confrontation, heated discussions and possibly conflict. Even in equal power relationships (think of friends), or where the dissatisfied party has more power (such as when you are a consumer or customer), voice will not be the primary strategy for many. Often conflict is avoided and dissatisfaction is dealt with using the other strategies.

In the employee-employer relationship, there is a power differential in favour of the employer. Voice, and the possible confrontation that it brings, could lead to retaliation by the employer. In other words, while voice is the preferred strategy, it is unlikely to be the dominant strategy in an employment relationship.

The solution, according to Freeman & Medoff (1984), is **collective voice** through unions and/or employee representatives. Because these actors speak on behalf of the collective (and are often protected from retaliation), they are in a better position to voice dissatisfaction than individual employees. As such, trade unions enable the voice strategy in companies and should lead to employees being more open about what is going wrong, but also about proposing ideas on how to improve work organisation without running the risk of retaliation.

But this is not the only role that unions play in companies. The second face of unions is the **monopoly of labour** face, which refers to the idea that unions organise individual workers into a collective force that can put pressure (through the threat of walkouts) on the employer to increase wages and improve working conditions. If workers are organised, they can not only suggest improvements in work organisation (collective voice) but also make demands on pay and working time. If a union is well organised, these demands can be met through the union's ability to decide when workers will cooperate or, more importantly, not cooperate and go on strike. In other words, the union has a monopoly over the workforce. By using this monopoly it can drive up its price (wages), sometimes to the detriment of company profits.

The problem is that they can do this 'above the competitive level', which can have negative economic and productivity effects. This second face of unions is therefore, according to the authors, potentially negative for productivity.

So, according to Freeman and Medoff, unions have potentially positive, productivity-enhancing effects, and more negative (from the firm's point of view) effects through the monopoly of labour. The question, then, is which effect is the strongest. This is an empirical question and depends on many contextual variables (Bennett & Kaufman, 2011).

The beauty of the 'two faces of unionism' framework is that it distinguishes between the different roles that unions can play in a company. It goes beyond the simplistic assessment that the union is simply good or bad.

An important criticism, however, is that the theory is very American in the sense that it looks only at what unions do at the workplace level. It ignores the role of unions at sectoral and national level. In a Belgian context, where wages and working conditions are mostly decided at sectoral level, the applicability of the theory is certainly limited.

3.4. Insider-Outsider

Insider-Outsider theory in brief:

- Main authors: Lindbeck & Snower, Rueda
- Focus: for who are unions fighting?
- Main publication: The Insider-Outsider Theory of Employment and Unemployment (1989)

The premise of the insider-outsider approach to trade unions is that trade unions are member-based organisations. Consequently, they will defend the interests of their members first and foremost. The problem is that union members tend to have certain characteristics (e.g. employed, middle-aged) and that in defending the interests of their members (the insiders) they harm the interests of those who are not members or who do not have the same characteristics (the outsiders) (Lindbeck & Snower, 1989; Rueda, 2005). In the words of Rueda (2007):

> *"Insiders care about their own job security much more than about the unemployment of outsiders. Outsiders, on the other hand, care about unemployment and job precariousness much more than about the employment protection of insiders."*

Importantly, this approach was not developed solely for the analysis of trade unions, but is a general approach to organisations that tend to prioritise the interests of insiders over outsiders.

Some examples are wage setting. Unions raise wages through collective bargaining and establish standard rates for all workers doing the same job. While this serves the interests of the workers in the company, this approach harms the interests of the unemployed, who may be willing to work for a lower wage, but are denied a job opportunity at the current wage rate.

A second example along the same lines concerns all kinds of employment protection legislation. Such legislation makes it more difficult (or more expensive) to dismiss workers. In this view, this is in the interests of the insiders, who are given a degree of job security, but not in the interests of the outsiders, who, in the absence of such legislation, might have a better chance of getting a job than the incumbents currently have.

A third example is the practice of (some) unions to negotiate multi-tier collective agreements. Such agreements establish different working conditions depending on when someone joined a company. Faced with management demands for lower wages and working conditions, some unions agree to lower them only for newcomers. In this way, they defend

the interests of current insiders (current workers, their members) to the detriment of current outsiders (future workers). The problem, of course, is that the current outsiders will become the insiders and that such agreements often lead to a lot of tension between the workers as they do the same work under different working conditions.

This theory has received some criticism, mainly because it takes a narrow view of what trade unions do and ignores the more macroeconomic effects that raising wages or employment protection could have. For example, higher wages could lead to higher purchasing power and demand for goods, which could ultimately lead to higher employment.

A second line of criticism relates to the fact that not a few unions also have unemployed members, which means that their interests also need to be represented. In such more inclusive unions, the general interest of the working class may be more important than the particular interest of workers in a particular company.

Thirdly, while one of the aims may be to defend the interests of members, another is surely to broaden the membership base. The more people employed, the more potential members a union will have. Therefore, the interests of unions may be more aligned with the interests of outsiders than the insider-outsider approach would suggest.

Exercise:

The insider-outsider theory is often used as a criticism of the role of trade unions. The next time you read a critical article about trade unions, try to see how it uses (or does not use) this idea of unions protecting the interests of some against the interests of other (more disadvantaged) groups.

3.5. System Theory

System theory in brief:

- Main author: Dunlop
- Frame of reference: pluralist
- Focus: general theory of industrial relations
- Main book: Industrial Relations Systems

As you will discover when studying social dialogue and industrial relations, you will keep discovering different actors and institutions that have a role or function that you have never heard of before. Social dialogue may seem like a simple interaction between employers and workers, but it is not. It is part of the functioning of society as a whole, and in itself has a multitude of sub-parts.

This complexity was first mapped by Dunlop[2] (1958), who sought to bring structure to the mountain of facts, institutions, traditions, laws and actors with which scholars are confronted. He did this by distinguishing four elements: (1) agents, (2) environmental context, (3) procedural and substantive rules, and (4) ideology and shared beliefs.

The **agents** of the system are the employers, the workers and their organisation, but also the government agencies involved. The **context** refers to the industrial, economic and technological environment in which the system operates, including the existing distribution of power in society. **Procedural and substantive rules** refer to the rules of the game for social dialogue and the way in which wages and working conditions are set and conflicts are resolved. Finally, **ideology** refers to the set of ideas that are regarded as common sense in relation to employment, social dialogue and the economy.

According to Dunlop, the rules and procedures of social dialogue (R) are the result of the interplay between the actors (A), the context consisting of technology (T), the market (M), the distribution of power (P) and ideology (I), which gives rise to the following equation:

$$R = f(A, T, M, P, I).$$

While this may look like a general theory of industrial relations, Dunlop's framework remains mainly a way of structuring knowledge and information. The advantage of mapping the system in this way is that it has allowed for more rigorous analysis and eventually

[2] John Thomas Dunlop was also the secretary of Labor under the Ford presidency and carried out advisory roles under president F.D. Roosevelt and Bill Clinton.

comparative research between different systems on the aspects mentioned above (Elvander, 2002). The second contribution of this theory is that it has brought the norms and rules of social dialogue to the fore (Kaufman, 2004). Next, by mapping the system, the scholar's attention is drawn to the broader context of the firm and the fact that there are multiple interdependencies that need to be taken into account (Harney, 2020).

The drawback is that by including so many aspects and issues, the theory is not really trying to explain anything. It guides the mapping of the system, but the question of the purpose of the exercise remains (Harney, 2020). It therefore has no predictive value and cannot be falsified in any way.

Exercise: According to Dunlop, rules and institutions are the result of a combination of factors. Take one of the institutions we will be learning about and try to see how it is the result of a particular combination of factors at the time it was created. What were the power relations, the market environment, the actors and the hegemonic ideology?

3.6. A balancing act: efficiency, equity and voice

Efficiency, Equity & voice in brief:

- Main author: Budd
- Frame of reference: pluralist
- Focus: Objectives and motives in employment relations

In order to understand the issues at stake in industrial relations and social dialogue, John Budd (2004) looks at what he sees as the main objectives of the actors in the employment relationship. Budd (2004) distinguishes three: (1) efficiency, (2) equity and (3) voice:

- **Efficiency** refers to the effective use of resources. It refers to both the employee's and the employer's desire to achieve the economic goals of collecting profit or wages.
- **Equity** refers to the desire (and right) of people (workers) to be treated fairly and equitably in the workplace. Budd sees it as an autonomous goal of workers to have a high degree of distributive justice.
- **Voice** refers to the ability of workers to influence the decisions that are made in the workplace that affect them. Again, given that employees are human beings and that we live in democratic societies, the desire for voice at work is an autonomous objective of employees. This is procedural justice.

According to Budd, achieving a balance among efficiency, equity, and voice is crucial for sustainable employment relations and effective social dialogue. Organizations need to find a balance between productivity and fairness, ensuring that economic goals are pursued while respecting the rights and well-being of employees. The theory suggests that integrating these three elements leads to improved employee trust, commitment, and overall organizational performance. However, quite often trade-offs need to be made between attaining optimal efficiency, voice and equity; hence the idea of 'balancing' the three objectives effectively.

In identifying these three objectives, Budd (2004) makes at least three important points. Firstly, he shows that employees have a broader set of goals than just earning a living through work. Their aim is also to work in a fair workplace with a degree of voice. Second, by identifying these three objectives, Budd (2004) shows that the non-efficiency objectives are equally important. Consequently, it is perfectly legitimate to argue for more voice or fairness, even though this may have an efficiency cost.

Let's take an illustration. Imagine a company that wants to introduce a new technology, let's say self-scanning in retail stores. A singular focus on efficiency might lead the company to roll out this technology top-down across its stores. This would reduce costs, speed up

operations and improve the company's overall competitiveness and profits. However, such an approach is likely to have some uneven and unfair consequences. Cashiers will see their jobs changed, or worse, disappear. The introduction of this technology may therefore go against the need for fairness and equity in the company. The company may therefore need to think about redesigning or revaluing the jobs (and working conditions) of cashiers, and how to deal with the reduced need for cashiers, even if this may reduce some of the increased profits the company was hoping to achieve. Still, even taking into account the equity effect, a top-down implementation of this new technology may still run counter to the workers' need to be involved in the process, to have their say, perhaps to suggest a different way of implementing the new technology, or to phase it in. The company will therefore need to put in place some sort of voice mechanism to ensure that all employees are on board with the changes and feel that their concerns are being heard. Again, the need for voice may delay or slow down the implementation of the new technology. In short, the company will need to balance the need for efficiency, equity and voice in the implementation of this new technology.

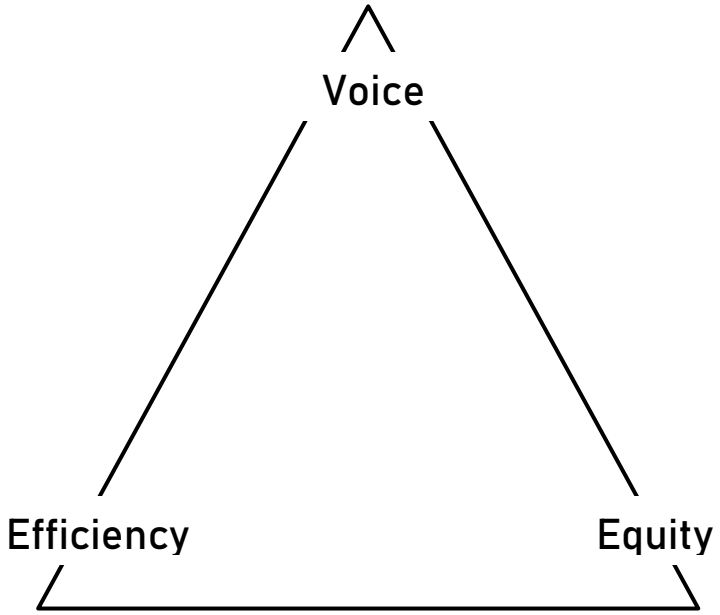


Figure 3.2: Efficiency, equity, voice - Budd (2004)

Exercise: Listen to your family or friends talking about work. If they are complaining, think about what it is about: efficiency, fairness or voice. And then see if the person is an employer or an employee.

In your assignment, try to see how companies balance efficiency, equity and voice.

3.7. Human rights

Human rights at work in brief:

- Main author: various
- Focus: fundamental and inalienable human rights
- Main works: ILO Convention, Charter of fundamental rights, Declaration of human rights

Before the end of the Second World War, analyses were made of the roots of the conflict and what could be done to prevent it from recurring. One of the most important post-war declarations was the 'Philadelphia Declaration', which set out the main aims and objectives of the International Labour Organisation (ILO). Among the fundamental principles set out in Article 1 are that "labour is not a commodity" and that "freedom of expression and of association are essential for sustainable progress". In other words, part of the cause of the two world wars was sought in the dire situation of workers, the lack of protection and the suppression of their voice and right to organise.

Similarly, the EU Charter of Fundamental Rights contains some clear references to social dialogue in Articles 27 and 28 (European Union, 2000):

> *"Article 27 - Workers' right to information and consultation within the undertaking*
>
> *Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.*
>
> *Article 28 - Right of collective bargaining and action*
>
> *Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action".*

Last but not least, the United Nations Declaration of Human Rights contains a clear reference to the right to organise (Article 20) and the right to join a trade union (Article 23).

It is clear that the right to organise, the right to strike and the right to be informed and consulted are considered fundamental rights of humanity and of the democratic systems in which we live.

This approach to social dialogue starts from the premise that every human being, simply by virtue of being human, has a set of inalienable rights and civil liberties that should be

respected, regardless of whether they are in an employment relationship or not, and regardless of whether they are economically efficient or not.

While the human rights approach clearly provides an ethical basis for the establishment of trade unions and a variety of representative structures, it also sets limits to their development, since the various declarations cited also include references to the right to property and the right to conduct business, which includes the right of employers to manage their enterprises.

Exercise: Are these fundamental and human rights to information and consultation, freedom of association, collective bargaining and the right to strike really respected for all workers? What are the problems?

3.8. Democracy at work

Democracy at work in short:

- Main author: various
- Focus: the relation between the organization of the economy and society
- Main works: Participation and Democratic Theory (Pateman, 1970)

Roughly since the Enlightenment, individual freedom and liberty have become an important touchstone for assessing the legitimacy of current institutions and social systems (Archer, 2010). In this light, democracy has often been presented as the least bad system available for public decision-making. At least in the political realm. For in parallel with the rise of democracies, political citizenship, equality and voting rights, the corporations in which we work remain largely authoritarian, with little room for democratic decision-making.

That this combination of political democracy and economic authoritarianism is an uneasy one has already been noted by the aforementioned Beatrice & Sydney Webb. In their book Industrial Democracy (1897a) they argue that this inconsistency is resolved by the combination of two things: (1) collective bargaining and (2) trade union democracy. Collective bargaining gives workers the power to influence company decisions, thereby checking the authoritarian nature of the company. And union democracy ensures that this collective bargaining is done in a way that is in line with what the workers want. So this combination brings a necessary dose of democracy into companies.

Another line of democracy-related arguments for workplace representation relates to the idea that in a democracy there is a plurality of groups with different interests and that each group should have the right and opportunity to organise. This is true in the political and social sphere, but also in the economic sphere. Accordingly, workers, as a group with a distinct and legitimate interest, should be able to organise and defend their interests as they see fit (while of course respecting the rights of others).

A third line of argument argues that trade unions are essential to the survival of political democracy. Observing the nascent American democracy, Alexis De Tocqueville ((De Tocqueville, 1835) saw value in political organisations such as trade unions, which he described as "great free schools" for democratic citizenship. It is in such political organisations that people become citizens through active participation in democracy, opinion-forming and compromise.

Pateman (1970) developed this line of thinking, arguing that democracy at work has positive spill-over effects into the political arena: people who work in non-hierarchical structures gain experience and competence by participating in collective decision making; they understand how political processes work; and they learn how to express their views and engage constructively with others. In contrast, employees in strictly hierarchical organisations exhibit passivity and political apathy. Accordingly, Pateman expected that employees in more democratically organised workplaces would have a stronger belief in the value of democracy and would participate more actively in the processes of civic democracy.

Two recent studies have supported this argument, showing that employees in workplaces with greater autonomy and involvement are indeed more politically active and have more faith in democracy (Budd et al., 2018; Timming & Summers, 2020).

Exercise: Being a critical citizen and forming your own opinion is crucial for a democracy to thrive, but is it valued in all areas of life? Where is it not, and could there be a way to infuse these contexts with more democratic elements?

3.9. The logic of collective action – rational choice theory

The logic of collective action in brief:

- Main author: Mancur Olson, Colin Crouch
- Focus: the promises and difficulties in collective action
- Main works: The Logic of Collective Action (Olson, 1974), Trade Unions: the problem of collective action (Crouch, 1982)

Anyone who has ever done any collective work knows the problem of collective action. If everyone would make an effort, the work would be easy and simple. But for some reason some people always tend to do less or nothing. What you have experienced is the *'free rider problem'*, something that is dealt with extensively in the rational choice approach. In industrial relations and social dialogue, this approach is represented by the early work of Mancur Olson (1974) and Colin Crouch (1982).

In 'The Logic of Collective Action', Olson (1974) describes the general problem of people working together towards collective goals. If a group of people (in this case workers) have a common goal (e.g. higher wages), it makes sense for them to band together to achieve that goal (collective action). By banding together, they have a greater chance of achieving their goal. A rational person would therefore have an incentive to engage in collective action.

But this is not always the case. Certainly not if the common goal is a public good and there is an individual cost to engaging in collective action.

A **public good** is something useful whose use is non-exclusive and non-rivalrous.

- **Non-exclusive** means that you cannot exclude people from using the good. For example, you cannot prevent people from capturing radio signals or enjoying the general safety of a city. Once the good is established, everyone can enjoy its effects. For exclusive goods, you can privatise their use. Clothes can be private property and only be used by the owners.
- Goods are rivalrous if one person's use of them reduces the ability of others to use the same good. For example, if you use a car, this means that other people have no/less opportunity to use the same car. If you use the motorway, other people will have less space on the same motorway. For **non-rivalrous** goods, this is not the case (or at least much less so). If you catch a radio wave from the air, this does not much affect the ability of others to do the same. If you breathe air, this does not affect the ability of others to breathe air under normal circumstances.

Public goods are non-exclusive and non-rivalrous, i.e. you cannot exclude people from using the good, and some people's use does not significantly affect others' ability to do the same (see table below). A typical example is a forest. The forest provides benefits in terms of nature and clean air. The benefits of clean air are enjoyed by everyone, regardless of whether they contributed to the creation or maintenance of the forest.

Table 3.1: Different types of goods

	Exclusive	**Not exclusive**
Rivalrous	Private goods	Common goods
	Food, car, house, clothes	*Fish in open sea, highway*
Not rivalrous	Club goods	Public goods
	Cinema, private park	*Radio, air, national defence*

Similarly, higher wages or good working conditions are (in a sense) public goods (in a particular company or sector). Most of the time (but not always) a wage increase will apply to all employees in a company or in a particular department or function, whether or not the individual employee has asked for it. A collective agreement specifying certain health and safety measures is non-exclusive within the company (everyone benefits) and to some extent non-rivalrous: it is not because you work safely that someone else cannot.

Most public goods can only be created (or maintained) through **collective action or coordination**. Clean air is the result of a collective effort not to pollute. Forests are the result of a collective decision to use space for other purposes. Collective agreements are the result of collective demands and pressure from workers in a company.

The problem arises because these collective actions may involve some **private costs.** Maintaining a forest requires investment and the work of many individuals. Demanding higher wages means asking for them and risking conflict with your employer.

In a situation where public goods are created by **collective action,** and where this collective action involves **individual costs,** it is (according to this approach) unlikely that many people will join the collective action. The rational (individual) person, who wants to maximise benefits and minimise costs, may simply hope that everyone else will join the collective action while he can save on the costs (**free rider problem**). However, if everyone does this, there is no collective action and no public good.

The figure below illustrates the collective action problem graphically. The higher the number of participants, the higher the probability that the public good will be achieved (or the higher the return to the public good). However, if there are only a few participants in the collective

action, the result will not be a gain but a loss, because joining the collective action comes with a number of costs and the public good is not obtained.

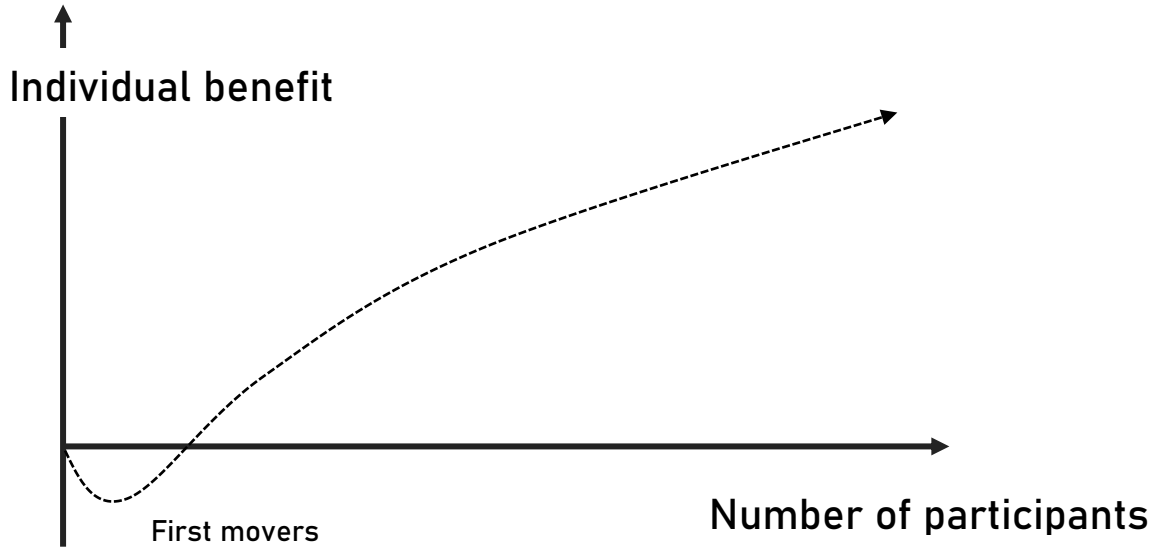


Figure 3.3 - Collective action problem

When applied to trade unions and social dialogue, these problems of collective action occur regularly. Let us take the example of **strike participation**. Workers have a collective interest in pressuring the employer to pay higher wages. The most important tool that workers have to exert pressure is to go on strike, to collectively refuse to work. This will cost the employer, who will be more likely to agree to the union's demands. But the strike is a real collective action. Its success depends on the participation of workers. If only 10% of a company strikes, it will cost the employer little and there will be no pressure; if 100% of the workers strike, the damage will be greater and hence the success will be different.

The result of the strike is a public good. The higher wages will benefit all workers, even those who did not take part in the strike. And the strike has some individual costs: the striking workers do not get paid for that day's work, and they risk getting into trouble with their employer.

So we have a typical problem of collective action. The 'rational' person will not join a strike and hope that everyone else will. If everyone were 'rational', there would be little change, a strike would be successful and the public good would not be achieved.

The next question is how to address this collective action problem.

- According to Olson (1974), one way to address it is to **limit the size** of groups. In smaller groups, the link between individual investment and benefit is smaller and more people will join the collective action. In the strike example, this would mean striking only in a particular department or company, rather than in the whole sector or country.
- A second strategy is to try to get **exclusive goods** rather than public goods. Ensuring that the benefits go only to those who have joined the collective action. In the case of the strike, this would mean higher wages only for those who took part. This is a difficult strategy as it goes against the principle of 'equal pay for equal work', but in some countries (e.g. US, TR) collective agreements sometimes apply only to union members.
- A third strategy is to **increase the benefits of joining** collective action by providing selective benefits. Independently of the public good, those who join the collective action will receive a different benefit. In the case of the forest, this might be access to the forest. In the case of trade unions, information and advice. In the example of the strike, the social benefits of joining a group can be seen as such collective benefits.
- A fourth strategy is to **reduce the individual costs** of joining the collective action. In the example of the strike, this is done through legal insurance in case of a problem or the collective's promise to fight against retaliation.
- A fifth strategy is to **increase the cost of not joining** the collective action. In the case of a strike, this is usually done by putting social pressure on the non-strikers by talking to them and trying to persuade them, or by social exclusion and abuse.
- Another strategy is **'coercive membership'**, in the sense of forcing everyone to join the collective action. In the case of a strike, this is sometimes done by blocking the company premises or factory to make sure that even non-strikers cannot enter the company to work.

While Olson (1974) focused on "trade union membership" as an example of the collective action problem, Crouch (1982) extended this reasoning to issues related to strikes, wage coordination, the trade-off between control over work and higher wages, etc.

While these rational choice approaches have the advantage of providing clear schemes of analysis and transparent lines of argument, they have also been criticised. The main criticism is directed at their untenable assumption that people are rational beings who make this kind of cost-benefit analysis. Secondly, rational choice tends to start from an observable reality and find rational reasons to explain the situation or behaviour. In a sense, it sometimes looks like 'rationalised choice'.

Exercise: Collective action problems are everywhere. Try to find them and see how they are solved, what methods are used

3.10. HR view on social dialogue: high performance workplaces

Following Beer et al.'s (1984) conceptual map, human resource management refers to those company policies that are designed to increase the commitment, competence, efficiency and congruence of employees in an organisation, which should ultimately lead to long-term individual, organisational and societal well-being. The focus of these policies has traditionally been on reward management (pay), working conditions (working hours, schedules), work organisation (teamwork, organisational design), etc.

The very same issues are often discussed in collective bargaining rounds, in information and consultation institutions or influenced by regulation. Nevertheless, in most textbooks on human resource management (and especially on organisational behaviour), the role of trade unions, collective bargaining and social dialogue is minimised.

How can this be explained and what can we learn from it?

- The first part of the explanation is that most of the HR and OB literature has **Anglo-Saxon** roots. It is mostly US and UK-based researchers who promote these views. However, in this context, trade unions and social dialogue play a very specific (and relatively limited) role in defining, regulating and setting the policies that HR literature focuses on.
- Second, much of the HR and OB literature focuses on measuring differences in the attitudes and behaviours of **individual** workers and is based on theories, models and methods of industrial psychology. As a result, the collective forms of regulation and behaviour remain outside the scope of the research and hence the theory and models.
- Third, and perhaps most importantly, the HR literature focuses on identifying those solutions that are **win-win** for the organisation, employees and society, as exemplified by the De Beer et al. (1954) model. This line of thinking is often at odds with the social dialogue and industrial relations view of the firm, which focuses much more on the divergence of interests and the need to manage and organise conflict in the firm. Trade unions and collective bargaining, by their very existence, thus prove difficult to reconcile with the assumptions and ambitions of HR.

In the HR view of the company, , "*the unions are seen as unnecessary and irrelevant. To obviate any desire for collective representation through a union, a company practicing human resource management will normally pay above the average rate and will have excellent communication and individual grievance systems. (...) There is no recognition of*

any broader concept of pluralism within society giving rise to solidaristic collective orientations." (Guest, 1987).

A less cynical way of looking at the HR/OB approach to trade unions is the instrumental approach from high performance workplace systems theory. In this approach, trade unions and social dialogue are generally seen as possible intervening factors in the implementation of certain HR practices. As such, social dialogue and the company's approach to it can enhance or hinder the efficient implementation of HR policies and thus affect their effectiveness.

In any case, while many of the pluralist visions of social dialogue and trade unions (e.g. Webb's, systems theory, efficiency equity voice model) challenge the absolute prerogative of management by giving social dialogue and trade unions a role in the 'joint regulation' of the company, the HR and OB view of social dialogue and trade unions puts management back in the driver's seat (Legge, 1995).

European Works Councils in the service of management

European Works Councils (EWCs) bring together employee representatives from different countries within the same company with central management. The aim of these works councils is to provide transnational information and consultation. The idea is that workers in multinational companies need to be heard not only at national level but also at transnational level. For a number of reasons (see later in the course), EWCs are not heavily regulated. How they operate and what they do is a matter for negotiation between employee and employer representatives. Pulignano & Waddington (2020) interviewed managers involved in these EWCs and found that they designed works councils to achieve 'human resources' rather than 'industrial relations' objectives. Managers ensured that employee representatives could not really control management or influence decisions by controlling the flow of information (and ensuring that information was not given too early). However, they 'used' the EWC to legitimise management decisions and communicate them to the workforce. They have also designed EWCs to promote a transnational corporate identity, a sense of belonging, which is arguably a 'human resources' rather than an 'industrial relations' priority.

Exercise: If you read an HR magazine or article, check how they discuss issues that are generally influenced by collective bargaining (working time, pay) or information and consultation (work organisation, training), do they discuss these roles or do they ignore them?

3.11. Neoliberal thinking on trade union

Neoliberal thinking on trade unions in brief:

- Main author: Hayek, Hutt
- Focus: the effect of unions on unemployment and the coercive union strategies
- Main works: The theory of collective bargaining (Hutt, 130, 1975).

When reading modern accounts of recent developments in social dialogue and trade unionism, the word 'neoliberal' is ubiquitous. The 'neoliberal turn' in policy around the 1980s is identified as a crucial moment when the state moved to actively oppose trade unionism and the autonomy of the social partners in setting social standards. Rarely, however, do textbooks delve deeply into what this neoliberal thinking consists of and how it perceives trade unions and the role of social dialogue.

Neoliberalism is generally associated with thinkers such as Friedrich Van Hayek, Milton Friedman & James Buchanan, who were associated in the **'Mont Pelerin Society'**. The neoliberals strongly favour market rules and private initiative, and opposed intervention by the state or by organizations as trade unions. The strongest (and most developed) criticism of trade unions from the Mont Pelerin Society came from its South African member W.H. Hutt in his publications "The theory of collective bargaining" (Hutt, 1930, 1975) and "The strike-threat system: the economic consequences of collective bargaining" (1973).

Without going into detail, the general tendency of neoliberalism with regard to social dialogue can be summarised as follows:

- A strong belief in and emphasis on **individual freedom**: Neoliberal thinkers prioritise individual freedom and autonomy over any form of government regulation or group norms.
- A strong belief in **market-based solutions**: According to neoliberal thinking, the free market is the best way to regulate society and the economy. Any kind of intervention in the workings of the free market is generally seen as harmful. Therefore, the role of the state in the economy should be minimised. Trade unions and collective bargaining (see below) are seen as harmful and the state should refrain from supporting or facilitating in any way trade union organisation, social dialogue or collective bargaining.
- An **opposition to trade unions**: While neoliberals are very much in favour of private initiative and spontaneous civil society organisations as an alternative to state intervention, trade unions are seen in a bad light. According to them, trade unions are "coercive" organisations, referring to some of their tactics (closed shops, blockade

strikes) that strongly encourage (if not force) individuals to participate in collective action even without explicit consent (Jackson, 2015). In his book The Strike-Threat System, Hutt (1973) also argues against what he sees as particularly violent trade union instruments that threaten the state's monopoly on the use of force. Comparisons between trade unions and piracy, banditry or worse are ubiquitous in his writings (Jackson, 2015).

Neo-liberals were highly critical of the **role of trade unions in the market economy**. In Hutt's view, unions are monopolies that seek to control the supply of labour in order to raise the price of labour (wages). While this seems similar to Webb's argument, the difference is that Hutt denies that collective bargaining would correct the fact that employers have monopsonistic power over wages. While others argued that wages were too low because employers had wage-setting power, and that this was partly corrected by unions and collective bargaining, Hutt argued that workers had considerably more power in choosing their employer than others thought, and that unions exacerbated this power differential in favour of workers.

Second, Hutt argued that unions not only raise wages above appropriate levels through collective bargaining, but also do so by excluding some workers from entering the profession or labour market in order to raise wages further. This meant that unions had a direct negative impact on employment and even equality. In his words, "*Workers' combinations are impotent to secure a redistribution of the product of industry in favor of the relatively poor"* (Hutt, 1975, p. 145).

Thirdly, according to Hutt, unions could collude with certain employers for higher wages, leading to higher prices at the expense of unorganised consumers. "*The ultimate gains of workers by combination when not at the expense of excluded competitors are obtained by exploiting the consumer*" (Hutt, 1930, p. 131). In his words, organised labour and capital can act as a 'joint monopoly' against the interests of the consumer. But, according to Hutt, this hits the working class hardest. In other words, the unions are working in direct opposition to the interests of their own members.

He concludes that "*the rate of wages which is best for the workers as a whole is that which is determined in the free market"* (Hutt, 1975, p. 145) and that collective bargaining should therefore not be about wages but about so-called social issues such as working conditions and working hours. Van Hayek even went so far as to say that unions are "the main cause of unemployment" and "the falling standard of living of the working class" (Hayek, 1984). "*The real exploiters in our present society*", Hayek continued (Hayek, 1982), "*are not egoistic capitalists or entrepreneurs, and in fact not separate individuals, but organizations which*

derive their power from the moral support of collective action and the feeling of group loyalty".

These neo-liberal thinkers thus have an argument in principle against the role of trade unions and collective bargaining, which they see as harmful interventions in the free market, which is supposed to serve the best interests of all in the long run. This argument is nicely summarised by Ludwig von Mies in the preface to Hutt's (1975) book:

> "*On a free labor market there prevails a tendency to make unemployment disappear. Not to interfere with the operation of the labor market is the only effective full-employment policy. If either by government decree or by union pressure and compulsion wage rates are raised above the potential market rate, unemployment of a part of the potential labor force becomes a lasting phenomenon. It is impossible for the unions to raise wage rates for all those eager to earn wages and to find jobs. If they win for some groups of workers higher compensation than what they would have collected on a unhampered market, they victimize other groups".*

Exercise: Neoliberal thinking says that trade unions work against the interests of their own members by demanding higher wages. Do you agree with this and why (not)?

3.12. Labour process theory

The logic of collective action in brief:

- Main author: Braverman, Burawoy
- Focus: the absolute control of the employer over the employee
- Main works: Labor and Monopoly Capital (1979)

When Harry Braverman was studying occupational shifts in the US, he noticed a contradiction in the discourse about what was happening. On the one hand, there was a lot of talk about the need for skills, education and training due to the increasing automation of work. While this might suggest the development of more interesting jobs, he also observed a growing dissatisfaction among workers with their jobs. This dissatisfaction, he said, was rooted in people reporting increasingly boring tasks. While the overall production process may be complex, the division into small, seemingly useless tasks makes the work itself particularly mind-numbing (Braverman, 1974, pp. 1–5).

Based on this paradoxical observation, Braverman developed labour process theory, which has had a major impact on thinking about work. Much of labour process theory revolves around two concepts: **deskilling** and **control**.

Labour process theory starts from the observation that labour is a special commodity because of its indeterminacy. The potential of labour has to be converted into actual labour input. And since capitalism is about capital accumulation, the employer will be forced to constantly search for methods and ways to optimise this conversion process. The only way for the employer to do this, according to this approach, is to establish structures of control and power (Abbott, 2006). Even when this **control** and power is exercised through the 'consent' of the employee, the employee is still being exploited in this sense.

One strategy for exercising power and control over employees is through the methods of scientific management, which breaks down large and complex tasks into small and simple ones. As a result, little skill is required of workers, making them easily **replaceable** and thus depriving them of much bargaining power.

In this view, social dialogue and collective bargaining cannot 'rebalance' the existing power imbalance. Worse, they are seen as simply an alternative management mechanism to increase control and power over the work process. Social dialogue, in this view, is seen as necessarily compromising.

Exercise: Think about modern technologies in the workplace: do they increase the autonomy and skillset of the worker, or do they increase the control of the employer and make the workers more replaceable?

3.13. Is labour a commodity?

ILO declaration of Philadelphia (1944).

"The conference reaffirms the fundamental principles on which the Organization is based and, in particular that: (a) labour is not a commodity"

Underlying much of the thinking about the employment relationship and social dialogue is a discussion about whether (or to what extent) labour can be seen as a 'commodity' like any other. If we look at the terms used in the employment relationship, they are very similar to those used in other areas of the economy. We talk about the 'labour market' where labour is bought and sold for a price (the wage). If there is a lot of labour supply (unemployment), the price will go down, while if there is a lot of demand (the war for talent), the price will go up. Similarly, one could discuss the market for bananas, refrigerators or eco-friendly hotel stays. In this sense, labour can be seen as any other kind of commodity. The consequence of this thinking is that, as with the banana market, it is claimed that the best way to regulate it is to regulate it as little as possible.

The question, however, is whether the labour market is like any other market and whether labour, like bananas, can be regarded as a commodity. Several objections have been raised to this market-based view.

- The first relates to the **lack of equality** in the labour market. Contract thinking assumes that the parties in the market come together and are free from any pressure to participate. People are free to buy or not buy bananas, and buyers and sellers have roughly equal power. This is not the case in the labour market. The balance of power, according to this critique, is very much in favour of the employer, since he is the one who offers the paid employment on which the workers depend for their livelihood. While the employer can easily refuse someone a job and give it to someone else who is interested, the employee is not in the same position.
- Secondly, the issue of **'authority'** is central to the employment relationship. When you sign a contract, you agree to work under the authority of the employer for a certain period of time. In the case of bananas, you become the owner of the banana and can do whatever you want with it (within the limits of criminal law). With labour, the buyer does not become the owner of the worker, he/she can do a lot with the rented labour, but

given that there is a human being attached to the labour, there are limits to how the workers can be (ab)used.
- Thirdly, when you 'buy' labour, there is usually a human being attached to it, and that human being has certain **fundamental rights** and the right to be treated with dignity and respect. Viewing labour as a commodity ignores the human aspect of labour.

Labour, according to many, is not a commodity, which means that its exchange should not be governed by the same logic or even discussed with the same vocabulary. This has a number of concrete consequences. For one thing, the rules that govern commodity markets should not simply be applied to the labour market. Instead, democratic processes, collective bargaining and social dialogue should regulate the labour market and its functions. Second, workers should be given special protection through specific individual and collective labour laws. Third, the treatment of labour should not be solely focused on productivity, but should take a human-centred approach. In addition to productivity, energy should be put into making work environments fit for well-being and self-development.

Labour as a commodity at Sports Direct.

You probably know Sports Direct as a cheap, often cramped sports shop. The next time you walk into a Sports Direct, take a look at the people who work there. You are likely to hear all sorts of shouting on the staff walkie-talkies. In the UK, Sports Direct received a lot of (negative) attention around 2016 for its HR policies. In its UK stores, workers were mainly employed through agencies on so-called zero-hours contracts. Under these contracts, the company is not obliged to offer workers a minimum number of hours, but workers are semi-obliged to accept any offer. In addition to this high level of insecurity about working hours (and therefore income), the work process is closely monitored. Anyone who accumulates six 'misdemeanours' (such as talking too much or taking too many toilet breaks) in six months will be fired. After shifts, workers are regularly searched for stolen goods, and pay is very low. The culture of fear encouraged employees not to take toilet breaks or call in sick (Williams, 2019: 70-71).

3.14. Summary

This section has provided a brief and superficial overview of some of the main theories and conceptual frameworks on social dialogue, trade unions and industrial relations. As you will see, they differ considerably in terms of the questions they ask, the assumptions on which they are based and the methodological or philosophical approach they take. The focus of this section has been on pluralist or radical theories, as many of the unitarist approaches to social dialogue are adequately covered in other courses and handbooks.

Table 3.2 - Overview

Theory/model	**Main authors**	**Framework**	**Focus**	**Main question**
Three methods of trade unionism	Sidney & Beatrice Webb	Pluralist	Micro and macro-economic	What do unions do to control the labour market?
Two faces of unionism	Freeman & Medoff	Pluralist	Micro-economic	What do unions do in companies?
Insider-outsider	Lindbeck & Snower; Rueda	Pluralist	Micro and macro-economic	Who are unions defending
System Theory	Dunlop	Pluralist	Institutionalist	How can we map out this whole system
Efficiency-Equity-Voice	Budd	Pluralist	Philosophical	What are the real motivations of employers and employees?
Human rights	Various	Pluralist	Philosophical	What are the basic human rights of workers?
Democracy at work	Various	Pluralist	Philosophical	How can we organize our societies (and thus also companies) in a democratic way?
Logic of collective action	Olson; Crouch	Pluralist	Micro and macro-economic	How do rational cost-benefit choices affect labour relations?
Management prerogative	Various	Unitarist/Individualist	Philosophical	To what degree has management the freedom to decide?
Human Resources	Various	Unitarist	Psychological	How can we organize staff policies as such to create mutual benefits?
Neo-liberal	Hutt, Hayek	Individualist	Micro- and macro-economic	How do trade unions distort the free market?
Labour process	Baverman	Radical	Micro-economic	How does management try to control the labour process?

4. Actors

4. Actors in social dialogue

4.1. Introduction

"The capitalists want the most labor for the least money. The laborers want the most money for the least labor. Workers produce wealth and build the world's palaces, but they neither use the wealth nor dwell in the palaces." Mother Jones[3]

"Onderhandelen is luisteren. Paul Windey[4]

In the popular science book "Never split the difference", former FBI hostage negotiator Chris Voss (2016) gives some tips and tricks for negotiators. One of the main points is the importance of listening and understanding the other party, but many fail to get to this point: "*Most people approach a negotiation so preoccupied with the arguments supporting their position that they are unable to listen attentively*" *"* (Voss & Raz, 2016, p. 42).

Listening to and understanding the positions, values and concerns of the other parties is important for genuine discussion, negotiation and compromise. This part of the course aims to increase your understanding and appreciation of the different parties involved in social dialogue.

For this reason, this section looks at the actors in the field and tries to identify some of their interests and motivations.

Figure 1 provides a graphical overview of the actors in the employment relationship and social dialogue. A distinction is made between primary, secondary and tertiary actors:

- The primary parties are the individual employers and employees. These parties are bound together by an employment relationship, a contract of employment.
- The secondary parties are the representative organisations of employers and employees. The relationship between them can be called 'social dialogue' as it covers the more collective relationship.
- The tertiary (but very important) party is the state, which structures, enables, hinders or stimulates the social dialogue and the conditions of the employment relationship.

[3] Mother Jones (actually named Mary G. Harris Jones) was a Irish-American union organizer in the United Staes of the late 1800's. She was involved in coordinating major strikes and co-founded the Industrial Workers of the World (IWW) union.
[4] Paul Windey was the president of the National Labour Council (NAR) until May 2020.

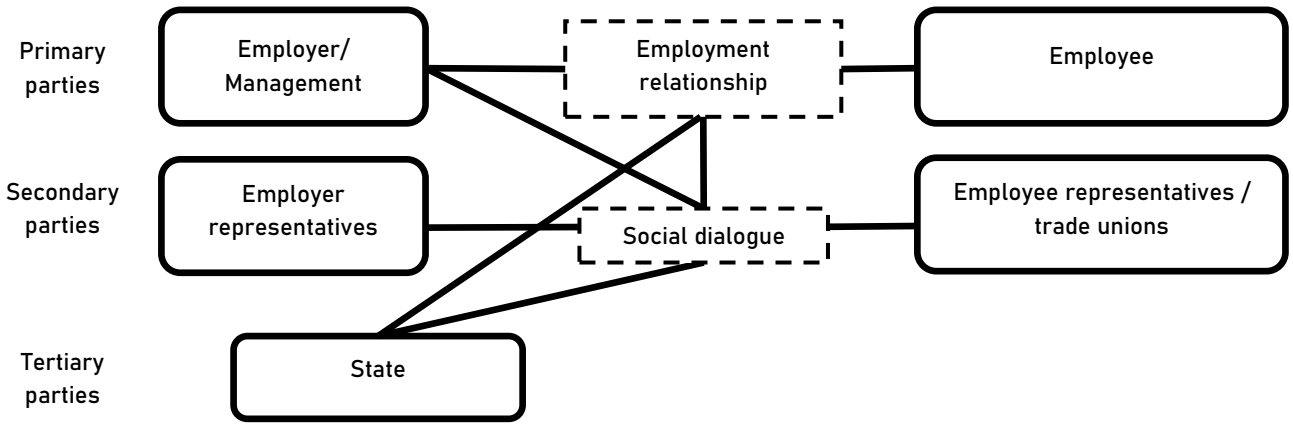


Figure 4.1: The actors in social dialogue (adapted from Edwards, 2003: 9)

Who's talking: bipartite and tripartite social dialogue

When discussing the relations between the actors in the employment relationship and the social dialogue, reference is often made to **bipartite** and **tripartite** relations. As the word suggests, bipartite social dialogue refers to relations between the two main parties: employers or their representatives and workers' representatives. Tripartite dialogue is a dialogue involving workers' and employers' representatives and the state. In other words, there are three parties involved in tripartite dialogue.

4.2. The employment relationship

> *"Since no employment contract could anticipate all relevant contingencies arising in work relations, many issues had to be settled during the everyday conduct of business. How hard was the employee to work? Under what material, social, and psychological conditions? With what tools, machines, and materials? With what rights to demur against specific instructions, managerial policies, and proposals for change?"* (Fox, 1974)

The focus of this course is on social dialogue. However, in order to understand the difficulty of social dialogue, it is important to fully understand the nature of the **employment relationship**. The employment relationship refers to the contractual relationship between an employee and an employer. It involves the exchange of the employee's time and labour for a (more or less) predetermined sum of money. It is essentially a compromise between the employee's need for security (of income) and the employer's need for flexibility. While employees want a certain degree of income security, employers want to be able to deploy

labour and manpower flexibly as and when required, without having to constantly renegotiate terms and conditions.

According to Sisson (2020), it is characterised by the following:

- **Tangible and intangible rewards**: Employment provides a number of tangible and intangible benefits to employees. The obvious tangible benefits are salary, paid holidays or pension rights and a degree of security. Less tangible benefits and rewards relate to the degree of autonomy an employee enjoys, opportunities for skills development and the like. But social contact and status, personal identity and a sense of purpose are also part of the rewards that employees derive from an employment relationship.
- **Incomplete/indeterminate**: It is important to note that employment is an incomplete contract. The worker agrees to work for the employer for a certain number of hours without specifying exactly what, how and at what pace or intensity the work is to be performed. When you buy shoes, a television or a trip to the Spanish coast, the subject of the contract is quite clear. For a certain amount of money, you get a concrete object or service in return. This is not the case when you buy labour through a contract of employment. The employer buys a promise to work for a certain period of time under the authority of the employer. This promise or potential of the employee must be made concrete. The subject matter of the employment contract is therefore partly indeterminate. The proper execution of the contract (and its usefulness to both parties) depends on many factors, such as the employee's ability, but also the employer's management style. In other words, the outcome of the contract is not predetermined.
- **Residual control rights**: One of the main advantages for employers of using employment relationships (rather than contracting out work) is the residual control rights that managers get. In an employment relationship, the employee sells his or her labour and agrees to work under the authority of the employer. This effectively means that the employee signs a blank cheque for the employer. It is the employer who can then decide (within certain limits) what the employee should do and how.
- **Cooperative and antagonistic**: Finally, the employment relationship is both cooperative and antagonistic. It is cooperative because the success of the relationship depends on mutual cooperation. Employers control capital but cannot produce without workers. Workers own their labour, but it is difficult to survive without a wage. At the same time, the relationship is antagonistic (in Edwards' terms, it is a

"structural antagonism") with an inherent potential for conflict over issues such as wage setting, pace of work, control over work processes, etc.

The very nature of the employment relationship, in particular it's indeterminate and structurally antagonistic nature, makes it very prone to conflict. Ongoing conflict management and recalibration of the relationship is necessary, and **social dialogue** is one of the main instruments for this.

Structural, not personal

Imagine a textile company that manufactures T-shirts. Management is looking for ways to reduce costs and maximise profits. One of the major costs is labour, given the large number of employees. On the other hand, the workers who operate the sewing machines want to be fairly compensated. They believe they should be paid a wage that reflects their efforts.

In this scenario, the structural antagonism emerges. The management, driven by the profit motive, tries to keep wages low. Conversely, workers, represented by unions or otherwise, may engage in collective bargaining or industrial action to press for higher wages and better working conditions.

This antagonism is not due to personal animosity between individual employers and employees, but is inherent in the relationship itself because of conflicting economic interests. It is, in other words, structural.

This structural antagonism is an essential aspect of industrial relations and may not be entirely resolvable or avoidable. Both sides seek to advance their interests within the constraints of the economic system.

4.3. The employer / manager

This section focuses on the employer/management/shareholder side of social dialogue and the employment relationship: those who own or control organisations that employ workers to perform tasks under their authority.

A first question immediately arises because it's not clear who exactly we're talking about. One could focus on **shareholders**, the owners of companies that employ people in order to maximise the return on their investment. While in principle this may be a good definition and has the advantage of being linked to a clear interest (profit maximisation), in practice it is often difficult or impossible to identify the real shareholders, sometimes there are none (e.g. public service), often they are dispersed (e.g. a company with many shareholders, some of whom are pension or investment funds) and quite often the interests of the shareholders are more diverse than just profit maximisation. In terms of social dialogue, the problem is that shareholders often do not "act" directly, but through their representatives, the management.

Another way is to look at **employers**, which according to Budd & Bhave (2019) are those who 'buy labour'. This rather broad definition has the advantage of including many types of organisations that employ workers, such as private, non-profit or public sector organisations. On the other hand, the disadvantage is that in quite a few organisations, the 'employers' are not directly or indirectly involved in social dialogue.

Another way is to look at the **management**, employer representatives or shareholders who run the company on a day-to-day basis and deal with employees. This has the advantage that it is easier to identify who we are talking about (compared with, for example, shareholders). The disadvantage is that in some areas the interests and motivations of management may differ from those of employers or shareholders.

The role of management is to run the organisation in the interests of the shareholders or the authority. The scope of management's activities is therefore broad, ranging from work organisation to strategic investments, financial management and personnel issues. Management is also responsible for relations with employees, both individually and collectively. Of course, this is often only a small part of management's activities.

Although minor compared to other management responsibilities, the HR literature shows that poor management of employee relations can result in significant costs and lost opportunities. The same is true of collective labour relations, which is best illustrated when a company is faced with frequent strikes and industrial action. Even with the best strategy,

financial management and production process, frequent and prolonged strikes and poor industrial relations can have a negative impact on a company's performance.

Depending on your area of interest, your definition of 'employer' will be different. If your focus is on company-level social dialogue and interaction with trade unions, you are likely to look at management. However, if you're interested in the systemic role of trade unions in modern capitalism, you're more likely to focus on shareholder interests and how these are reflected in company, sectoral and national collective bargaining and social dialogue.

Measuring disfunctions: 1st social unrest

When visiting a logistics company a while ago, one could notice little charts on the team boards. The charts represented the time lost due to several causes such as material breakdowns, supply issues, understaffing and social unrest. Social unrest referred to all loses in productivity because of more or less collective actions by employees in protest to certain management policies. As such, employees would from time to time shut down a machine to protest lacking protective equipment, would slow down to protest work pressure etc. What was remarkable is that in most charts, social unrest was the main cause of disruption in the last months

4.3.1. The management prerogative

The property ownership of employers and the indeterminacy of the employment relationship gives managers the right to manage. They have the right (and duty) to organise work, to direct, to delegate and to control workers. This right of managers to manage is also called **management prerogative**. In the words of Storey Storey (2014, p. 102), it *'reflects an area of decision-making over which management believes it has (and acts as if it has) sole and exclusive rights of decision and in which it fiercely resists any interference'*.

The roots of this thinking go back to the employment contract. When you sign a contract, you agree to work **under the authority** of the employer for a certain period of time in return for a certain wage. What you will do during that time is loosely defined by a job description or job title. The details of what has to be done, when and how are part of management's right to 'manage'.

This right to manage is more or less explicit in the individual employment contract, but also in a number of post-war social pacts in countries such as Sweden or Belgium. In these basic compromises, the unions agreed to accept the authority of management (and hence their right to manage), while management accepted the legitimacy of the unions and agreed to negotiate working conditions.

Some areas that are typically considered to be part of the management prerogative are organisational structure and strategic decision making. Management is generally perceived as having the authority to decide on the structure of the organisation, the departments, their tasks and cooperation, job roles, as well as deciding on the strategic direction of the company, planned investments, resource allocation, etc.

The question, then, is where the 'right to manage' ends, where the individual autonomy of the worker begins and where the duty to inform, consult or negotiate intervenes. There's no clear answer to this question in the management prerogative debate, nor has there been much research into what managers really think. Although it is not a structured approach or theory, it has significant implications in practice, with managers and employers often using the concept to reduce the role and influence of trade unions or works councils.

Upscale negotiations to keep the managerial prerogative in the company

Faced with the need to negotiate working conditions, employers have historically sought to externalise these negotiations to employer organisations and unions outside the company. Through sectoral bargaining, for example, wages have been set through collective bargaining, while the idea of management control within the company has remained (Williams, 2020, p. 21).

4.3.2. Management styles towards social dialogue

Given that social dialogue is often not the main concern of management, how do managers view social dialogue and industrial relations? Some see it as a complete waste of time, some try to use the institutions to their advantage, while others accept the role of unions and representatives in both their cooperative and confrontational aspects.

One way of looking at how managers behave in social dialogue is to identify **'management styles'** towards unions and representation. Management styles are ways in which management approaches issues. They should not be confused with the idea of strategies or frames of reference. **Strategies** refer to a consciously defined way of dealing with social dialogue. Many managers do not have a real strategy, but they do have a style of dealing with the issue. This style is often based on, but different from, how managers perceive the reality in their company (the frame of reference). A **frame of reference** is how you perceive the world, whereas a management style is more about how you act in the world.

Various attempts have been made by different authors to distinguish between a number of management styles. For example, Alan Fox (1966) distinguished six types of management styles, while Purcell (1987) identified management styles along two basic dimensions (collectivism and individualism) and distinguished between different policy areas (industrial relations, work organisation and human resource management), and others have developed around the same general theme (Bacon, 2008).

On the basis of these typologies, an adaptation based on two main indicators is presented below: (1) the social dialogue manager's frame of reference and (2) management's perception of the potential benefits of representation and social dialogue.

The necessary caveats must be made here. The typology proposed below is inspired by previous typologies, but has not been researched in detail. The typology is intended to be instructive in distinguishing between different possible managerial approaches to social dialogue and does not claim to be exhaustive at this stage.

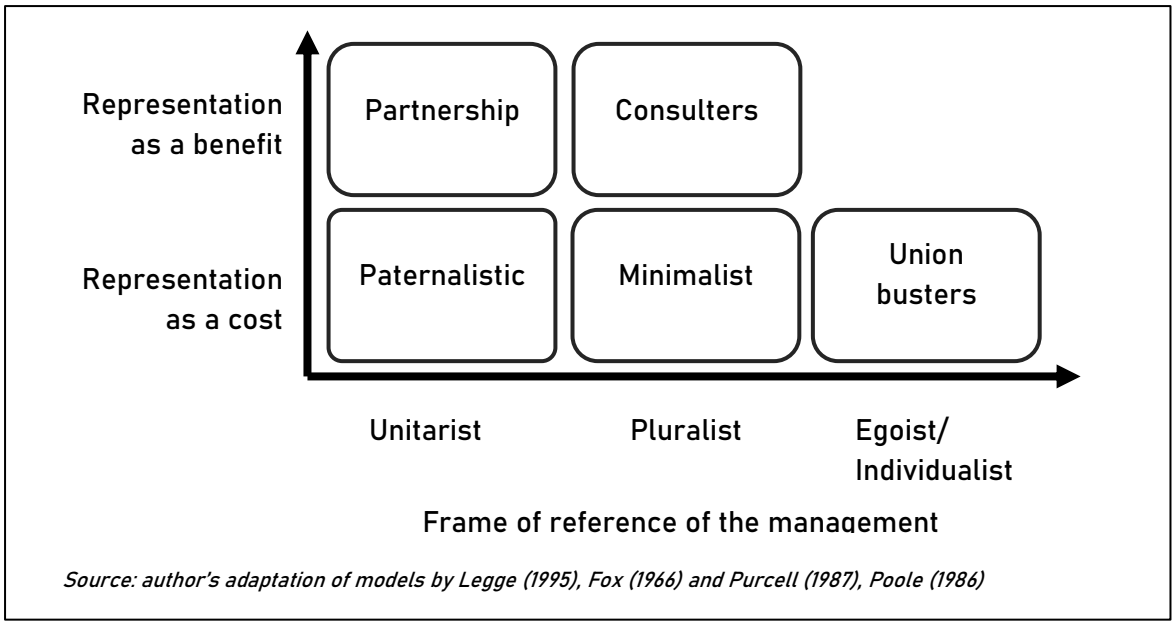


Figure 4.2: Management styles

The different management styles suggested here are as follows:

Paternalistic: This management style is based on a unitary management frame of reference. In the view of management, the interests of employers and employees are fundamentally the same. The added value of representation is perceived as very low or non-existent. Social dialogue institutions are seen as costs to be avoided. The paternalistic view is often found among employers/managers of small and medium-sized enterprises who try to look after their employees like a 'good father' (Bingham, 2016, p. 41). In the paternalistic management style, authority is completely in the hands of the employer, but the employer uses it in a more or less benevolent way (Cullinane & Dundon, 2014). Employee welfare is high on the agenda and there are often close personal relationships between the employer and subordinates. Trade union membership is avoided through direct participation and the manager's closeness to employees. Collective bargaining is perceived as breaking up the family by installing a two-sided mentality.

Father-son relationships: In a small textile company, the boss and employees have a very close relationship. They often have breakfast, lunch and dinner together and family visits are not uncommon. The employer uses fatherly language and attends the employee's children's birthday parties. While the employee is well rewarded financially, he/she bends over backwards for the company and works very long hours and weekends without proper compensation.

El buen patrón (The Good Boss – 2021). This Spanish film gives a vivid portrait of what paternalistic management means. It tells the story of a factory boss who manages like a father figure. While maintaining strict control over the workforce, he also interferes in their personal lives, but all in the interest of the company.

Partnership: In this management style, the management also has a unitary frame of reference, but sees added value in representation. Here the manager does not consider himself to be all-knowing and is open to ideas from the floor. Representation is a useful tool for channelling information and ideas from the shop floor and can help to improve the implementation of change and innovation. The union or representation is seen as a partner in the company. The key words are association, common interests and participation (Herriot, 2001). The focus is on solving problems rather than compromising on diverging interests. In this way the employer can go beyond the law and invest in the institutions of social dialogue and shape them in such a way as to maximise the common good. But social dialogue must be about mutual benefit. Real bargaining on divisive issues should be avoided.

Tesco: Tesco is the third largest retailer in the world (after Wall-Mart and Carrefour and excluding Amazon). In 1998, the UK branch signed a partnership agreement with the Union of Shop, Distributive and Allied Workers (USDAW). For a country with few legal requirements for union involvement, the agreement went a long way, providing for very frequent consultation at various levels, extensive union training, frequent union briefings, etc. Interestingly, the agreement defined what should and should not be discussed in two ways. The employee forums (as the meetings were called) were not to be about company propaganda, nor were they to discuss working conditions or personal grievances. The focus is clearly on problem solving and mutual interest (Blyton & Turnbull, 2004).

Consulters: The consulters' management style sees social dialogue as a possible advantage, but has a more pluralist frame of reference. Management recognises that there is a degree of convergence and divergence of interests. Employee representatives are invited to express their views, which are welcomed by management, but given the sometimes divergent interests, it is management that makes the final decision.

Consulters: the 'consulters' management style sees social dialogue as a possible advantage, but has a more pluralist frame of reference. The management sees that there is a degree of convergence and divergence of interests. The union and representation is therefore actively consulted: the employee representatives are invited to provide their views which are welcomed by the management, but given the sometimes divergent interest, it is the management who makes the final decision.

SouthWest Airlines (US): At this low-cost airline, the management style in relation to social issues can best be described as that of a consulter. In their own words, they follow a model of 'cooperative collectivism'. It accepts that there are sometimes divergent interests, but also that the interests are often the same. Unions are seen as possible sources of partnership and bargaining partners. As the company pursues a low-cost strategy, everything is done to reduce overall costs and increase productivity. In such cases, trade unions and employees are crucial in providing ideas on how to organise work better. In addition to the often tough negotiations about wages, the company's principle is to have fun and give employees a lot of autonomy in how they do their work (Harvey & Turnbull, 2020; Thomas, 2015).

Minimalist: This management style departs from a pluralist frame of reference by accepting the divergence of interests, but sees social dialogue as a cost item to be minimised. Management accepts that representation and unions have a role to play, but this should be organised in the most efficient (read: cheapest) way possible. Legal requirements are seen as the maximum and efforts are made to reduce the number of meetings, representatives and time spent, without actively trying to suppress any kind of social dialogue. These managers will often say 'of course trade unions are needed, but...':

At **Germanwings**, management policy towards the unions was minimalist. Make no mistake, the unions were accepted as relevant actors and there was no pressure not to organise. The emphasis was on preventing them from playing a major role and on ignoring them as much as possible. This resulted in the absence of a works council, but the presence of (legally required) board-level representation in the company. A culture of individualism was fostered and the discourse towards the often young and female workforce focused on the idea that a works council was not really needed (Barry & Nienhueser, 2010).

Union busters: this last management style departs from an egoist/individualist frame of reference by observing that there may be divergent interests, but that these are best balanced through market relations. Social dialogue is seen as a cost and something that disturbs the normal (market) relationship between employers and employees. Trade unions and representation should therefore be actively avoided and suppressed:

Ryanair (IE) has long been (and still is) a typical union-busting company. It clearly had a 'individualist' frame of reference, as it fully accepted the difference in interests between management and workers, but workers were invited to leave if they were unhappy. They couldn't join a union. In the words of Michael O'Leary, 'hell would freeze over' before he would negotiate with the unions. Every time a base organised and demanded the right to

negotiate, the company would close the base or even leave the country altogether. Until 2018, when Ryanair was forced to accept negotiations with the unions.

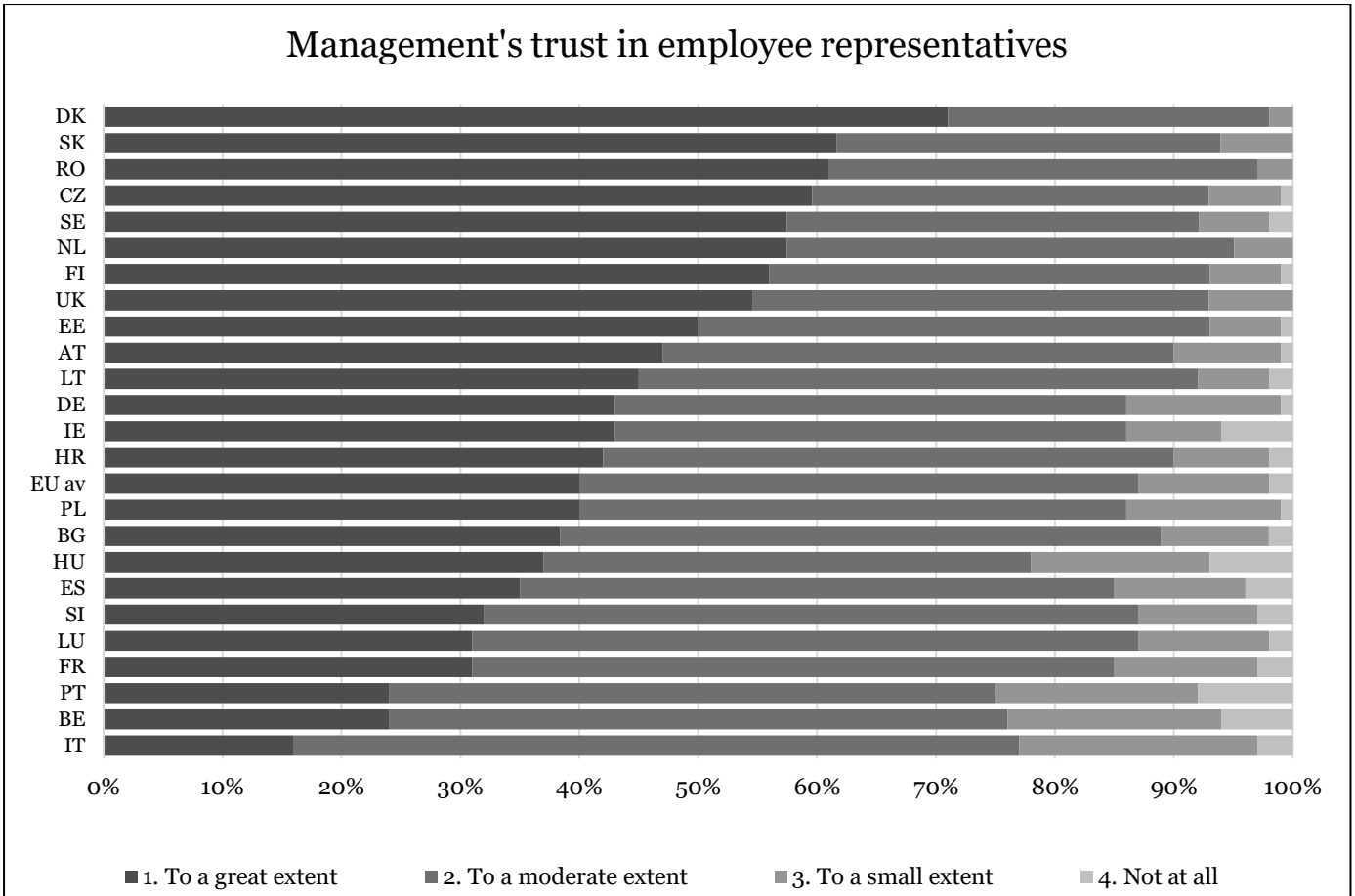
St-Joris Laundry Services (BE) and **Accent Interim** (BE) certainly have a more anti-union management style, which became clear in the run-up to the social elections. In the first company, all the workers who were potentially interested in becoming employee representatives were dismissed and a bonus of €150 was offered if no one stood. At Accent interim, employees were similarly promised an iPad if no one stood for the works council or health and safety committee.

Would you give up your fundamental rights for an iPad? In response to the Accent interim measure to prevent trade unions from organising, the Belgian satirical programme *De Ideale Wereld* asked citizens if they would give up their right to parental leave, freedom of speech, the right to vote and other rights for a smartphone, coffee machine or iPad. You can see the results here: https://www.facebook.com/canvastv/videos/10153907486354344/

4.3.3. Management attitudes and beliefs

How do managers view social dialogue, trade unions and works councils? To get an insight into this, we can look at the results of the European Company Survey 2019, which surveys managers in a representative sample of companies. The figure below shows the answers given by managers to the question "*In your opinion, to what extent does management at this establishment trust the employee representation?*".

As can be seen, the vast majority of management representatives in all countries replied 'to a great extent' or 'to a moderate extent'. On average across the EU, only 13% of management representatives said they had little or no trust in employee representatives. Behind this positive picture of trust there are a lot of differences between countries, mainly in the proportion of management representatives answering 'a great deal'.



Source: European Company Survey 2019. etrust: to what extent does management at this establishment trust the employee representation?

Figure 4.3: Management's perception of the employee representatives

Only about one in four of the Belgian representatives responded the trust the employee representatives 'to a great extent', compared with more than half of the management representatives from countries such as Denmark, Sweden, the Netherlands and Finland (and, interestingly, also Slovakia, the Czech Republic and Romania).

The figure below shows management's preference for types of consultation in Belgium. The graph shows that almost half of Belgian managers prefer to consult directly with employees rather than (also) with employee representatives. Only 4% said they did not want to consult employees at all.

Compared with other European countries, Belgian managers have a higher preference for direct consultation. Across all companies in Europe, 17% of managers say they would prefer to consult only with employee representatives, while 49% prefer to consult with representatives and directly with employees.

However, there is a very important company size effect at play here. Managers in small companies (10-50 employees) are more likely (64%) to say they would prefer to consult

directly with employees, while managers in larger companies (50-250 employees) are much less likely (30%) to say they would prefer to consult only with employee representatives (22%) or also with employee representatives (45%).

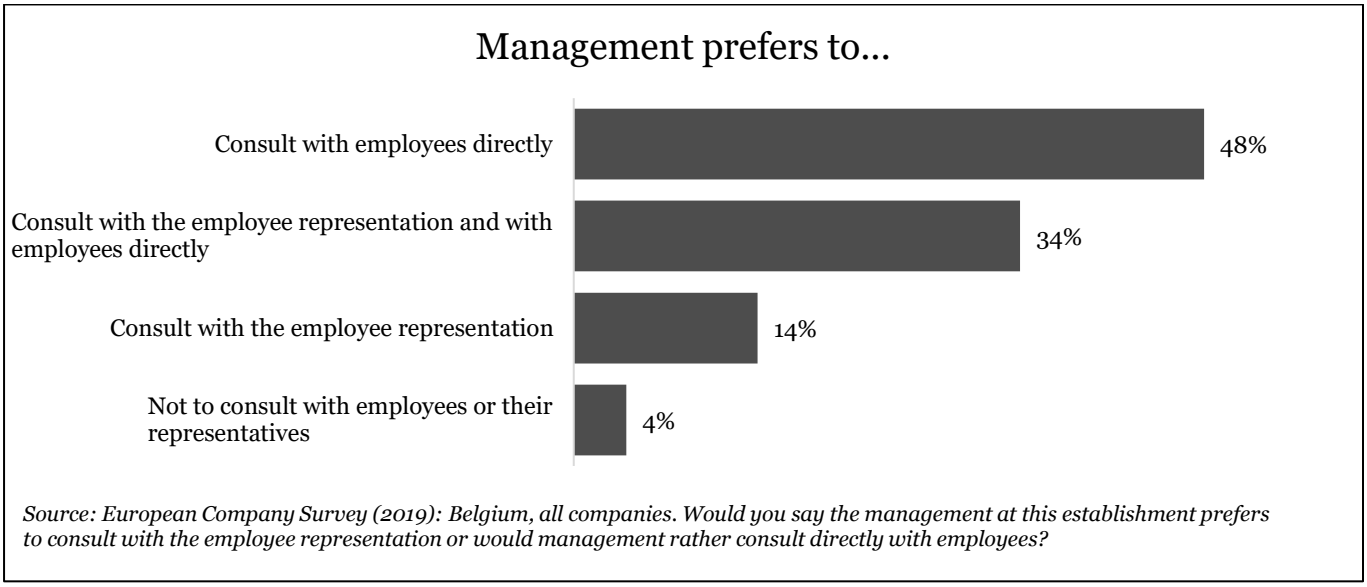


Figure 4.4 - Management's preferences regarding social dialogue

The figures from the European Company Survey present a mixed picture. On the one hand, they show that the vast majority of managers trust employee representatives and that most want to consult with them (often in combination with direct consultation of the workforce).

Belgian managers follow this general pattern, but have comparatively less trust in employee representatives and a greater preference for direct consultation.

4.4. Employer organizations

Further reading : Traxler, F. (2008). Employer Organizations. In P. Blyton, E. Heery, N. A. Bacon, & J. Fiorito (Eds.), *The SAGE Handbook of Industrial Relations* (1 edition, pp. 225–240). SAGE Publications Ltd.

Most attention in studies of social dialogue is given to workers' organisations, trade unions. However, employers also tend to organise themselves in 'employers' associations'. As the literature has not focused much on these organisations, much less is known about how they function.

Traxler (2008) identifies three main functions that employers' associations tend to fulfil:

a) interest representation,
b) service provision and
c) collective bargaining.

The interests of business groups are much more diverse than just the relationship with the workforce. Employers in a particular sector or country have interests to defend vis-à-vis suppliers, customers, competitors, government, financial institutions and so on. In order to defend these interests effectively and efficiently, employers tend to join organisations that represent their interests. This **interest representation** typically takes the form of lobbying, where employers' organisations seek to influence political and other decision-making. This is done through individual discussions, providing evidence for positions, personal networks, etc. From the perspective of collective action (see theory section), this interest representation is a public good, as both members and non-members enjoy the fruits of successful lobbying.

Employer organisations will therefore also provide a range of **services** to their members that are not related to external representation. The idea is that by providing 'private goods', the employer organisation provides a selective incentive for employers to join the organisation. Services can range from providing information about the sector that is useful to employers, to training, to providing expert advice to employers in their relations with suppliers, customers, government, labour or financial institutions.

Thirdly, some employers' organisations (not all) also engage in **collective bargaining** on behalf of their members. This means that they negotiate collective agreements with the unions present in the sector, covering things like minimum wages, working time rules, social dialogue, training or other issues. The employers' organisation negotiates on behalf of the individual employers and if they sign an agreement, it automatically applies to all their

members. A number of employers' organisations (mostly outside Belgium) explicitly state that the employers' organisation does not have this competence. In this case, these organisations are often referred to as 'trade organisations' rather than employers' organisations.

Figure 4.5 gives the proportion workers employed by an employers that is member of a employer organization, of all workers. What is obvious from the figure is that there is a wide divergence in the organization rate of employers in different European countries. In countries as Austria, the Netherlands and Belgium, Sweden, Luxembourg, France and Spain over 75% of all employees are employed in companies that are members of an employer organization. In countries like Poland and Lithuania this is less than 20%.

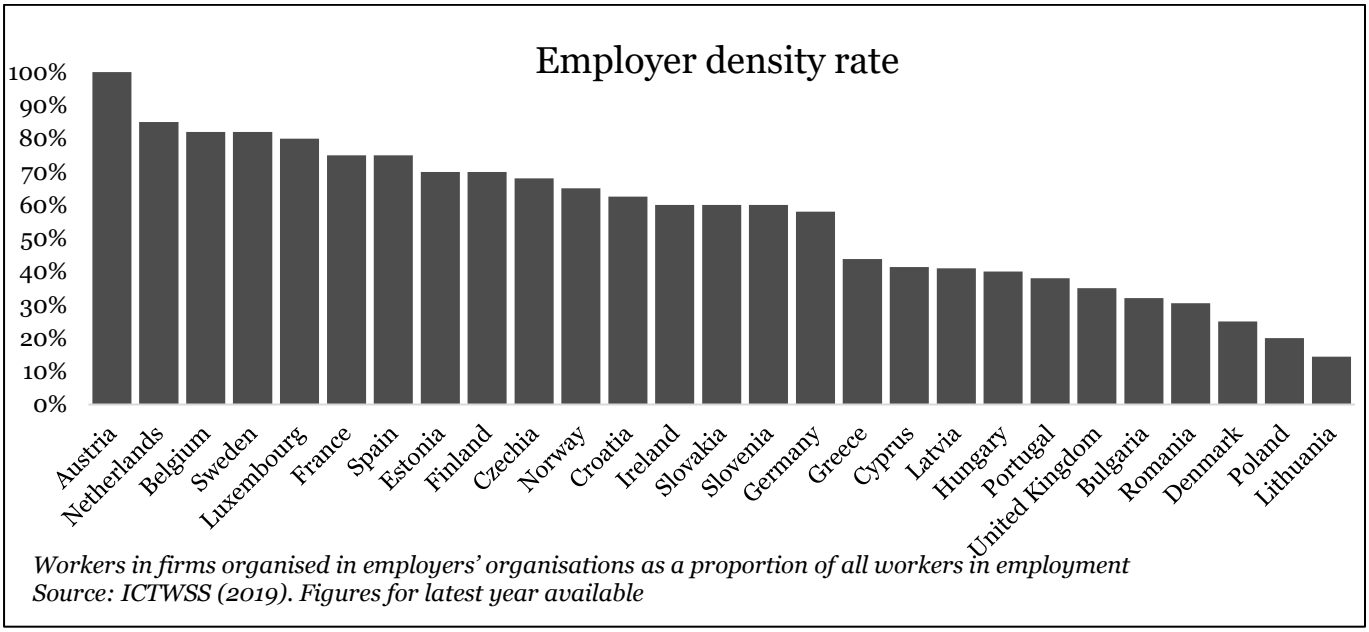


Figure 4.5 - Employer density rate

Austria: obligatory membership

In Austria there are two cross-industry employers' associations: the Austrian Federal Economic Chamber (WKO) and the Federation of Austrian Industry (IV). The main difference is that membership of the former is compulsory, whereas membership of the latter is voluntary. All companies in Austria must be members of the WKO and the WKO also engages in collective bargaining, resulting in 100% collective bargaining coverage (Eurofound, 2021).

4.5. The worker/employee

Without going into the legal (but very pertinent) discussion of who is an employee and who is not, the study of employment relations and social dialogue takes an operational definition which is 'anyone who sells their labour' (Budd & Bhave, 2019). This means that it includes all workers in public and private sector organisations who work for a wage or monetary compensation from the employer. It therefore also includes some executives and managers who, although they represent the employer, are still employees of the company or organisation.

The worker sells his or her time and labour in exchange for money, a wage. In strictly economic terms, the employee makes a trade-off between income and leisure to determine how much he/she needs to sell on the labour market. However, a number of studies have shown that workers' motives go far beyond income or leisure. For employees, work and employment also define their social contacts, their social status, the extent to which they can develop their skills, where they live, their citizenship rights and sometimes even what and how they think.

Skin in the game

One of the main reasons for the power differential between employers and employees is that the latter, the workers, have much more 'skin in the game' when it comes to their employment. They have much more to lose (and gain) from the employment relationship, which makes their bargaining position much weaker. Let's look at some examples:

- **Income**: In general, employment provides the bulk of a worker's income and livelihood. Without it, he/she would have to reduce his/her expenditure and consumption patterns considerably. For the employer, an employee's contribution doesn't represent the same cost. If an employee leaves, he or she will not suffer as much financially.
- **Career development**: For the employee, the job is important not only for the current income, but also for the future. The skills they develop and the experience they gain will determine their future income. This is much less the case for employers.
- **Social relations and status**: In addition to income, work provides workers with social relations with colleagues and, most importantly, social status. Losing a job can mean a significant drop in the social status of an individual worker. This, in turn, is much less or not at all the case for the employer.

The study of individual workers and their relations with management is beyond the scope of this course, which is primarily concerned with the collective relations of workers and their

organisations with employers, employers' organisations and the state. However, it is worth recalling that in the theory section the efficiency-equity-voice model was presented, which makes it clear that employees have a variety of interests and motives in their work, which go beyond the mere economic exchange of work effort for money.

The pleasures and sorrows of work

The British philosopher **Alain de Botton** has written an engaging and accessible book on work, The Pleasures and Sorrows of Work (2010), in which he offers insights into the work of logistics, painting, careers advice, biscuit making and more.

Much more engaged books on the experience of work can be found in the (Marxist) tradition of worker research. These inquiries aim to understand the situation, context and experience of workers from their own perspective. These inquiries often involve participatory observation, where researchers do a particular job for a period of time and report from the inside. They often make for very interesting reading. Some tips:

- Working For Ford (Beynon, 1973), in which Huw Beynon (now a professor) listened and talked to many Ford workers and reported (very provocatively) on their lives and work experiences. This book is an eye-opener for many.
- Working the phones (Woodcock, 2016), in which a PhD student works in a call centre and analyses the work process and forms of worker resistance.
- Dokter aan het stuur (Ruelens, 2017) in which a general practitioner works for a year for the Flemish public transport company De Lijn.
- The website notesfrombelow.org has a section on workers' inquiries with timely reports from the gaming industry, platform workers, Amazon workers, etc.

4.6. The Trade Unions

The actor that has undoubtedly received the most attention in the study of industrial relations or social dialogue is the trade union. A trade union is a "*collective organization of working people which works to protect their interests in employment relations*" (Williams, 2020). Almost all the words in this definition are important for a good understanding of what a trade union is and what it is not:

- **Collective**: A trade union is by definition a collective. The idea of a trade union is strength in numbers, so it must be made up of many members.
- **Organisation**: a trade union is a more or less structured organisation, i.e. it is not a loose coalition of workers, a network or an ad hoc group. The idea of an organisation also means that it is something that exists over time and is relatively stable.
- **Working people**: A trade union organises working people. Now it is quite a challenge to identify what 'working people' are. It is usually assumed that a union does not organise employers. But whether the self-employed, the retired and the unemployed can and should be members of a union can be (and is) debated.
- **Protecting interests**: In this sense, a union is a political organisation, since the defence of the interests of a particular group (the members) is the main objective of the union. The definition of these interests and the strategy chosen to defend them can vary widely, as will be discussed later.
- In the **employment relationship**: a union defends workers who are in an employment relationship. A strict interpretation would suggest that a union can only defend those with a formal employment contract. A broader interpretation would include workers without a contract, civil servants, the unemployed and even freelancers or self-employed.

The basic idea of a trade union is an attempt by workers to counterbalance the imbalance of power between employers and employees by banding together (Webb & Webb, 1897a, p. 850).

An overview of what trade unions do would inevitably be quite lengthy and would depend very much on which trade union one focused on. Some of the functions of trade unions are

- Organising and mobilising workers
- Collective bargaining at different levels
- Lobbying government and politicians
- Educating and training workers
- Protecting the personal interests of members
- Providing information to members
- Provide selected services to members

4.6.1. Typology of unions

Suggested reading :

- Hyman, R. (2001). Understanding European trade unionism: Between market, class and society. SAGE.
- Boumans, S. (2018). De vakbeweging in de driehoek markt, samenleving en klasse. In S. Boumans & W. Eshuis, Positie en strategie vakbeweging Beschouwingen, analyses en voorstellen (pp. 55–62). De Burcht.

Depending on how unions are viewed, a different balance can be found between these functions and the way in which unions put them into practice. An influential way of looking at different types of trade unions is through the typology developed by Hyman (2001) and nicely explained in Dutch by Boumans (2018), which will be explained in the next section.

Hyman's (2001) model proposes three ideal types of trade union, depending on whether they focus on the **state**, the **class** or the **market**. He thus proposes a triangle with three extreme corners on which the union can focus. However, all unions will be somewhere within the triangle.

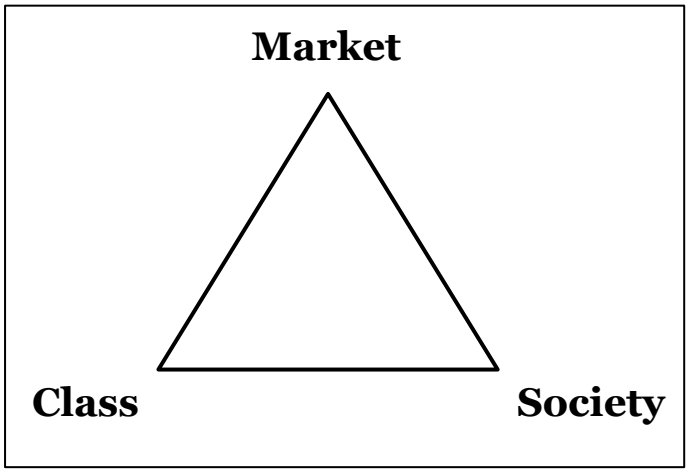


Figure 4.6 - Types of trade unions

1. **Market**: In the first corner of the triangle, unions are mostly focused on the market and their labour market functions. The main function of these unions is to negotiate good collective agreements for their specific members in the specific companies in which they are involved. This type of trade unionism is sometimes called **business unionism** and has a clear focus on financial terms and conditions of employment (pay and working time, sometimes called 'bread and butter issues'). Links with political parties or movements are unnecessary and even unwelcome. The classic example of such market-

oriented business unionism is the unions in the United States, where unions are very much focused on the company level and negotiate agreements only for their members.

2. **Society:** In the second corner, trade unions are primarily concerned with improving the position of workers in society and promoting **social justice**. These unions have a broad understanding of their role and will be involved in collective bargaining and social dialogue at different levels and on different issues. As their focus is wider than the company or workplace, they will often form political alliances with parties to advance their interests. The most pronounced examples of this type of trade unionism can be found in the Nordic countries and in Germany, where trade unions are involved in broader rule-making in society. The Belgian ACV-CSC, based on more Christian teachings, could also be identified as a union with a strong social focus. As is the Dutch FNV.
3. **Class:** In the third corner, the dominant line of the trade unions is the struggle between the working class and the capitalist class. Since the ultimate aim of these unions can be seen as anti-capitalist, their main method of action is militant mobilisation, strikes and workplace organisation. In Hyman's words, they are "*schools of war in the struggle between capital and labour*". In such a conception, the union itself is a mere instrument of the workers' struggle, and its role and future are subordinate to the larger interests of the working class. The unions in France, and especially the left-wing unions such as the CGT etc., are examples of unions that focus primarily on class struggle.

One of the problems identified by Hyman (2001) and others is the **institutional inertia** of the system. Unions and countries that have chosen or developed a particular focus and identity are very unlikely to change quickly or at all. While there are tensions in most unions and countries about what kind of unionism to prefer, institutional inertia makes moving along the axis quite difficult.

While we can place some of the more well-known unions in some of the corners of the triangle, every union is always at least somewhat exposed to all three directions. Even the most socially oriented unions engage in bread-and-butter bargaining at company level. Even the US business unions engage in coalitions with politicians and their campaigns. Even the most revolutionary unions will compromise and make an agreement from time to time.

Exercise: The next time you see a communication from a trade union, try to think what they focus on most? On market, class or social issues?

Later, when discussing the Belgian trade unions, in which corner of the triangle would you put the different unions?

4.6.2. Power Resources approach

Suggested reading:
Schmalz, S., Ludwig, C., & Webster, E. (2018). The Power Resources Approach: Developments and Challenges. Global Labour Journal, 9(2). https://doi.org/10.15173/glj.v9i2.3569

The idea of a trade union is to rebalance the unequal power relationship that exists between employers and employees. The way in which a trade union or workers' organisation seeks to rebalance this relationship can be based on different sources of power. One way of analysing the different types of power is through the Power Resources Approach (PRA). The PRA is both an analytical tool and a framework for action. It is an analytical tool because it is used by researchers to analyse trade union power and strategies. It is also a framework for action, as unions use the different sources of power to map their current situation and develop strategies to strengthen their position.

The PRA identifies four main types of power: (i) associational power, (ii) structural power, (iii) institutional power and (iv) societal power.

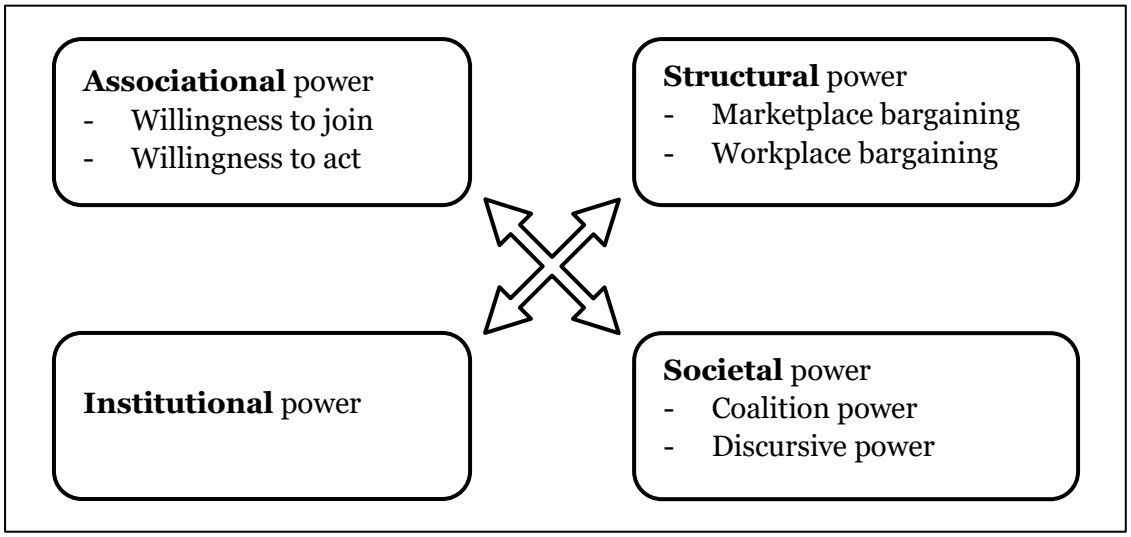


Figure 4.7 - Power Resources Approach (author adaption of Schmalz, Ludwig and Webster (2018, 116))

4.6.2.1. Associational power

Associational power is the fundamental power of trade unions. It is the power that *arises from workers unity to form collective political or trade union workers associations"* (Schmalz et al., 2018). It refers to the idea that workers individually have less power than the employer, but collectively workers have more or even equal power.

In general, associational power is further divided into two related but distinct parts: (1) the willingness to join and (2) the willingness to act.

Focusing on **'willingness to join'**, the power of association lies in a union's membership numbers. Union density (the proportion of union members to all workers in a particular workplace/sector/country) is often used as the main indicator. Having many members means that a union has some authority and legitimacy to speak for those members.

The '**willingness to act'** refers to the mobilisation capacity of unions and their ability to get workers and other people to take collective action such as demonstrations, strikes or voting for particular parties. A high mobilisation capacity also means that the union has a capacity for disruption, which it can use to bring pressure to bear.

The power of association is seen as the fundamental power of trade unions. They derive their legitimacy and clout from bringing together large numbers of workers.

France vs Sweden: different types of power in numbers

In France, less than 10% of the workforce is unionised. In Sweden it is over 70%. Obviously, Swedish unions have a high degree of associational power, but French unions also have quite a lot of associational power. Why is that? Because the French unions can count on a high level of willingness to act on the part of both members and non-members. When the French unions call a strike, many people join in. The militancy is such that strikes are often combined with occupations, road blockades or other actions that go beyond simply not working. By comparison, strikes are relatively rare in Sweden, let alone occupations. Both Swedish and French trade unions have a considerable degree of associational power, but in radically different forms.

4.6.2.2. Structural power

Structural power refers to the bargaining power derived from the employee's position in the economic system (Schmalz et al., 2018)It can take different forms.

To illustrate this, let us compare two fictional workers, Sepideh and Elisa. Sepideh is an experienced programmer with excellent knowledge of several programming languages. She has worked in several large FAANG companies (Facebook, Apple, Amazon, Netflix, Google) and is currently employed in a medium-sized company where she is developing some applications aimed at automating the workflow. Elisa, on the other hand, is a blue-collar worker with few specific skills. She works with five other colleagues in a large logistics centre that supplies computer chips to several large car manufacturers in Europe. Who do you think has the most bargaining power? Sepideh or Elisa?

The reality is that both have a lot of structural power, but of different kinds. Sepideh has a lot of **marketplace bargaining power**. Her skills are in high demand. If she leaves his company, she will be able to find a job easily and on the same terms. Her company, on the other hand, will find it difficult to replace him quickly. Moreover, the long-term success of the company depends on her performance. In contrast, Elisa has very little bargaining power on the market. She has no rare skills or qualifications. There are many other people who are able and willing to do her job for the same or even less money.

At the same time, Elisa has a lot of **workplace bargaining power**. Together with her colleagues, she has an important place in the production process of her company and many others. If she and her few colleagues decide to withdraw their labour (strike), the effect will be felt immediately and strongly. Working in a bottleneck of a production chain gives her a strong potential tool, although her skills are not particularly rare.

4.6.2.3. Institutional power

Institutional power refers to power derived from institutions such as laws, regulations and traditions. It is a 'secondary' form of power because it is the result of previous actions and struggles. It is the result of societies trying to create social peace by institutionalising the conflict of interests. Examples of institutional power are labour laws, strike laws, structures such as works councils or bipartite or tripartite consultation committees at different levels.

These institutions (and institutional power in general) are often seen as a double-edged sword. It can provide trade unions and workers with extensive rights and protections, but at the same time limit their power and freedom to act (Schmalz et al., 2018). Take the example of the works council in Belgium. It is obviously beneficial for workers, as it obliges the employer to organise social elections, hold frequent meetings, provide certain information and listen to workers' opinions. It is an enormous source of institutional power. At the same time, a works council's powers are limited by the legislator, the required information is defined and the employer is not obliged to listen to advice from the workers' side. It will be very difficult for workers to go beyond the institutional powers of the works council and demand more information or influence.

Given that institutional power is the result of previous conflicts and discussions, it is not as stable as it might appear. The institutions of social dialogue are constantly being challenged. Without the associational power of trade unions, a solid institutional base is likely to erode over time.

UK wage councils, gone in no time

In post-war Britain, wage councils were established. These were similar to the Belgian Joint Committees in that they were responsible for setting minimum wages through collective bargaining at sectoral level. In 1986, after the Tatcher government had successfully reduced the power of the unions, these councils were significantly weakened. They were abolished in 1993, leaving collective bargaining in the UK exclusively at the company level (Hughes & Dundon, 2018). Without the backing of sufficient associational power, the institutional power that came from the wage councils was first eroded and then erased.

Power on paper in not power in practice

'It depends on the local power of the union'. If you talk to Belgian trade union members and employee representatives, you may hear this phrase a lot. While the legislation may be more or less clear (institutional power), its application often depends on local power relations. If the local union is weak and has few members, the works council is unlikely to be consulted in time. If the union is strong, it will be taken more seriously. In other words, the institutional framework alone doesn't guarantee that rights will be respected.

4.6.2.4. Societal power

The fourth power identified in the Power Resources Approach is 'social' power. This comes from workers and unions finding support for their demands and struggles outside the workplace. Again, a distinction is made between coalitional and discursive power.

- **Coalition** power comes from the ability of workers and their organisations to form coalitions with other organisations and networks. Often trade unions will join NGO actions around social justice or even geopolitical issues. These NGOs may in turn join trade unions in workplace-related actions.
- **Discursive** power refers to the extent to which workers and their unions can engage in public debate and gain moral support from society. Discursive power is rooted in the ability of unions and workers to explain and frame their case in a way that non-members and non-unionists can support.

Stranded passengers support union action

In September 2018, Ryanair cabin crew went on a massive coordinated transnational strike. This meant that many flights had to be cancelled on the spot, leaving hundreds of passengers stranded. When I visited the strike post at Zaventem airport, one of the stranded passengers approached the strikers. While I expected him to be angry about his cancelled flight, he said he fully supported the strikers and hoped they would be successful, he just wanted to know where he could find an alternative flight to get to his destination. This was a clear example of how Ryanair workers have defended their case in public and won the support of many non-workers, in this case even a passenger who was personally affected by the strike action.

4.7. State

Suggested reading : Hyman, R. (2008). The State in Industrial Relations. In P. Blyton, E. Heery, N. A. Bacon, & J. Fiorito (Eds.), *The SAGE Handbook of Industrial Relations* (1 edition, pp. 258–283). SAGE Publications Ltd.

As with 'employers' or 'trade unions', it is difficult to define what we are talking about when we discuss the role of the 'state'. In what follows, the state is taken to include the government, the administration, the legal institutions and all the elements associated with them.

What is the general role of the state in social dialogue and employment relations? Hyman (2008) refers to Offe (1984) who distinguished three broad (and sometimes contradictory) roles of the state in social dialogue and industrial relations: accumulation, pacification and legitimation.

- **Accumulation** refers to the role of government in promoting economic performance and activity. The state should provide an environment in which businesses can flourish. Whether this should be done by the state not intervening or intervening a lot is a matter of debate.
- **Pacification** refers to the idea that the state has a role to play in reducing conflict and strife between groups in the territory. In the case of labour relations, the state will seek to minimise open conflict between employers and employees. Again, the methods it might use to do this will be a matter of debate and choice, and may range from the repression of certain groups, to the prevention of conflict, to the institutionalisation of conflict.
- **Legitimation** refers to the role of the state in ensuring that the current order of things is seen as legitimate by the vast majority of citizens. In the case of social dialogue, this could mean the state ensuring sufficient influence, participation and voice for workers in the way decisions are made, or by promoting a discourse that legitimises other choices.

It is easy to see that these three major functions of the state in labour relations may sometimes require contradictory interventions. In some cases, the pacification of conflicts through repression may work against the legitimacy of decisions or the efficient functioning of the economy.

In addition to these three major roles of the state, we can also identify in a much more concrete and operational way how the state intervenes in social dialogue and industrial relations. It can do this in a number of ways (Hyman, 2008):

- as the employer of civil servants and public employees,
- by regulating the rules of the game in which social dialogue is to take place,
- through individual labour law
- by shaping the labour market through economic policy
- by organising social security systems
- and by promoting a certain discourse on social dialogue and industrial relations.

4.7.1. The state as an employer

In most countries, the state is by far the largest employer, taking into account direct employment of civil servants (in state administration, police, health, education, security and other services) and public sector workers in specific sectors such as transport, energy and others. This employment is often characterised by working conditions (relatively high job security) and social dialogue. As such a large employer, the state can influence social dialogue in the private sector by setting a (good or bad) example in terms of wages, working conditions and social dialogue.

An even more direct influence of the state on the private sector is through public procurement policy. In public tenders, states can impose social conditions by only awarding contracts to companies that meet certain criteria in terms of working conditions or social dialogue. In the UK, for example, some public authorities only award contracts to companies that pay the *living wage* (which is different from the official minimum wage).

4.7.2. The state as setting the rules of the game

The state has a direct impact on social dialogue because it sets the rules of the game for social dialogue. For example, states generally set different criteria for organisations to meet before they can legally engage in collective bargaining. Trade unions and employers' organisations are often required to be 'representative'. States also differ in the extent to which they facilitate or hinder social dialogue. Some countries (such as Belgium) set up a system to encourage dialogue by bringing the parties together in joint committees, works councils and other institutions. Other countries do not interfere.

A key issue is the status that a country gives to collective agreements. In most countries collective agreements take precedence over individual contracts. In some countries, company level agreements cannot be less favourable than industry level agreements. In some other countries they can under certain conditions (e.g. France). Finally, some countries give

collective agreements the force of law (such as France, the Netherlands and Belgium), while others hardly ever do (such as most of the Nordic countries and the UK).

Another area in which the state has important rule-making powers is the area of strikes and conflicts. In some countries there are no specific rules and laws on strikes (such as Belgium), while in others the right to strike is clearly regulated and subject to many formal conditions. For example, 'legal' strikes can only be called after a formal procedure of conciliation, a procedure in which a majority of workers can express their opinion on the strike, and after cooling-off periods.

Only nine legal strike in Turkey in 2011.

According to the official statistics of the Turkish Ministry of Labour, there were only 9 official strikes in 2011 involving less than 600 workers. Knowing that there were over 9.5 million registered workers at the time, this would mean that less than 0.00006% of workers were involved in a strike in 2011. Any observer of the Turkish labour market knew that there were far more strikes, but calling an 'official' strike in Turkey is an extremely cumbersome activity. Strikes can only be called in the context of a collective bargaining round, which can only take place once the unions have proved that they have enough members. This can take up to two years. If negotiations fail, a strike can be called after a cooling-off period and mediation. However, the government can postpone the strike or ban it for reasons of national security. In short, few strikes can tick all the boxes, so many workplace disputes don't lead to strikes but to "actions" in which workers are much more vulnerable to employer retaliation.

State repression of unions

Regulating, enforcing, institutionalising… one could get the idea that the state is a neutral actor in the organisation of social dialogue. This would be wrong. All the functions of the state involve political choices aimed at promoting (some form of) social dialogue or hindering it.

The proof that the state is not a neutral actor is easily found in the annual report on trade union violations published by the International Trade Union Confederations (ITUC, 2021). This report lists all violations of fundamental labour rights by employers and the government. For example, the 2021 report found an increase in government surveillance of trade union leaders.

The report also found that the right to strike and/or bargain collectively was violated in more than 80% of countries, that violence, restricted access to justice and arbitrary arrests of trade

unionists were reported in more than 50 countries, and that there's been a general increase in the number of countries erecting barriers to trade union registration.

And Belgium?

While Belgium is certainly not in the worst category of countries (rating 5+ - no guarantee of rights due to breakdown of the rule of law), it is also not in the best category (rating 1 - sporadic violations). Belgium is placed in category 2 - repeated violations. The violations mentioned were the prosecution of an ABVV member for obstructing traffic during a general strike and previous similar convictions.

4.7.3. The state regulating the individual employment relations

In addition to regulating collective labour relations, the state also influences the individual employment relationship through labour law. Here too, states can opt for a more or less interventionist approach. In some countries (mainly Anglo-Saxon), the individual employment contract is the primary point of reference. Any restriction on what can be discussed in individual contracts needs special justification. In this case, employees and employers should be free to set wages and working time by mutual agreement.

In many other countries, the starting point is the unequal power relationship between employer and employee. As a result, the individual contract is not a contract between equals and should be regulated and restricted. In these cases, the individual contract cannot freely determine issues such as wages and working time, as these are determined by higher-level collective agreements or laws.

Although the degree of restriction and regulation varies, all countries impose some basic restrictions from a health and safety perspective and often define what a 'normal' contract should look like. At the same time, the trend in recent decades has been towards greater flexibility, i.e. deregulation of labour law.

Are you allowed to agree to work more than 48 hours a week.

A particular example of the friction between the two conceptions of the role of the state can be seen in the regulation of working time in Europe. When the EU adopted the 'Working Time Directive', it set a hard maximum limit of 48 hours per week. Individual employment contracts could not legally stipulate a higher number of hours per week. But the UK objected to this limit. They allowed individual workers to opt out of the 48-hour limit through a 'voluntary' agreement. While the UK believes that employees can freely agree to work more, most European countries believe that the power imbalance does not allow for a truly free choice by employees.

4.7.4. The state shaping the labour market through economic policy

Government macroeconomic policies, including fiscal, monetary and investment policies, also have an impact on social dialogue and employment relations. In previous decades, policies were geared towards achieving 'full employment' through Keynesian policies. In recent decades, the focus has shifted to ensuring the competitiveness of national companies through wage moderation policies.

4.7.5. The state organizing social security

The state also influences social dialogue through the organisation of social security and the breath of the welfare state. The extent to which workers are financially protected against the consequences of periods of unemployment will affect how unions and employers negotiate and set wage levels.

In Belgium, the idea that social security is 'too generous' in the sense that it doesn't encourage people enough to seek and take up specific jobs has received a fair amount of attention in the public debate. The lack of labour supply, in turn, leads to higher wages.

Similarly, where the state provides a range of social services, firms will be less inclined to provide them, and vice versa. In a number of countries with less developed public transport, companies usually provide commuter services, whereas in other countries this is a rarity.

4.7.6. The state promoting a certain discourse

Last but not least, the state plays an important role in promoting a certain discourse on social dialogue and industrial relations by emphasising certain fundamental rights and principles.

In this sense, observers generally distinguish between 'liberalism' and 'corporatism' with regard to the role of the state in social dialogue (Leat, 2016, p. 182). Liberalism refers to the idea that the state should not be too involved, as the market is a good way of regulating the labour market. Trade unions and employers are free to engage in relations and collective bargaining, but there is little support or legal framework from the state to regulate how and when this must be done.

In a more corporatist view, the state has a much more important role. From this perspective, the market in itself is insufficient (and not legitimate) to regulate the labour market and government intervention is justified. The state is there to ensure social justice and a role for organised labour and employers.

By emphasising the first or the second type of thinking, the state plays a role in how social dialogue is conducted on the ground.

Michel vs. DeCroo government

An interesting shift in discourse took place in Belgium in 2020 when the centre-right Michel I government was replaced by the centre-left De Croo I government. Whereas the centre-right government promoted a discourse focused on the inefficiency of social dialogue, the De Croo I government emphasises the legitimacy of social dialogue and the expertise of the social partners. Through government plans and communication, the state influences the legitimacy of social dialogue at other levels and thus also practice.

4.8. Conclusion

There are many actors in the field of social dialogue and employment relations. While the differences between the actors are great, this section of the course has also shown that the differences within the different actors are also great. Employers, depending on their strategy and perception of reality, may engage positively in social dialogue, avoid it or violently repress it. On the workers' side, trade unions may see social dialogue negotiations as useful, but also as an unacceptable compromise.

When engaging in social dialogue, the first thing you need to do is to understand not only yourself, but also the other party, it's concerns, perspectives and opinions. This section aims to give you some tools and frameworks to better understand who exactly is playing and for what.

4.9. Summary

- Management can have a very different style of engagement with social dialogue, depending on their view of social dialogue and whether or not they see added value in representation.
- Managers in Europe generally trust employee representatives and want to consult with them. Belgian managers are comparatively more critical.
- Employers' organisations are generally involved in interest representation and service provision. Some of them also have a collective bargaining mandate.
- There are many reasons for companies to engage in collective bargaining at sectoral level, related to cost efficiency, regulation of competition and moderation of trade union demands. In some cases they are forced to do so by union strategies or government intervention.
- Trade unions are collective organisations of working people that seek to protect their interests in employment relations. Every word of this definition matters
- Trade unions tend to differ in their focus on the market, class or society.

- Trade union power can derive from associational, structural, institutional and societal power.
- The role of the state in social dialogue should not be underestimated. It sets the rules of the game, individual rights, social security, macroeconomic policy and influences the legitimacy of social dialogue. Last but not least, it is a major employer that can set an example.

4.10. Exercises

- If you had to form a union, which corner of Hyman's triangle would you choose? Why and what might be some of the disadvantages?
- Power is everywhere, try to apply the power resources approach to economic and non-economic problems around you. How much associational power do the children in the youth movement have, what about the structural power of the partner with the highest income?
- Look around you at the different employers of your family and friends. What kind of management style do you think they have?
- Think about the associational power of trade unions and the problem of collective action. Where might there be problems and how would you solve them?

5. Social Dialogue in Belgium

5. Social dialogue in Belgium

5.1. Introduction

"Do the unions have a image problem, or is it more fundamental?" (De Morgen, 05/05/2022)

"Unions Agfa threaten with strike against work pressure" (De Tijd, 08/06/2022)

"Social consultation about cleaning aids is stuck" (De Tijd, 12/05/2022)

"Strike at insurance company over telework" (De Standaard, 16/12/2021)

Social dialogue is a controversial topic in Belgium. If you want to make a family get-together a little less cosy, it is always a good idea to express a strong opinion about the role of the unions or the last public transport strike that got you blocked. The position and behaviour of trade unions (and employers) in Belgium is not uncontroversial, many have opinions on the subject, and often they are emotionally invested in those opinions.

Remarkably, however, there is very little in-depth understanding of the specifics of social dialogue in Belgium. Of how the social partners are involved at company, sectoral and national level. Even in university studies in political science, economics or human resource management, the role of trade unions, employers' organisations and social dialogue does not receive much attention.

The aim of this text is to provide an English-language overview of social dialogue in Belgium. The text takes a multidisciplinary approach, combining historical, legal, sociological, economic and political insights. For students who want to know more, the text is supplemented with references to other texts (further reading), practical examples and applications.

Primary and secondary issues

An important skill is to be able to distinguish between primary and secondary issues (*hoofdzaak en bijzaak*). The following text contains a number of detailed explanations of historical events, peculiarities of institutions, etc. These details are given for the sake of completeness, but are often not the primary issue; they serve to illustrate, develop or concretise the main points made in the text. The aim of the course is not for the student to study all the details and examples, but rather to gain a broad (and critical) understanding of the main issues at stake.

5.2. History

Reading:

- Luyten, D. (2011). Het nationale/federale overleg in België: een historiek in vogelvlucht. In C. Devos, M. Mus, & P. Humblet, *De toekomst van het sociaal overleg*. Gent: Academia Press.
- Cassiers, I., & Denayer, L. (2010). Concertation sociale et transformations socio-économiques depuis 1944. In E. Arcq, M. Capron, E. Léonard, & P. Reman (Eds.), *Dynamiques de la concertation sociale* (pp. 75–91). Brussels: CRISP.
- Vilrokx, Jacques, and Jim Van Leemput. 1998. 'Belgium: The Great Transformation'. In *Changing Industrial Relations in Europe*, edited by Anthony Ferner and Richard Hyman, 2nd edition, 315–45. Oxford, OX ; Malden, Mass: Wiley-Blackwell.

To understand the present, you need to know the past. All contemporary institutions, actors and beliefs are shaped by long historical processes. Some understanding of the historical development of social dialogue in Belgium is therefore necessary.

The main contours of today's institutions were shaped just before and after the Second World War by the Social Pact and the Productivity Pact. These two pacts were also products of history, so the overview begins in the run-up to the First World War and the inter-war period.

5.2.1. Before world war I

The beginnings of the modern trade union movement and social dialogue date from around the 19th century, with the Industrial Revolution and the emergence of a working class made up of a majority of unskilled workers who had recently migrated from rural to urban areas and were dependent on the sale of their labour for their livelihoods. Compared to the traditional skilled workers in these urban areas, these unskilled migrant workers had no tradition of collective organisation and defence of interests. At the same time, the working (and living) conditions of these workers were very harsh. The working day could be as long as 16 hours, wages were low and there was a general lack of protective labour legislation (Arcq & Blaise, 2007).

In this context, workers began to organise. In doing so, they were confronted with a legal framework that prohibited the collective organisation of workers (the **Le Chapelier law** of 1791), rules on the "workers' book" and other legal obstacles. In the early 1800s, the first mutual aid funds were set up by some more skilled categories of workers (printers in Ghent, 1806, cotton spinners in Ghent and printers in Brussels, 1810, etc.). Although these mutual

aid funds were not trade unions in the strict sense (as they remained closed to certain professions), they added to their objectives the struggle for better working conditions, higher wages and even organised strike funds.

The mutual aid funds (organised locally and by profession) were clearly inadequate and out of step with industrial developments, where many different workers had to work together in the same companies. This led to the creation of more modern and inter-professional trade union organisations. The first two were the *'Broederlijke maatschappij der wevers van Gent'* and the *'Maattschappij der noodlijdende broeders'* in 1857. The first federation, de *Werkersbond*, was founded in 1860 and included these two organisations and a metalworkers' union founded in 1859 (Arcq & Blaise, 2007). In 1866, the ban on coalitions was lifted, but strong restrictions on industrial action remained in place (e.g. Article 310 of the Penal Code, which punishes any interference with the freedom to work).

Unions, mutual aid and cooperatives

In addition to trade unions and mutual aid funds, workers began experimenting with their own production and consumption cooperatives in the second half of the 19th century. The most famous group of cooperatives was organised as *De Vooruit* in Ghent. It started in 1877 as the Free Bakers (*De Vrije Bakkers*), which focused on baking bread at below market prices. As bread accounted for up to a quarter of the workers' income, cheap bread was a clear success (Brepoels, 1977, p. 27). The bread cooperative laid the foundation for a variety of activities, including a pharmacy, a bread delivery service, a supermarket and a newspaper. In addition to economic activities, *Vooruit* also built a concert and banqueting hall and started a brewery. A bank (*Bank van de Arbeid*) was established in 1913. The model attracted a lot of international attention as it promised to build a parallel economy to the capitalist model in which the workers were the owners. In the 1930s, the cooperative steadily declined after the bank went bankrupt and many of the factories were taken or damaged during the Second World War.

There was little formalised dialogue between workers and employers. Trade unions were present and active, but they were not recognised by employees as interlocutors. However, some companies were experimenting with some form of social dialogue and employee consultation. One example of such a voluntary, management-initiated structure was the *'chambres d'explication'* set up by Julien Weiler in a Belgian mining company around 1887. This engineer noticed a great distance between management and workers and saw the need to 'translate' management policies to the workforce through communication with elected representatives (Van Gyes, 2015, p. 26). While certainly innovative, this type of structure lacked any legal backing and could not guarantee an autonomous employee voice.

1886: the start of social legislation in Belgium

In 1886, a commemoration of the Paris Commune of 1871 was organised in Liège. In the evening, riots broke out and demonstrators clashed with the police. The next day, a number of factories in and around Liège went on strike. The Belgian army occupied Liège, causing several casualties. This caused the strike wave to spread to Charleroi, Tournai, Dinant and the mining areas of the Borinage, where workers destroyed machinery and set fire to factories. The army suppressed the strikes, causing several deaths, the arrest of popular labour leaders such as the future minister Edward Anseele, and the sentencing of strikers to up to 20 years' imprisonment or 12 years' hard labour (Brepoels, 1977, pp. 38–40).

One of the main starting points in the history of labour, labour legislation and social dialogue is the 1886 riots. As a result of these riots, the **'Labour Commission'** was organised, which led to the introduction of several pieces of legislation. For example, child labour (under the age of 14) was banned and wages had to be paid in cash rather than in vouchers for company shops (the so-called truck system). In addition, a first type of 'workers' council' was organised. However, the representatives in these councils were not 'representatives' of a particular union, factory or occupation, they were just individuals.

At the same time, an ideological split appeared in the labour movement with the organisation of the 'Trade Union Commission' by the Belgian Workers' Party (BWP-POB) in 1989. Some time later, on the side of the Christian labour movement, a 'General Secretariat of Christian Trade Unions' was created, which was clearly anti-socialist and rejected the idea of class struggle.

The anti-Socialist unions

Many of the predecessors of today's Christian Democratic trade unions (ACV-CSC) were founded as 'anti-socialist' unions. They were founded with the explicit aim of fighting socialist influences in the working population and were supposed to show the necessary moderation under the leadership of priests. As such, the strike was to be avoided as a means of pressure. Under pressure from the other unions, these anti-socialist unions also began to organise strikes, but only when absolutely necessary (Brepoels, 1977, p. 78).

5.2.2. The interwar period

On the eve of the First World War, the first government was formed as a coalition of Catholics, liberals and socialists. The Socialists, strengthened by the war, the Russian Revolution (1917) and the German November Uprising (1918), put social issues high on the agenda. At the **'Coup de Loppem'**, agreement was reached on the following fundamental reforms:

(1) the introduction of universal suffrage,
(2) the abolition of penalties for strike activity,
(3) the protection of the right to organise, and
(4) the equality of Dutch and French as official languages.

The 'coup' part refers to the role of King Albert, who essentially forced the conservative Catholic leaders to accept these reforms.

It was not until 24 May 1921 that the right to strike and the right to organise were accepted through two pieces of legislation. In effect, they removed parts of the Penal Code that prohibited any kind of assembly or action in the vicinity of a company. The acceptance of the right to strike meant that strikers could not be prosecuted, but it did not protect them from being dismissed by the employer[5] (Polfiet, 2021).

Similarly, the first attempts to organise and institutionalise social dialogue in Belgium were made. 1919 is an important year with the organisation of the first (sectoral) **joint committees**. These joint committees were again organised in response to waves of strikes demanding higher wages and a reduction in working hours.

The joint committees negotiated minimum wages for specific sectors and automatic wage increases in line with inflation (indexation). The number of joint committees grew steadily and by 1923 more than half of the workers in Belgium were covered by a joint committee.

The national strikes of 1932 and 1936.

Following the financial crisis in the USA, miners in Belgium had their wages cut by around 26%. In 1932 it was announced that they would be cut by a further 10%, and the miners went on strike. The spontaneous strike spread like wildfire to other areas, while the Belgian Socialist Party and the trade unions tried to persuade the workers to return to work.

[5] This would only be settled by 1981 when the court of cassation stated that participating in a strike is a suspension of the labour contract, rather than an (implicit) rupture of it.

After weeks of peaceful demonstrations, violence erupted in July when miners surrounded the homes of the mine's management. The army was mobilised, and in cities such as Brussels all car and bicycle traffic was banned. The army and gendarmerie (*Rijkswacht*) started digging trenches around important buildings. After a while (and many deaths) the unions regained control of the situation and in September (partly due to demoralisation and a lack of resources) the strike was weakened and called off. A wave of repression followed, and whole villages of strikers had to move to France because they could no longer find work in Belgium.

In 1936, two workers were killed by right-wing extremists. Their funeral turned into a huge demonstration. At the same time, the Antwerp dockers went on strike to demand higher wages. The strike spread to the diamond workers and the mines in the Liège region. Several ships and mines were occupied by the strikers. Violent repression by the gendarmerie caused the strike to spread and by mid-July half a million workers were on strike (Brepoels, 1977, p. 104). Unlike the 1932 strike, the 1936 strike led directly to dialogue and a series of reforms.

A part of this story can be seen in Episode 9 of "Het Verhaal van Vlaanderen"

In 1936, another general strike led to the creation of the first **National Labour Conference**, bringing together representatives of the unions, employers and the government. This conference led to major advances such as the introduction of the 40-hour week, paid holidays, a minimum wage and a further expansion of the system of joint committees.

In short, the run-up to the Second World War saw the first experiments with institutionalised social dialogue. This meant, firstly, the recognition of trade unions as representatives of workers and, secondly, the organisation of bipartite and tripartite institutions to negotiate collective agreements and guarantee social peace.

National Labour Conferences

Before and during the institutionalisation of social dialogue in Belgium, a tradition of national labour conferences developed. These conferences were a form of tripartite negotiation between the state, employers and trade unions.

The first national labour conference was held in 1936 after a major wave of strikes. It signalled the recognition of the unions as interlocutors and led to the creation of the first joint committees, a reduction in working hours, a minimum wage and paid annual leave.

In 1939, another national labour conference was organised, which mainly meant that the social partners looked for ways to limit the damage of the looming war. This meant a wage

freeze, intervention in the indexation system and greater flexibility in dismissals. Another national labour conference was organised in 1940 (Humblet, 2013). In the post-war period, eight national labour conferences were organised (between 1944 and 1948). In 1952, the National Labour Council was established as a bipartite institution.

5.2.3. World war II

Suggested reading : Not a book or article this time, but a comic book which tells the story of the establishment of Belgian social security during world war II. Harald. (2020). *Een Hart voor Elkaar*. Daedalus.

The institutions for social dialogue were swept away during the Second World War and the occupation. During the occupation, strikes were banned and the existing trade unions were forced to cease their activities and merge into a single unified trade union called the Union of Manual and Intellectual Workers (de Unie van Hand- en Geestesarbeiders), which included workers of all ideologies.

The occupier's model was not one of dialogue and consultation, but one of **corporatism**, in which the different parts of society (workers, employers) were to work together for the progress of the nation. All this meant a shift in the main level of dialogue from the sectoral to the company level and a general weakening of the trade union voice.

This shift to the company level was reinforced by the organisation of illegal trade union activity in large industrial enterprises. These radical socialist and communist unions managed to take over several of the 'factory councils', which were supposed to be cooperative institutions.

In 1941, these illegal (in the eyes of the occupiers) unions managed to organise a successful strike called the **'strike of the 100,000'**. This strike was a turning point, as the pre-war social partners realised that there was a new force to be reckoned with: radical company-level unions that could organise during the war.

The strike was also a wake-up call for the leadership of the traditional social partners in exile in Britain. They met to discuss the organisation of post-war industrial relations and social dialogue. This would lead to the famous 'Social Pact', which is still a blueprint for many of the social dialogue institutions we have today. It also served to keep the radical unions out of social dialogue by introducing a requirement for 'representativeness'.

The strike also showed the occupying forces that the labour movement was to be reckoned with. In 1941, the German secret service launched 'Operation Sonnewende', in which thousands of trade unionists, socialists and communists were arrested, deported to concentration camps and never seen again (Brepoels, 1977, p. 130).

In short, while the Second World War meant that all institutions were put on hold, it also contributed to a further institutionalisation of social dialogue (at sectoral level) in the immediate post-war period. This institutionalisation was partly aimed at reducing the power of radical company level unions, which had gained much prestige during the war.

5.2.4. '45-'60: Post-war institutionalization

The framework for post-war industrial relations was established during the Second World War in discussions between union and employer leaders. These discussions resulted in a draft **social pact (1945**). This Social Pact is the main reference text for the post-war institutionalisation of industrial relations (and social security) in Belgium (see Annex I). It always remained a 'draft' pact, as it was never signed by the various parties.

The first paragraphs of the pact give a good idea of the kind of compromise that was reached:

English translation	**Original Dutch**
Having set out their respective positions, the employers' and employees' representatives recognise that the good functioning of enterprises, which is linked to the general prosperity of the country, can only be achieved by working together in good faith.	Na beide standpunten belicht te hebben, erkennen de werkgevers- en de werknemersvertegenwoordigers dat de goede gang der ondernemingen, waarmede de algemene welvaart van het land verband houdt, alleen door een trouwe samen-werking kan geschieden.
They wish to establish an understanding between management and labour based on mutual respect and recognition of rights and obligations.	Zij wensen een verstandhouding tussen werkgevers en werknemers tot stand te brengen, welke gegrond is op wederzijdse eerbied en op een wederkerig erkennen van rechten en plichten.
Employees shall respect the legal authority of the heads of enterprises and shall undertake to carry out their work dutifully.	De werknemers eerbiedigen het wettig gezag van de hoofden der ondernemingen en stellen er een eer in, hun werk plichtsgetrouw uit te voeren.
Employers respect the dignity of workers and are proud to treat them fairly. They directly undertake not to interfere, either directly or indirectly, with their freedom of association and the development of their organisations.	De werkgevers eerbiedigen de waardigheid der arbeiders en stellen er een eer in hen met rechtvaardigheid te behandelen. Zij verplichten zich ertoe, hun vrijheid van vereniging en de uitbreiding van hun organisaties direct, noch indirect te hinderen.

The government was then presented with a detailed map of the structure and governance of the social security system, employee representation at company, sectoral and national level. These included, in particular, bipartite works councils and joint committees.

The Pact also contained the first references to the idea of **'representativeness'** (see further). Only those trade unions (and employers' organisations) that were considered to be representative of workers could become members of the institutions envisaged. This status depended on two criteria: (1) the organisations had to be organised throughout Belgian territory and in all sectors, and (2) they had to have at least 200,000 members or their members had to employ at least 200,000 workers. This effectively meant the exclusion of (more radical) company level unions from the post-war institutions of social dialogue. One of the main points of contention was the **'trade union monopoly'** (see further) and the role of works councils.

Soon after the end of the war, the social partners and the government began to shape and institutionalise social dialogue. In **1947**, the trade union delegation to a national labour conference was accepted and enshrined in a collective agreement. In **1948**, the important Economic Organisation Act was passed, establishing works councils, joint committees and the Central Economic Council. The National Labour Council was established in **1952**.

Works councils: at the mercy of capital

In 1948, the law on works councils was passed, fulfilling a promise of the Social Pact to organise collective consultation in companies. While the law aroused the enthusiasm of many, it also had its critics. The real power of co-decision was limited to work rules, annual holidays and the company's social services. On everything else, the works council could only advise or be informed. In other words, works councils do not limit the power of employers.

The Social Pact was not the only major post-war agreement to have an impact on industrial relations. In the immediate aftermath of the Second World War, the Belgian economy recovered quickly because its infrastructure had emerged from the war relatively unscathed. However, in the late 1940s, when the rest of Europe was rebuilding its infrastructure and businesses, Belgium was faced with a serious productivity gap, as it was largely using old, pre-war machinery. The need to boost productivity led to a second pact, the **Productivity Pact** (*Gemeenschappelijke Verklaring over de Produktiviteit*, 1954).

This pact involved a second level of compromise and agreement between employers and employees:

- The workers accepted that they would help to increase the productivity of companies and would not resist changes that would increase productivity.

- The employers accepted that this mutual cooperation for productivity had to be based on very broad information and consultation of the workforce.
- The employers' side accepted that any gains would be shared fairly between employers and employees, taking into account productivity developments and their impact on employment and employees' working and living conditions.

The **basic Belgian compromise** between the two pacts is graphically illustrated in Figure 4.5.1. Similar compromises were made in many other European countries during this period. Such compromises are generally referred to as **Fordist compromises**.

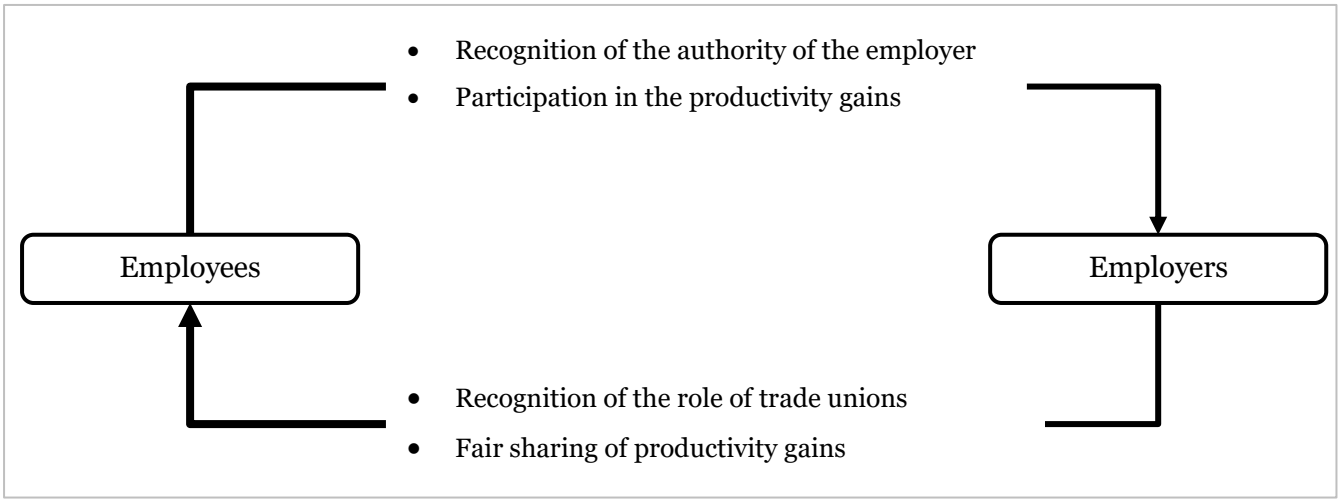


Figure 4.5.1 - The Belgian basic compromise

With the two social pacts, plans for further democratisation of the economy and companies were put on the back burner. In many other countries, works councils were given important co-determination rights, workers were given the right to be represented on company boards, or companies were brought under public control through nationalisation. Not so in Belgium, where the focus was mainly on developing bargaining at the sectoral level (Van Gyes, 2015).

The Renardist influence

During the Second World War, André Renard organised the Mouvement Syndical Unifié, which had some 60,000 members and which merged with the ABVV-FGTB after the war. Renard was a Walloon regionalist with a strong preference for action-oriented unionism. He had a strong influence on the Walloon FGTB and was critical of many of its post-war achievements. He called the health and safety committees a "*boîte enregesitreuse des decisions patronales*" (Humblet & De Wilde, 2007) because they lacked co-decision rights. Similarly, he suggested using the term *'comité de production*' instead of 'works council', because (in his view) the main purpose of works councils was to increase productivity, not to give workers a voice. Accordingly, Renard's priority was not sectoral, let alone national,

social dialogue, nor information and consultation at company level, but organisation and mobilisation at company level. The focus of his attention was therefore on the trade union delegation, which had to be given extensive rights of control.

In short, the Social and Productivity Pact laid the foundations for the Belgian compromise and the institutionalisation of social dialogue. The compromise rests on several foundations, namely:

(1) mostly bipartite consultation and negotiation,
(2) the importance of the sectoral level in setting working conditions,
(3) the recognition of trade unions as representatives of workers, combined with a limited trade union monopoly, and
(4) a dense system of dialogue institutions at all levels.

Watch your words: demand a new social pact, lose your job

In the midst of the COVID pandemic, Robert Vertenueil, president of the socialist union ABVV-FGTB, declared himself ready to negotiate a new social pact with the employers. The president of the employers' organisation also agreed to talks. There were never any real talks or negotiations, as the union leader's move was not backed by a mandate from his organisation. The ABVV-FGTB was particularly irritated that the declaration was made in a joint interview with the president of the French-speaking liberal party MR. As a result, Robert Vertenueil was forced to resign.

5.2.5. '60-'70s: the heydays of social dialogue

The 60s were the heyday of Belgian social dialogue. It began, however, with one of the largest strikes in Belgian history, the strike against the Eyskens government's Unitary Law. This was a package of measures on socio-economic issues, the organisation of municipalities, tax policy, cuts in education and defence spending, and changes to the unemployment and pension systems.

The unitary law triggered a massive wave of strikes that lasted for four weeks between December 1960 and January 1961. The main actions took place in Wallonia, as the ACV-CSC did not fully support the strike. The demonstrations, which were often violent, resulted in four deaths. In the end, the historic strike was unsuccessful and the (adapted) unitary law was passed in January 1961 (Luyten, 2011).

The 'mythical' strike against the unitary law:

In September 1960, Prime Minister Eyskens presented the Unitary Law (*Eenheidswet*) to the Belgian Parliament. It contained several chapters which, taken separately, were unacceptable

to at least one member of the coalition. That's why the Prime Minister presented it as a package deal, which should have been acceptable in its entirety. From the point of view of the workers, the measures included a substantial increase in consumption taxes, a reduction in the wages of municipal employees, a tightening of the conditions for unemployment benefits and more controls on the misuse of sickness and invalidity benefits (Brepoels, 1977, p. 180).

The wave of strikes began in November around Liège and led to a strike in mid-December that lasted until mid-January 1961. The strike wave against the unitary law has a semi-mythical character for the Belgian left. The massive and often violent demonstrations led to the mobilisation of the army, the recall of Belgian troops stationed in Germany and the return of the King from abroad. The police response included mass arrests, house searches of union leaders and violent clashes with demonstrators. Several deaths were reported and many were injured.

You can find some documentaries online with quite powerful (but obviously old) images of the atmosphere, including fully armed gendarmes attacking strikers: https://www.youtube.com/watch?v=LjzVXuKm3wY, **https://vimeo.com/18715456,**

The defeat of the 1960s strike mainly meant that the general strike would be used less often and that priority would be given to dialogue and consultation. A new instrument was the **interprofessional agreement** (see below), which was designed to streamline social dialogue at national level. However, the main focus of dialogue and negotiation remained at sectoral level. These interprofessional agreements included progress on wages, social security contributions, paid leave, reductions in working hours, etc. The social progress achieved by the interprofessional agreements should not be underestimated, including a reduction in weekly working hours and an increase in annual paid holidays.

In **1968**, the institutionalisation of the social dialogue was more or less completed with the Collective Agreements Act, which codified the system of joint committees, gave the collective agreement a prominent place in the hierarchy of norms (see below) and gave the unions affiliated to the three main Belgian unions a protected position.

Employers want strong unions

The 1960s were really the years of social planning, with good relations between trade unions and employers' organisations. This is illustrated by the following quotes from some of the employers' leaders:

"Het patronaat verlangt machtige en representatieve vakbonden voor zich te zien, die gedisciplineerd zijn en die erkende en geldige gesprekspartners zijn, om met het patronaat te diskussiëren"

"The bosses wishes to see powerful and representative unions in front of them, that are disciplined and are valid interlocuters, to discuss with the bosses" Hendrik Cappyuns, VEV president, 1965, in: Brepoels (1977, p. 206).

Dîner des Belges

For a long time, Belgium was the world's leading example of constructive, solution-oriented social dialogue. The 'Dîner des Belges' was a good example of this. Every year, on the occasion of the International Labour Conference of the ILO in Geneva, Belgian representatives of employers, workers and the government would have dinner together. For most other countries it was unthinkable to dine with 'the enemy'.

5.2.6. '70s-'89: Social dialogue under custody

The heyday of social dialogue was followed by a gradual decline. The price of the period of constructive relations is that the trade unions have been seen as part of the establishment and as 'mediators' between labour and capital, rather than really defending the interests and views of the working class. The social question movement, which grew strongly after the events of 1968 in Paris and Leuven, took a critical stance towards the trade unions and social dialogue in general. Similarly, non-unionised migrant workers began to mobilise and organise unofficial strikes, for example in the Michelin and Citroën factories in 1970. An example of the criticism of 'bureaucratic unions' was a banner reading 'Sindacati venduti' (bribed unions) during a miners' strike and protest in Hasselt in 1970 (Hemmerijckx, 2007).

The oil shocks of the 1970s put social dialogue in an even more difficult position, as there was no more rising wealth to share. At the same time, rising inflation eroded workers' purchasing power. All this made it more difficult to reach agreements, and in 1975 a last interprofessional agreement was reached. Between 1977 and 1986, the social partners at national level did not manage to conclude any interprofessional agreements, with the exception of a minimal agreement concluded in 1981 (Léonard, 2020).

One to watch: Groenten uit Balen (2011)

To get an insight into the role of the trade unions and their relationship with the student movement, the film 'Groenten uit Balen' is recommended. It tells the story of a strike in the Balen factory in 1971 and is based on a true story. You can witness the course of a spontaneous strike, the tensions it creates in families, the role of the trade unions, the support of the student movement, etc.

Women on the barricades for equal pay at FN (1966)

In 1966, an important struggle for equal pay for men and women took place at the FN Herstal arms factory. The women workers (*les femmes machines)* went on strike for 13 weeks to protest against the fact that women in the factory were paid 25% less than men doing exactly the same work. The strike began as a wildcat action and led to tensions in the union as the mostly male union representatives tried to negotiate on behalf of the striking women and showed little understanding of the strikers' demands (Van Hemeldonck, 2006). The strike resulted in an increase in wages and a reduction in working hours. Equal pay was not achieved, but the fight for equal pay became a trade union priority after the strike and, more generally, unions began to address gender equality within their own structures.

Employers' attitudes towards trade unions also began to change. Whereas in the 1960s employers had a relatively positive view of unions, in the 1970s and 1980s employers and the government took a much more openly anti-union stance. Several governments began to pass austerity packages, which provoked protests from the unions. An example of the changing attitude of employers was a secret note of the employers' organisation discussing different methods to break union action in companies, including the use of legal means (Brepoels, 2015, p. 479).

Do it yourself: occupying and taking control of factories

In the 1970s, spurred on by the dispute movement, the unions began to discuss more radical programmes and positions, including the self-government of factories and companies. An experiment with such self-management took place in the Prestige factory in 1975. This factory produced kitchenware and was making losses. In November 1975, management announced the closure of the factory, which immediately led to a workers' occupation as management tried to ship the machinery to the UK. Work resumed after a few weeks, but under the direct management of the workers themselves. A non-profit organisation was set up as the official employer and a radical form of economic democracy was installed. Management challenged the occupation and takeover with legal action, and after a few months the factory was evacuated and sealed off. This did not stop the workers, who broke the seals and resumed production. Negotiations led to an agreement and in July the occupation ended with the promise that a feasibility study would be carried out to determine the fate of the plant (Brepoels, 1981, p. 139).

In the 1980s, further pressure on social dialogue came with the growing popularity of 'neo-liberal' thinking, which argued for a limited role for the state and the decentralisation of social dialogue to company level. An example of this was the slogan used by the Liberal Party in the 1981 campaign: 'Not you, but the state lives beyond its means' *(Niet U, maar de staat leeft boven haar stand)* (Brepoels, 2015, p. 473).

Poupehan: how 4 friends sealed the fate of Belgium

In 1982, the Belgian economy was in deep crisis. In the small village of Poupehan, the Prime Minister (Wilfried Martens), Jef Houthuys (ACV-CSC), Hubert Detremmerie (banker) and Fons Verplaetse (National Bank) discussed the state of the Belgian economy and possible solutions. The involvement of trade union leader Jef Houthuys was to ensure that the austerity package did not have too much of an impact on workers, but above all that the union did not put up too much resistance to the government's plans. The result was a devaluation of the Belgian franc, a moderation of the automatic wage indexation and a price freeze to stop rising inflation. In order to appease the trade unions, the government proposed the 5-3-3 plan, which provided for a 5% reduction in working hours combined with a 3% reduction in wages and 3% compensatory hiring. The plan was never more than a recommendation to the social partners (Brepoels, 2015, p. 476).

Between 1975 and 1986, the social partners at national level were never able to conclude an interprofessional agreement. It was not until 1986 that a new interprofessional agreement was concluded, which included a number of recommendations for sectoral negotiations. The subsequent national agreements were different in scope from the previous (pre-70s) period, as they were much more focused on maintaining the **competitiveness** of the Belgian economy.

5.2.7. ’89-now: social dialogue under house arrest

As the issue of 'competitiveness' received more attention, the state began to intervene more and more in the social dialogue by setting conditions for wage negotiations. In 1989, the first **law on competitiveness** was passed. It basically mandated the Central Economic Committee to monitor wage developments in the main trading partners. In 1996, this law was made much stricter. This law introduced a maximum wage increase based on economic calculations and comparisons that the social partners could not go beyond. Negotiations were no longer defined by power relations, but also by economic indicators (Brepoels, 2015, p. 533).

In order for Belgium to join the eurozone, it had to meet the 'Maastricht criteria' as defined by the EU. In order to do this, the Dehaene government drew up the 'Global Plan' in 1993, which included a wage freeze, a freeze on collective agreements, a change in the automatic wage indexation system, large cuts in social security and an increase in VAT. Trade union protests (including a major strike on 'Red Friday', 26 November 1993) resulted in only minor adjustments to the plan (Brepoels, 2015, pp. 520-521). Clearly, the labour movement was moving from successful offensive actions to rather unsuccessful defensive ones.

Renault Vilvoorde, 1997

Driving from Brussels to Vilvoorde, you pass a roundabout with a big fist in the middle, a reference to the workers' struggle around the Renault factory in 1997. The struggle was important not only for Belgium but for the whole of Europe. Although it did not prevent the closure of the plant, the events led to one of the first Europe-wide strikes, European legislation on restructuring and innovations in managing the social consequences of large-scale restructuring (Weber et al., 1997). The events began when Renault management announced the closure of the Vilvoorde plant at the Brussels Hilton Hotel on 27 February 1997. As the workers had not yet been informed, they were told by their families, who cycled to the plant after hearing the news on the radio. What followed was a four-month struggle to keep the plant open, including an occupation of the plant and car park, several strikes, including a coordinated Europe-wide strike of all Renault plants, several court cases and many demonstrations. In the end, the plant was closed, but with an 'employment cell' set up to help workers find alternative employment. At a legal level, the events highlighted the need for proper information and consultation in the event of restructuring. This led to the adoption of the "Renault Directive" on information and consultation in 2002. At the Belgian level, the events led to the Renault Law, which provides for a whole consultation process when companies restructure their operations, including collective redundancies.

In 2005, the Belgian government, led by the liberal prime minister Guy Verhofstadt, proposed the '**generational pact'** to prevent the ageing population from putting too much pressure on the labour market and social security spending. This led to a long debate on the end of working life. The main issue was the various forms of early retirement introduced in the 1970s. In the event of collective redundancies, employers could put workers on early retirement schemes to prevent them from becoming unemployed. While this was seen as a socially elegant solution, it put pressure on pension expenditure and meant that these workers became 'inactive' in the labour market. The Intergenerational Pact aimed to partially solve this problem by restricting access to such early pensions. The plan provoked strong but divided reactions from the trade unions. While the strikes mobilised many workers, the pact was passed with only minor adjustments.

The **financial and economic crisis of 2008** put additional pressure on the existing social dialogue. Interventions from Europe pushed for more flexible wage setting, decentralisation of collective bargaining and less state spending. The centre-right government of Michel I (see box) pushed ahead with these policies in the face of fierce opposition from the unions.

Strike wave of 2014

In terms of strike days per year, 2014 was a record year. For the first time, a coalition was formed between the Liberals, the Flemish regionalist party N-VA and the Flemish Christian Democrats CD&V. The government had a clear liberal and right-wing economic approach and the government agreement included a wage freeze, an index jump, a stricter wage norm, tax cuts for employers, reforms of the unemployment benefit system, an increase in the legal retirement age from 65 to 67, cuts in social security and a flexibilisation of working time rules. The reaction of the labour movement was quite harsh. A national manifestation was organised in the autumn of 2014, three regional strikes and a general strike on 15 December (Gracos, 2015). In total, there were more than 800,000 strike days (Kelepouris, 2019). After the strike, the government didn't change its plans, but a mini-agreement in the Group of 10 took the energy out of the protest against the government.

5.2.8. Overview

The figure below provides a graphical overview of the different phases of Belgian social dialogue in the post-war period. Immediately after the Second World War, the Social Pact led to a relatively rapid institutionalisation of social dialogue institutions, followed by a short period of bipartite social programming. In the 1970s and especially after the 1980s, the social dialogue came under pressure from the demands of competitiveness, which was exacerbated when the state began to intervene directly in the social dialogue after the 1989s.

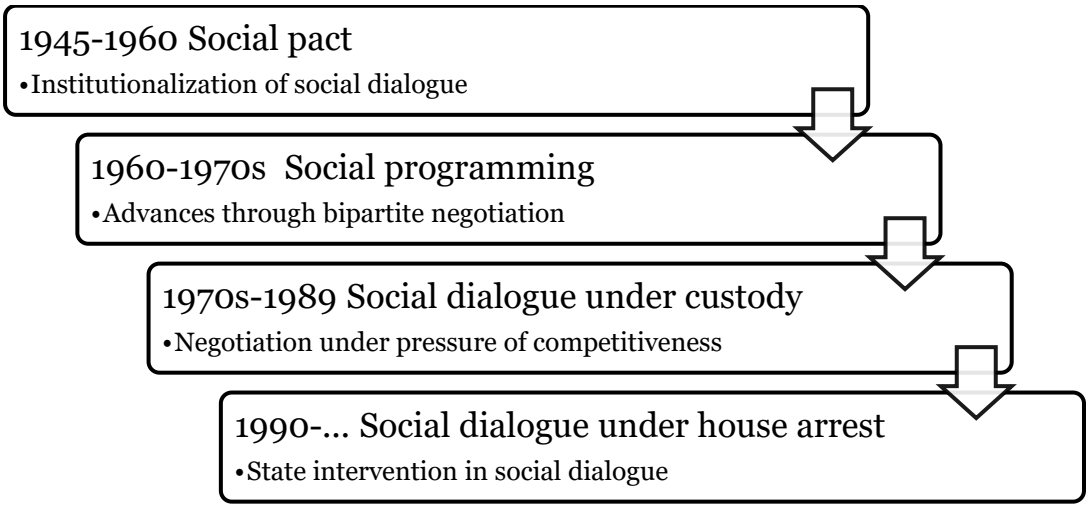


Figure 5.2 - Phases in post-war social dialogue in Belgium (author's adaptation of Vilrokx & Van Leemput (1998)

5.3. Trade unions in Belgium

The Belgian trade union landscape is rather complicated. At the national level, it appears simple, with three organisations that can be clearly distinguished along ideological lines. The socialist ABVV-FGTB, the Christian Democrat ACV-CSC and the liberal ACLVB-CGSLB.

At the sectoral level, however, the situation is more complicated, as in many cases the national confederations are made up of sectoral organisations with different names. These sectoral organisations, in turn, are sometimes divided into Dutch-speaking and French-speaking parts. And there is still a legacy from the past where the sectoral unions were also divided according to whether they represented white-collar or blue-collar workers.

Moreover, ideological differences may be clean in words, but not in practice. There is a growing ideological convergence between the confederations, and the reality at company level may be very different from the ideological differences at national level.

The following sections attempt to unravel some of this complexity. First, the three main actors are introduced, and then a number of key characteristics are discussed.

5.3.1. ACV-CSC (Algemeen Christelijk Vakverbond – Confédération des syndicats chétiens)

The ACV-CSC is one of the two main trade union confederations in Belgium and has a Christian Democratic background. It is currently known to be somewhat more consultative than the socialist ABVV-FGTB, although the differences between the two confederations are diminishing over time.

The ACV-CSC was founded in 1923. Its main motivation was anti-socialist. In the early days of the ACV-CSC, the union rejected the class-based analysis of the ABVV-FGTB and defended the need for cooperation between different parts of society (corporatism).

The main ideological reference text of the ACV-CSC is the papal encyclical Rerum Novarum (1891) and the subsequent encyclicals *Quadragesime Anno* (1931) and *Mater et Magistra* (1961). These texts affirm the primacy of the human person over production, institutions and wealth. While this Christian doctrine was very present in the early days of the ACV-CSC and in the first decades after the Second World War, references to Christian doctrine are almost completely absent in the more recent period. As a result, the question of whether or not to drop the 'C' (from Christian) from the confederation's name is regularly debated.

The ACV-CSC is part of a larger Christian workers' movement called beweging.net (NL, formerly ACW) and MOC (FR). This umbrella organisation also includes the Christian social security funds, women's organisations, etc.

The union catechism

If you don't know what a catechism is, ask your (grand)parents. Chances are they will have vivid memories of those little books of questions and answers that schoolchildren had to memorise word for word. Similarly, the ACV-CSC used to publish trade union catechisms with short answers to questions such as 'what is the Christian social doctrine', 'what are the characteristics of the social encyclicals', 'what is the working class'... Only to be found in old bookshops.

While the ABVV-FGTB defended the need for workers' control, the ACV-CSC was (in principle) in favour of a democratisation of the organisation of companies and thus a form of co-determination.

In practice, however, the immediate priorities and demands of the ACV-CSC are very similar to those of the ABVV-FGTB, while some differences remain in terms of tactics (when and how much to use the strike weapon, when to make compromises) and style.

The ACV-CSC is made up of several sectoral 'centres' (*centrales)*, which are listed in table 5.3. The table shows that the non-manual centrals ACV PULS (NL) and CNE (FR) represent more than a quarter of the total membership of the ACV-CSC.

Table 5.1: ACV-CSC structure

Centrale	Sectors	Members 2019	% members of ACV-CSC
ACV-PULS	Non manual staff NL	280.077	18,7%
ACV BIE	Building, Industry, Energy	257.976	17,2%
ACV METEA	Metal, Textile	159.750	10,7%
ACV Food and services	Food and Services	247.266	16,5%
ACV-Openbare diensten	Public Services	162.989	10,9%
CNE	Non manual staff FR	153.061	10,2%
ACV Transcom	Transport	78.854	5,3%
Christelijke Onderwijscentrale	Education	41.227	2,8%
Christelijke onderwijszersverbond	Education	35.942	2,4%
CSC Enseignement	Education	42.933	2,9%
Enter	Youth	36.019	2,4%
Source: (ACV, 2019; Vandaele, 2023)		**1.496.094**	

These sectoral organisations form the core of the confederation. They are responsible for representing workers at sectoral level and organising collective bargaining at company level. Compared with the ABVV-FGTB, these sectoral organisations have somewhat less power. For example, the strike fund of the ACV-CSC is centralised at confederation level.

5.3.2. ABVV-FGTB (Algemeen Belgisch Vakverbond - Fédération Générale du Travail de Belgique)

The ABVV-FGTB is also one of the largest union confederations in Belgium. It has around 1.5 million members and is ideologically a 'socialist' union.

Its direct predecessor is the BVV-CGTB (Belgisch Vakverbond), which was a successor to the Belgian Socialist Party-affiliated Trade Union Commission. After the Second World War, the ABVV-FGTB emerged as a kind of merger of the CGTB with three other trade union organisations that had been created during the war.

Ideologically, the ABVV-FGTB is a ‘socialist union’. Its main ideological reference text is the *Quaregnon Charter*, adopted by the Belgian Socialist Party in 1894. This text, and thus the ideology of the ABVV-FGTB, is based on a class analysis of society and the need for the emancipation of the working class. This emancipation and the resulting class struggle will, according to the ABVV-FGTB, lead to a total transformation of society (Arcq & Blaise, 2007, p. 25).

In concrete terms, this means that the ABVV-FGTB defends (1) a strong state and a public sector that is not regulated by the free market, (2) a strong voice for workers in companies.

An important concept for the ABVV-FGTB is 'worker control' (*arbeiderscontrole - contrôle ouvrier*). The idea is that workers should limit the freedom of the logic of capitalism through collective bargaining. This workers' control is directly opposed to the ideas of co-management present in the ACV-CSC. Such co-management or co-determination would lead to co-responsibility without control and thus to the integration of the unions into the capitalist way of thinking.

The ABVV-FGTB is made up of 6 sectoral 'centres' plus the youth branch. The table shows the relative importance of the different sectoral organisations. As in the ACV-CSC, the service sector organisation (BBTK-SETCa) has the largest number of members (28.2%). The BBTK-SETCa is a bilingual organisation. In the ACV-CSC, the service sector unions are divided between a Dutch-speaking and a French-speaking centre.

Table 5.2: ABVV-FGTB structure

Centrale	Sectors	Members 2020	% members of ABVV-FGTB
BBTK – SETCa	Non manual staff	437.616	28,2%
AC – CG	Chemical, cleaning, security, construction etc.	419.382	27,1%
ACOD – CGSP	Public services	307.120	19,8%
ABVV Metaal – FGTB Métal	Metal working	148.410	9,6%
ABVV Horval	Food, hospitality and services	139.178	9,0%
BTB – UBT	Transport	59.075	3,8%
ABVV Jongeren – FGTB jeunes	Youth	39.454	2,5%
Source: Vandaele (2023)		**1.550.235**	

In addition to this sectoral organisation, the confederation also has three so-called interregional organisations (Flanders, Wallonia & Brussels) and 16 regional departments.

The ABVV-FGTB is characterised by the fact that a great deal of power and autonomy is vested in the sectoral organisations. An example of this is the fact that the union's strike fund is not centralised, but that each sectoral organisation has its own strike fund. It is therefore the sectoral organisation that decides whether to organise a general strike.

5.3.3. ACLVB-CGSLB (Algemene Centrale der Liberale Vakverbonden van België - Centrale Générale des Syndicats Libéraux de Belgique)

The ACLVB-CGSLB is the smallest of the three Belgian confederations and has an ideologically liberal profile. It has almost 300,000 members. It was founded in 1930 and took its current name shortly after the Second World War.

The liberal confederation is the most centralised of the three, as it is not made up of sectoral organisations such as the ACV-CSC and the ABVV-FGTB. It has a separate structure for the public sector, the VSOA-SLFB, and two structures for teachers and civil aviation.

Ideologically, the ACLVB-CGSLB is based on the 1945 Universal Declaration of Human Rights. According to its statutes, it aims to create a better coalition between employers and employees and to guarantee individual freedom for all citizens. As a 'liberal trade union' may sound counter-intuitive, the confederation points out that in a free and liberal society, a free and liberal trade unionism is normal and indispensable, and that trade unions actually need a liberal society in order to be able to carry out their tasks (Arcq & Blaise, 2007, p. 31)

Union finances & resources

In early 2023, the newspapers reported a collective redundancy at FGTB Liège due to a fall in unemployment. As the Ghent system gives the unions a role in paying unemployment benefits, a fall in unemployment means less work and so the redundancies followed. Let us take a look at how trade unions finance their activities.

Unions have three main sources of income. The first and most important is membership fees. Union members pay a monthly membership fee, which varies depending on the union and the status of the employee or unemployed person. For a full-time worker, the fee is around 20 euros a month.

Second, unions receive indirect financial support through bipartite welfare funds (see section on sectoral institutions). These funds, which are set up and managed jointly by employers and unions at sectoral level, pay union bonuses to compensate for part of the union dues.

Third, the state provides indirect financial support to unions in a variety of ways. The most important is the quasi-Ghent system whereby unions administer unemployment benefits. For this service, the unions are paid a fee per dossier. Trade unions also receive a small amount of financial support through subsidies and project funding.

5.3.4. Other unions

The three main confederations are undoubtedly the most important players on the workers' side. However, there are a number of other unions and union-like structures active in Belgium with much less power and influence. Some of these unions organise a very specific category of workers, often in a particular sector or even company.

One of the categories of workers who have access to a nationally organised alternative are the 'managers' (*kaderleden, cadres*). These workers are employees, but they do managerial work. They are usually not part of the real management (the first two levels of the hierarchy in the organisation), but are very much involved in the management of a specific part of the company or are responsible for specific tasks. Essentially, they are employees, so they have the right to be represented by the union and to join it, but given their place in management and decision-making about company policy, they are often not seen as real employees by the other workers in the company.

So in the 1960s a new organisation was set up, the **National Confederation of Executive Staff (NCK**), which operated outside the traditional trade union structure. In 1987, special mandates for managerial staff were created in the works councils of companies with many such employees. Interestingly, candidates for these mandates could present themselves

through one of the three union confederations, or on a list of the NCK, or even on a non-affiliated 'house list'. This obvious exception to the union monopoly (see later) allows non-unionised managerial staff to become employee representatives. According to some, the aim of the government (which ruled with special powers) was to break the union monopoly. But looking at some of the figures, most of the candidates for the managerial staff mandates put themselves forward through the traditional trade unions, not through the house lists or the NCK.

While managerial staff can present themselves through the NCK or house lists, the NCK is not a member of the National Labour Council (see further) and is therefore not seen as a generally 'representative' trade union confederation. It's role in the national social dialogue is therefore limited.

Everybody executive staff: Janssens & Janssens

In January 2020, the trade union delegations at Janssen Pharmaceutica started legal action against the employer for allegedly abusing the status of 'managerial staff'. More than 60% of Janssen's employees are senior managers, compared to only 30% 15 years ago. Being a manager means that many of the collective agreements do not apply. According to the employer, the executive staff enjoy the same protection and are represented, but not through the official social elections.

Can executive staff be a union delegate – 3M

At 3M in Zwijndrecht, more than 75% of the employees were 'managerial staff'. What is more, a number of them earn higher wages than those laid down in the collective agreement. They earn what is known as a non-baremic wage. According to the chemical industry agreement, these workers cannot be members of the trade union delegation. They can stand as candidates in the company elections and be representatives on the works council. But they cannot discuss individual issues in the works council. So the 3M representatives went to the mediation committee of the joint committee (paritair comité) without success. The next step was to take the matter to court. The judge ruled that the exclusion was an illegal form of discrimination. As a result, managerial staff can now be union delegates and discuss individual issues with management (Van Looveren, 2021).

Some other unions present in Belgium focus on a very specific type of worker: (1) the Independent Union of Railway Workers (OVS-SIC)[6], (2) the Independent Union of Train

[6] The **OVS-SIC**, in accordance with its name, is uniting railway workers. It is not clear how many members the OVS-SIC has, but it has the capacity to disrupt the railway traffic. It has been involved in many strike actions to

Drivers (ASTB-SACT)[7], (3) the National Union of Political and Security Staff (NSPV-SNPS)[8] and (4) the General Central for Military Staff (ACMP-CGPM)[9].

The activity (and membership) of some other alternative unions, such as the National Union of Public Services (NUOD-UNSP) or the Flemish Solidarity Union (Vlaamse Solidaire Vakbond) and Neutr-On, is unclear. In any case, they do not play a significant role in the trade union landscape.

There are also a number of professional organisations that present themselves as trade unions. The most important are the Professional Organisation of Sea Pilots (Beroepsvereniging van Loodsen) and the Guild for Air Traffic Controllers (Gild der luchtverkeersleiders). Both are well known for their structural power and their ability to strike effectively.

Strikes by gatekeepers: maritime pilots and air traffic controllers

In 2019 and 2016, air traffic controllers at Brussels Airport organised several successful strikes to put pressure on their employer, Skyes. One of the peculiar players in the conflict is the air traffic controllers' guild. It organises a significant minority of controllers (80 out of 280 in 2016). It is not a recognised union, but it clearly has the capacity to call a strike and force its way to the negotiating table.

From time to time, the port of Antwerp has to shut down because of a strike by the maritime pilots (loodsen). These workers are organised by various trade unions, including the BvL (professional organisation of sea pilots). There are a total of 350 sea pilots in Belgium, but not all of them work in the port, some of them also work in inland navigation.

What these two examples show is that strikes by a few workers with a lot of structural power (they control the entire airport and port of Antwerp) can cause a lot of disruption. It is interesting to see that in these professions there are alternative union structures that are not linked to the three traditional unions.

get recognized as a trade union which it is since 2017. It can therefore participate in the social elections. Internationally, OVS-SIC is affiliated to CESI (the European Confederation of Independent Trade Unions).

[7] The **ASTB-SACT** is another union organized it the railway industry that unites train drivers. Similarly as OVS-SIC, it had to fight for being recognized but can also participate in the social elections.

[8] The **NSPV-SNPS** is an unaffiliated union which organized policy and security workers in Belgium.

[9] The **ACMP-CGPM** is an unaffiliated union which organized only military staff.

5.3.5. How representative and strong are Belgian trade unions?

There are a number of ways of measuring the strength and representativeness of Belgian trade unions. Here we focus on trade union density, mobilisation capacity, trust in trade unions and voter turnout.

Trade union density: Belgian trade unions have a total membership of more than 3 million, but this figure includes many unemployed and retired workers. So the question is: of all the people who are actually working, how many are union members? This is called the unionisation rate.

The graph below shows the unionisation rates of several countries over the years. The first thing the graph shows is that there is a great deal of variation in unionisation rates across Europe. While in some countries less than 20% of employees are unionised, in others the figure is over 50% or even around 70%. Belgium has a relatively high unionisation rate compared to most other European countries, just over 50%. The only countries with higher unionisation rates are the Nordic countries such as Denmark, Sweden, Norway and Finland.

Second, there is a downward trend in union density in virtually all countries. This means that proportionately fewer workers are joining trade unions. The only real exception (in Europe) to this declining trend is Belgium, where union density (unionisation rate) has remained relatively stable. However, there has also been a slight downward trend in Belgium in recent years.

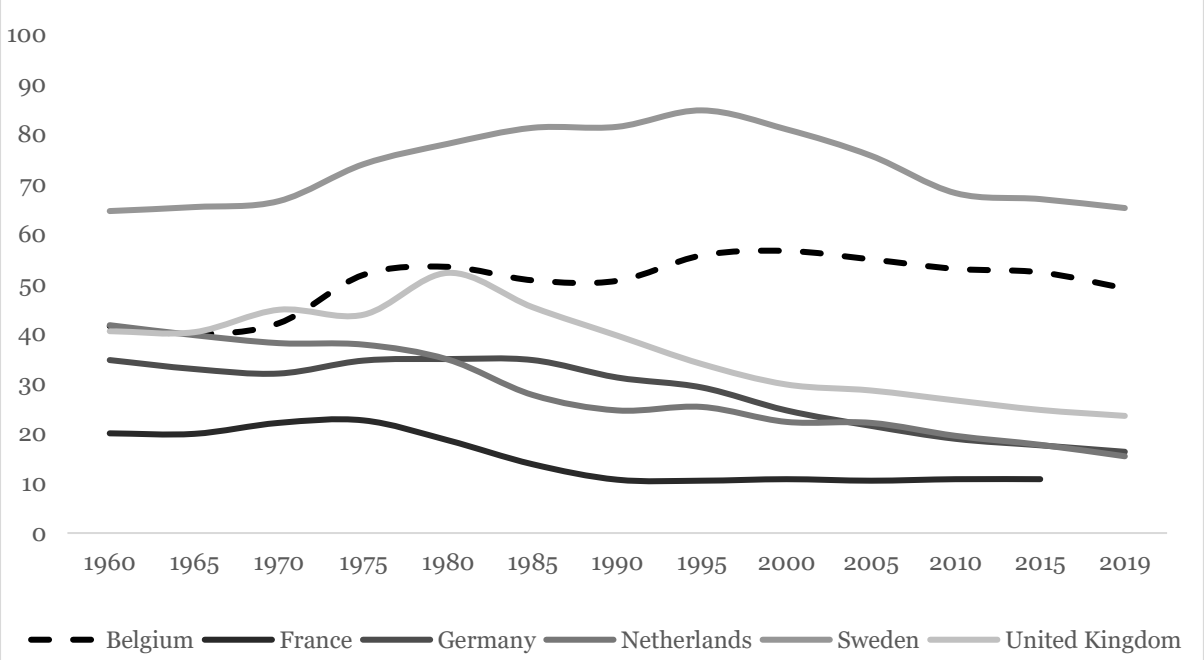


Figure 5.3: Unionization rate - selected countries (source: ICTWSS)

The end of het Belgian exceptionalism?

In 2018, what many observers had feared or hoped for seemed to become reality: the end of Belgian exceptionalism in terms of trade union density. For a long time, Belgium was an exception, as it was the only European country where trade union membership was not falling and was even growing very slowly. Until 2018, when the newspapers announced that the unions had lost around 88,000 members in two years. Whether this was just a small dip or fluctuation, or the beginning of the end of Belgian exceptionalism in terms of trade union density, will only become clear in the coming years. At least during the COVID-19 pandemic, many unions saw an increase in membership due to the massive use of temporary unemployment, the benefits of which are often paid by a union.

Mobilisation capacity: A second indicator of the relative strength of Belgian unions is their mobilisation capacity in terms of demonstrations and (national) strikes. It is not enough to have many members. Members must also be willing to act to defend their interests. A highly active and motivated membership can even compensate for having fewer members.

Belgian trade unions (still) have a considerable mobilisation capacity, as illustrated by some recent demonstrations and strikes. Few, if any, other civil society organisations have a similar mobilisation capacity.

Table 5.3: Some recent demonstrations, strikes and their participation

Date	Type	Participation
20 June 2020	National day of action for free wage negotiations	70.000
16 May 2018	National demonstration against Michel I	55.000
7 October 2015	National demonstration against Michel I	80.000
6 November 2014	National demonstration against Michel I	120.000
28 October 2005	General strike with demonstration against the generation pact	100.000

Trust in trade unions: A third indicator of the strength of Belgian trade unions is the high level of trust that the Belgian population has in trade unions. A number of studies and surveys show that the majority of Belgians trust the Belgian trade union, and that this trust is growing over time and is higher than in other countries. The table below illustrates this with the results of various surveys.

Table 5.4: Confidence in (Belgian) trade unions

	A lot of confidence/ a great deal	Some confidence/ quite a lot	In between	Little confidence / not very much	Very little confidence/ none at all
European Value Study 1981	6.8%	29.7%		43.4%	16.5%
European Value Study 1990	5.2%	28.5%		45.7%	18.2%
European Value Study 1999	3.9%	30.9%		40.4%	20.0%
European Value Study 2008	5.1%	41.9%		37.2%	13.7%
Swyngedouw, 2016	11.5%	27.7%	38.5%	21.6%	0.6%

5.3.6. Controlled pluralism and the union monopoly

The Belgian trade union landscape is characterised by what can be called 'controlled pluralism'. **Controlled pluralism** refers to the idea that workers have a choice of unions to join, with some ideological differences (pluralism). However, it is controlled because there are rules that favour existing unions and make it difficult for new unions (with different ideological backgrounds) to play a significant role.

As discussed above, the three confederations active in Belgium are differentiated according to their (historical) ideological affiliations. Thus, the ABVV-FGTB has an openly socialist or social-democratic ideological profile, the ACV-CSC a Christian-democratic one and the ACLVB-CGSLB a liberal one. These differences are related to the historically 'pillarised' Belgian society, where citizens often belonged to a trade union, a mutual fund, a school and a party of a single ideological side. With the relative decline in the importance of these pillars, the differences between the different union confederations have also become less pronounced.

Although there is a clear pluralist structure in the trade union landscape, this pluralism is 'controlled' by rather strict rules on representativeness and associated rights. The first indications of certain thresholds for trade union representativeness were set out in the draft Social Pact (see later). More formally, a union is 'representative' if it has a seat on the National Labour Council. And for this to happen, a union must[10]:

- operate throughout the country and be inter-professional;
- represent the absolute majority of sectors and employee categories in the private and public sectors;

[10] Article 2, § 2 fo the law of 29 mai 1952 on the National Labour Council.

- have an average of 125,000 paying members over the last four years; and
- have as their statutory objective the defence of workers' interests.

This status as a 'representative' union brings with it many advantages, such as

- The right to sign collective agreements,
- the right to put forward candidates for social elections,
- the right to organise trade union delegations
- the right to sit on joint committees,
- co-management of many social security institutions

In essence, these rules make it very difficult for new unions or confederations to become successful. Until a new organisation reaches the thresholds discussed above, it cannot provide any of the services that come with being a representative union. There is pluralism, but it is controlled and somewhat fixed.

Related to this idea of controlled pluralism is the existence in Belgium of a **trade union monopoly** on workplace representation. As will be discussed in more detail below, by law only trade unions can submit lists of candidates for social elections, and to be a candidate an employee must therefore be a trade union member. An important exception to this union monopoly is for managerial staff (see above).

Unions that are not affiliated to a 'representative organisation' do not have the above rights and therefore cannot put forward candidates for social elections. This makes it extremely difficult to set up an independent or alternative union. In some cases, other unions can be recognised as 'representative' for a particular sector if they organise at least 10% of workers and are the largest organisation that doesn't have an interprofessional structure.

This situation is called here ‘controlled pluralism’, but others went further and called it a ‘representation monopoly’ (Rigaux, 1987), union oligopoly (Humblet & De Wilde, 2007) or the ‘freezing’ of the ideological pluralism (Vandaele, 2003).

Non-affiliated candidates: dispute over Vlaams Belang candidates in 2008

On 17 January 2008, some 200 sympathisers and MPs of the Vlaams Belang filed a complaint with the Constitutional Court because they could not participate in the 2008 social elections. The law on social elections states that only "representative" trade union organisations can propose lists of candidates for non-executive employees. For managerial staff, other organisations and individual company unions can put forward candidates. The members of Vlaams Belang therefore felt discriminated against. However, the Constitutional Court did not accept the Vlaams Belang members' complaint, stating that the

representativeness criteria required of the unions were in line with international agreements and the Constitution. It ruled that the exception for managerial staff was reasonable and that the unions did indeed have the right to refuse membership (Van Hiel, 2009).

5.3.7. Ghent system

Another feature of the Belgian industrial relations system is the existence of a so-called 'quasi-Ghent system'.

A Ghent system refers to an unemployment insurance system that is subsidised by the state but administered by trade unions. This means that unemployment benefits are financed by the state social security system but administered and paid by a trade union (affiliated) organisation.

The current Belgian unemployment benefit system has the following characteristics

- It's **compulsory**, as workers have no choice whether or not to be insured against unemployment. Contributions are automatically deducted from workers' wages as part of social security contributions.
- Most **payments are made through trade unions**. Most unemployed workers receive their unemployment benefits through union-administered bureaucracies. Only the 'representative unions' (ACV-CSC, ABVV-FGTB, ACLVB-CGSLB) can set up payment services because they need at least 50,000 members.
- There is, however, a **state alternative**, as unemployed workers can also choose to receive their unemployment benefits through the state unemployment benefit agency (*Hulpkas voor Werkloosheidsuitkeringen, Caisse auxiliaire de paiement des allocations de chômage*).

The government reimburses the unions for their 'administrative costs'. The unions have a separate accounting system for these activities as a paying agency, which is controlled by the RVA/ONEM.

The Belgian system is a 'quasi-Ghent' system, in that unemployed workers can choose to receive their unemployment benefit in ways other than by joining a trade union. However, the trade unions dominate the administrative system, with over 80% of the unemployed choosing a trade union over the state alternative.

The Belgian Ghent system is an important resource for Belgian trade unions, as it provides a strong incentive for unemployed people to join a union. Often, these individuals remain union members even if they subsequently find employment (Vandaele, 2016). For example, the massive temporary unemployment that hit Belgium during the 2020 COVID closure led

to an increase in union membership, as many workers were unemployed for the first time in their lives and turned to the unions to manage their files.

According to the figures, the state HVW/CAPAC pays out just under 25% of all unemployment benefits, meaning that the three unions pay out the bulk of unemployment benefits in Belgium. According to Vandaele (2023), there are four reasons for the dominance of the unions. Firstly, there is the historical dominance, which continues to have an effect; secondly, the unions have a dense network of payment services, which ensures proximity for the unemployed; thirdly, the union can pay unemployment benefits slightly earlier than the state alternative; and fourthly, the general perception of service quality is higher with the union unemployment services. Accordingly, the majority of the unemployed in Belgium are trade union members.

Birth of the Ghent system in... Ghent:

In the 19th century, several trade unions tried to organise themselves against the risk of unemployment by setting up unemployment funds. These funds were small and some ran into financial difficulties, prompting the unions in Ghent to seek financial support from the city. This led to the creation of a municipal unemployment fund in 1901. The receipt of unemployment benefits was not dependent on union membership, but if the worker was a union member, it was the union that paid the communal subsidy (Vandaele, 2016). Other cities followed, and France established a Ghent system at the national level in 1905. Voluntary systems were soon established in Denmark and Norway, as well as in the Netherlands, Finland, Switzerland and Sweden. In 1920, the Ghent system was institutionalised at national level in Belgium.

Ghent system: not only in Belgium

Other countries with such a Ghent system are Denmark, Finland and Sweden, but in these countries the system is **completely voluntary**. In other words, workers can choose whether or not to be insured against unemployment through their trade union. At the same time, various measures ensure that the take-up of voluntary unemployment insurance is high. Firstly, a worker must contribute to the system for a certain period (usually one year) before he or she can receive benefits. Second, the contributions are only a small part of the financing of the unemployment funds and are tax deductible. Additional funding comes from taxes, so the total cost of being insured is low compared to the potential benefits. Third, benefits are relatively high (up to 90% of previous earnings) during the first periods of unemployment, which makes it attractive for people to join the system. All this results in more than 80% of workers being members of an unemployment insurance fund (Van Rie et al., 2011).

Another difference between the Nordic Ghent countries and Belgium is the body that **pays** the benefits. In Belgium, unemployment benefits are in principle administered by a separate unit of the trade union, but the payment is processed through the trade union. There are also no other structures that make the payment, apart from the state alternative. In the Nordic countries, on the other hand, the unemployment insurance funds are linked but separate from the trade unions, and there are also so-called 'open' funds which have a less clear link to a particular trade union.

5.3.8. Blue vs. white collar employees

"The difference between blue- and white-collar workers? Blue-collar workers shower after work, white-collar worker before."

In Belgium, there's not only a shower difference, but also a legal difference. The 1978 Employment Contracts Act defines the different types of contract: blue-collar worker (arbeider), white-collar worker (bediende), commercial agent (handelsvertegenwoordiger) and student work.

Blue, white, pink, green, grey and other collars

The term 'blue-collar' originated in the inter-war period, when manual workers often wore blue shirts and trousers to hide the dirt and grime. Administrative staff were not exposed to dirt and wore white shirts. Hence the distinction between manual workers (blue-collar) and more 'intellectual' workers (white-collar). While this remains the main distinction, some other categorisations have been found. For example, blue-collar workers are those who do manual work but require a high level of education or expertise (e.g. pilots, cooks, teachers or paralegals). Pink-collar workers are those in the (often female-dominated) care sector, such as nursing, social work and childcare. More recently, the term 'green-collar worker' has gained popularity and refers to those working in environmental sectors such as passive house architects, solar energy installers, etc.

Although these terms are often used, they are neither exhaustive nor exclusive. Many jobs will be difficult to fit into one colour, while others may fit into several categories.

The following text focuses mainly on the difference between manual and non-manual workers and the implications for social dialogue. According to the 1978 law, blue-collar workers (*arbeiders*) are those who do mainly manual work, and white-collar workers (*bedienden*) are those who do mainly intellectual work.

The distinction stems from a typical Taylorist view of work organisation, where some conceive the work and others do it. Some employees are the thinking 'heads' of the

organisation, while others are the executing 'hands'. Needless to say, such a strict division is a fiction and many (if not most) jobs require both intellectual and manual work.

The Belgian peculiarity is that a blue-collar worker received a different contract with very different conditions than his white-collar counterpart. The main differences related to the notice period, which was significantly shorter for blue-collar workers than for white-collar workers. There were also other issues relating to unfair dismissal, sick pay and general wage developments. The system was declared discriminatory by the Constitutional Court in 2011 and the two statutes had to be merged into one (*eenheidsstatuut*). A final (but far from final) step towards harmonisation was taken in 2013.

Trade union landscape: Because manual and non-manual workers had (and to some extent still have) different legal frameworks, trade unions in Belgium have organised themselves along these lines. In addition to the sectoral unions (see above), both ACV-CSC and FGTB-ABVV have a separate structure for white-collar workers. This means that within a company, workers of the same 'colour' can be members of different parts of the union, depending on whether they are manual or non-manual workers. This meant different union officers to deal with these members and sometimes different opinions.

The harmonisation of the two statutes requires a reform of the trade union landscape. Since there shouldn't be any distinction between manual and non-manual workers, they should be part of the same union. In practice, this means that many members of the white-collar sections of ACV-CSC (ACV Puls and CNE) and ABVV-FGTB (Setca-BBTK) will have to join the former blue-collar unions in their sector. And vice versa, some blue-collar workers in white-collar dominated sectors have to transfer to the former white-collar unions. This may seem like a simple exercise, but it is not. Membership means money, so discussions about this are sometimes sensitive.

Sociological differences: The very first study I had to do on trade unions involved focus groups with union representatives from different sectors. One of the questions was about the difference between white-collar and blue-collar workers. A few quotes may give you a fuller picture: "*White-collar workers are wimps*", "*You can never trust them [white-collar representatives] to take action, while blue-collar workers will always try to defend them*", "*They think they are smarter, but we never see them in the workplace"*. Conversely, many of the white-collar representatives described their blue-collar colleagues as "*bulls*", "*ruthless*", "*incapable of dialogue and negotiation*".

It is fair to say that even with the harmonisation of legal statutes and a reformed trade union landscape, differences between white-collar and blue-collar workers will continue to exist. Although recent research is scarce, older studies suggest that blue-collar workers are more

economically progressive than white-collar workers, while the reverse is true for ethical progressiveness (De Weerdt & De Witte, 2004; De Witte, 1993).

5.3.9. Young workers

Suggested reading: Pulignano, V., & Doerflinger, N. (2014). Belgian Trade Union and the Youth: Initiatives and Challenges. *Centre for Sociological Research (CeSO) Working Paper, CeSO/CAAE/2014-1*, 45.

> *""In Flanders, many youngsters are not members of trade unions. Insight in the reasons for their low participation is of vital importance for the future of the labour movement".*

This quote could be from yesterday, but it is from an article from 1988 (De Witte, 1988). Then, as now, trade unions were trying to find out *whether* they had a recruitment problem with young workers and *why*.

The fact that trade unions have been grappling with the 'youth' issue for some time is reflected in the existence of many special youth structures in trade unions, often including free membership. In most union decision-making structures, young members are guaranteed a number of special mandates. At the level of representation, there are special 'youth mandates' in workplaces with significant numbers of young workers.

A look at the data shows that across Europe, including Belgium, young people are slightly less likely to be union members than older workers. Nevertheless, more than 40% of working young people (< 24 years) in Belgium are members of a trade union (Walraven, 2017).

A number of studies have shown that the reasons why young people are/become members of trade unions are somewhat different, in that they attach more importance to the quality of union services than to the more social or ideological reasons ((De Witte, 1988; Pulignano & Doerflinger, 2014). In the words of one representative: "*Membership is seen as an insurance against what can go wrong; it could be described as the 'cheapest lawyer'*" (Pulignano & Doerflinger, 2014, p. 21).

It is often said that trade unions have a bad image, that they are only known for their strikes, etc. At the same time, figures from the European Social Studies between the 1980s and 2010 show that the proportion of young people (18-29 years old) who trust trade unions has steadily increased (Liagre & Van Gyes, 2012).

The main unanswered question is whether the fact that young people seem to be (slightly) less likely to join a union is an 'age' question or a 'cohort' question. In other words, is it just because they are young now that they are less likely to join a union and will join later, or will

this cohort of currently young workers also be less likely to join a union later, and will this consequently put pressure on the unionisation rate?

5.3.10. The legal personality question

The question of whether trade unions should have 'legal personality' is controversial. According to the anti-union voices, trade unions do not have legal personality and should get one very quickly. The pro-union voices fear that legal personality will open up a whole new front of anti-union agitation. The following paragraphs attempt to disentangle the situation and the debate without going into legal detail.

Firstly, legal personality is a legal construct that gives an organisation the ability to 'act like a person' in the legal arena. This means that a legal entity can own property, incur debts, enter into contracts and be sued in court. A group of people doing something can be a de facto association (*feitelijke vereniging*). This organisation has no legal personality, which means that any action taken by the organisation is actually taken by the members of the organisation. It is a specific member who has a property, makes a debt, does something and can be sued in court. The same group of people can be a non-profit organisation (*vzw*), which means they have legal personality and it is the organisation, not the individual, that has a property, owes a debt and can be sued.

Do trade unions have legal personality in Belgium? In fact, trade unions have many legal personalities. For many of the trade union functions, they have set up various non-profit organisations with full legal personality. For example, all trade union activities relating to the payment of unemployment benefits are carried out through organisations with legal personality.

At the same time, for many functions, the unions have 'legal capacity' (*rechtsbekwaamheid*) to conclude collective agreements, to demand their application in court, to act in the case of disputes in works councils (e.g. during social elections).

Why don't trade unions historically have (full) legal personality? Firstly, trade unions could have legal personality if they applied for it. So far, they have only done so for specific organisations carrying out specific trade union functions (Humblet and Rigaux, 2005: 18). There have been several moments in the development of the Belgian industrial relations system when legal personality for trade unions was considered or even planned. In the inter-war period, for example, the first plans to organise joint sectoral committees included the condition that trade unions should have legal personality. According to the legislators, this would make it easier to enforce the 'social peace clauses' in collective

agreements. However, the socialist trade union saw this combination of legal personality and social peace clauses as a clear violation of the right to strike (Luyten, 2011, p. 4).

Why is legal personality important? Why are some parties so much in favour of giving trade unions legal personality, and why are others against? There are at least three points of contention:

- **Accountability, transparency and money versus power**: According to advocates of legal personality, the issue is one of transparency and accountability. Without legal personality, unions are not obliged to share or publish their financial situation. This usually includes the strike fund. According to those in favour of legal personality, this means that unions are not transparent about their financial accounts. Opponents argue that allowing access to the strike fund would have a negative impact on the balance of power and their bargaining position. Two more recent initiatives to give trade unions legal personality emerged in the aftermath of a fraud scandal in the Antwerp section of the BBTK (see box below). Legal personality could also mean that unions would have to publish a list of members, including their full names. On the one hand, this could show the employer the relative strength/weakness of the union, but it could also contribute to targeted personal anti-union efforts by the employer. Last but not least, having a legal personality could open up the possibility for the courts to dissolve the organisation (Humblet & Rigaux, 2005, p. 18).
- **Damages vs. right to strike:** For those who oppose full legal personality, the fear is that this would allow employers and citizens to sue the union for economic damage caused by strikes or demonstrations. As this damage can be quite substantial, they fear that they could be financially ruined after a few court cases and that this could have a negative impact on their ability to use their power.
- **Illegal forms of action vs. right to strike:** Currently, if illegal actions (e.g. violence, deprivation of liberty) take place during strikes or demonstrations, the union as an organisation cannot be held accountable, only the individuals. Those in favour of legal personality argue that it would encourage the union to take better control of its actions and exercise a kind of policing function. In fact, one of the most recent proposals to give trade unions legal personality emerged after several hostage-taking incidents in 2003 and 2004 (at Sigma, Electrabel & Cockerill Sambre). Those opposed to legal personality fear that the actions of some of their members would be uncontrollable and could damage the organisation.

Golden parachutes at BBTK Antwerp

In 1987, three trade union leaders of the BBTK Antwerp decided to give themselves a 'golden parachute' of over 12 million Belgian francs (about 300,000 euros). As a result of internal power struggles, they took early retirement and were therefore compensated. In addition to the fact that the total sum is quite large, part of the money came from a 'black fund' financed by members' contributions that the local union didn't report to the national union.

5.3.11. Why do people join union?

This question is something of a holy grail for both pro- and anti-union observers. If anti-union activists could find out exactly what drives people to form or join a union, they could take away that reason as a powerful antidote to unionism. And if unions knew exactly why people join, then targeted action could lead to stronger unions overall.

The literature distinguishes between ideological and instrumental reasons for joining a union:

- **Ideological** reasons refer to the idea that workers join a union because they believe in the value of trade unionism and that it contributes to a better society.
- **Instrumental** reasons are more pragmatic and refer to the idea that a union provides certain services or benefits (e.g. information, help, higher wages) that the employee is interested in.
- **Social ties** are also identified as a factor. Coming from a family where union membership is a given may be a good reason for sons and daughters to join unions (Klandermans, 1986; Van de Vall, 1963) .

A study by Swyngedouw et al. (2016) attempted to identify some of the reasons why people join trade unions in Belgium, and some of the results can be seen in table below. The majority of those who joined a union said that they did so because the union provided services and best protected the rights of employees. The specific service of the union paying unemployment benefits (see Ghent system) was important for just under half of respondents. Family ties and strike action were considered important by far fewer members.

Table 5.5: Motivations to join a unions.

Reason	**% 'important'**
Because of the provided services	72.5%
Because the union pays the unemployment benefit	47.9%
Because of the contribution to a solidaristic and democratic society	34.7%
Because I'm from a certain family	26.3%
Because of a strike action	12.5%
Because the union protects best the rights of the employees	61.5%
Source : Swyngedouw et al. (2016)	

5.4. Employers

Reading tip: Arcq, E., & Blaise, P. (2007). *Les organisations syndicales et patronales* (Vol. 68). CRISP.

While there is a lot of research and knowledge about workers' organisations, this is not the case for employers' organisations. What follows is an overview and introduction to the main employers' organisations active in the Belgian social dialogue. This is done by first briefly discussing the history of employers' organisations and then highlighting some characteristics of employers' organisations in Belgium. This is followed by brief profiles of the various organisations active at national and sectoral level. Some organisations are also very active at regional level, but these will receive less attention.

5.4.1. Short history

At the beginning of the 19th century, there were no employers' organisations because they were also subject to the prohibition of association (Arcq & Blaise, 2007). The first function of employers' coalitions was to resist the coalition of sellers of primary goods and resources or buyers. By joining forces, they mainly wanted to protect the prices of their goods, but also to coordinate wage setting in order to limit competition on working conditions.

The first coalitions were local and sectoral. However, as the number of workers' organisations grew, these coalitions began to unite to defend their interests at other levels.

Some of the coalitions were formed after collective disputes with workers and are in fact employers' associations that organise 'strike funds' to support employers facing strike action. In this way, by organising strikes at company level, the unions encouraged the creation of employers' organisations and the regulation of working conditions at a higher level.

In 1895, several of these associations came together to form the Comité Central du Travail Industriel, which became the Comite Central Industriel in 1913. Sectoral employers' organisations began to appear around 1900. Most of the sectoral organisations were set up in the inter-war period, as was the Flemish-based Vlaams Economisch Verbond (1926). After the Second World War, the joint committees were further developed and new sectoral employers' federations were created.

5.4.2. Main characteristics

High level of organisation: As with trade union organisations in Belgium, employers are very likely to be members of employers' organisations. As shown in figure below, around 8 out of 10 employees in Belgium work in companies that are members of an employers'

organisation. This is not the case in many other European countries. One of the main reasons for the high rate of unionisation is the practice of extending collective agreements (lee later). As collective agreements concluded by employers' organisations generally apply to all employers, there is little incentive not to be a member, as the employer cannot influence the bargaining strategy.

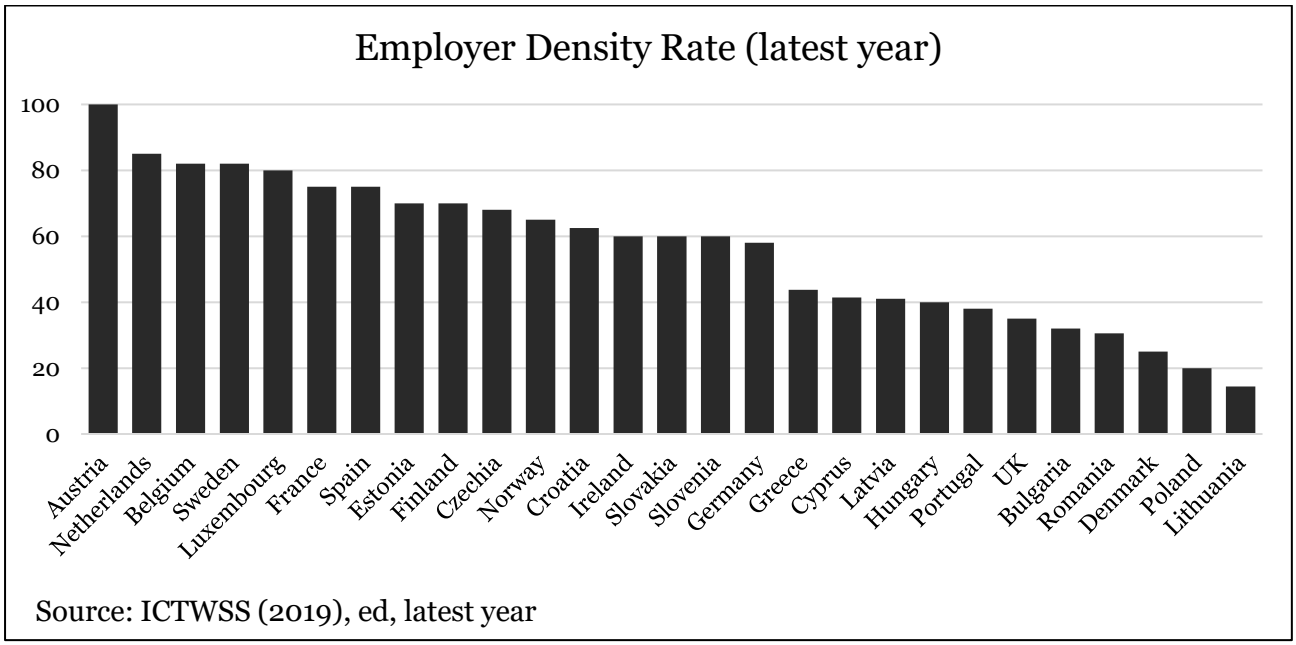


Figure 5.4 - Employer's organization rate (source: ICTWSS, 2019)

No pluralism: Unlike on the employee side, there is no pluralism among employers' organisations in Belgium. The main differences between organisations are based on company size and region of activity.

Importantly, there are still employers' organisations with a more ideological profile. ETION used to be called VKW (Verbond Katholieke/Kristelijke Werkgevers - Catholic/Christian Employers' Association) and thus has its roots in the Christian movement.

Diverse functions: Like workers' organisations, employers' organisations tend to combine several functions: (1) lobbying, (2) study services, (3) negotiating with trade unions and (4) providing other services to members.

5.4.3. National Organisations

5.4.3.1. VBO-FEB (Verbond van Belgische Ondernemingen – Fédération des Entreprises de Belgique)

The Federation of Belgian Enterprises (VBO-FEB) is the largest employers' organisation in Belgium. It is an umbrella organisation of more than 50 sectoral employers' federations

representing more than 50,000 companies in the private sector. In terms of employment, the VBO covers around 75% of total employment in the private sector in Belgium.

It was created in 1971 by the merger of the Fédération des Industries Belges (FIB) and the Fédération des entreprises non-industrielles de Belgique (FENIB).

The VBO-FEB has three types of members: ordinary members, applicant members and corresponding members. The full members of the FBE have equal representation on the board of the VBO-FEB, which also includes representatives of the regional interprofessional organisations (VOKA, UWE and BECI).

The VBO-FEB's ideological focus is on the protection of entrepreneurial freedom and thus on limiting the role of the state. The VBO-FEB is a very active social partner in consultation and negotiation committees. It has mandates in about 150 different institutions.

5.4.3.2. UNIZO (Unie van Zelfstandige Ondernemers)

UNIZO was founded in 2000 as the successor to the NCMV (Nationaal Christelijk Middenstandsverbond). It is the largest organisation of small and medium-sized enterprises, mainly in the Flemish region. It organises more than 100,000 small and medium-sized enterprises in Belgium. Its main functions are to unite employers of small enterprises (including networking activities), to provide information and advice and to defend the interests of its members.

5.4.3.3. UCM (Union des Classes Moyennes)

The UCM is the French-speaking organisation of small and medium-sized enterprises. It organises more than 20,000 small and medium-sized enterprises. It has an affiliated social secretariat and a family allowance payment office. Its main tasks are lobbying at all levels, providing information and training on issues of interest, providing services such as the payment of family allowances, networking between members and participation in social dialogue institutions.

5.4.3.4. Boerenbond

The Boerenbond is a Catholic organisation of agricultural employers in the Flemish region, but also of people living in rural areas. It has around 15,000 members. Its mission is to defend the interests of its members, provide training and information, offer services such as advice and assistance, represent its members in various institutions and promote networking and cooperation.

5.4.3.5. FWA-Fédération Wallonne de l'Agriculture

The FWA is the leading organisation of agricultural employers in Wallonia. It has around 7500 members and aims to represent, inform and defend the interests of agricultural employers.

5.4.3.6. UNISOC

Unisoc is the Union of Social Profit Enterprises (Unie van Social Profit Ondernemingen - union des entreprises à proift social) and is a Belgian employers' organisation. It organises organisations such as hospitals, health services, care services, socio-cultural organisations, etc. Its main tasks are to support its members with services and to defend their interests in various institutions at different levels. It has only been a member of the National Labour Council and the Central Economic Council since 2009.

5.4.3.7. VOKA

VOKA was founded in 2004 as a result of the merger of the Vlaams Economisch Verbond (VEV, 1926) with eight chambers of commerce. It is a regional employers' organisation with around 18,000 members.

VOKA is a special case in that it is not represented in the main social dialogue bodies at national level, such as the National Labour Council or the Central Economic Council. It is, however, represented in various regional social dialogue institutions such as SERV (Sociaal-Economische Raad van Vlaanderen).

Social dialogue according to VOKA

In 2016, VOKA published it's vision of social dialogue for 2025. VOKA's main proposals focus on the promotion of direct participation and communication with employees, the possibility for companies to operate outside the scope of statutory joint committees, the merging of works councils and health and safety committees in medium-sized companies, the introduction of full legal personality for trade unions, the adaptation of protection for employee representatives and the introduction of a right to strike (Gavel, 2016; VOKA, 2016).

5.4.4. Sectoral employer organizations

Reading tip:

- Ballegeer, Daan. "'Wanneer We Fuseren? Simpel: Als Hij of Ik Doodvalt.'" *Trends*, December 21, 2015. https://trends.knack.be/economie/ondernemen/wanneer-we-fuseren-simpel-als-hij-of-ik-doodvalt/article-normal-637669.html.

While it's difficult to find good research material on employers' organisations at national level, this is certainly the case for organisations at sectoral level. Part of the problem is the large number of existing organisations. According to an article by Daan Ballegeer in Trends of 2015, there are about 163 employer organisations that are recognised as social partners (Ballegeer, 2015). The majority of them have less than 5 employees and can therefore be considered as micro-organisations.

Some of the larger sectoral employers' organisations are

- **AGORIA**, which covers about 13 sectors and is the result of a merger in 2000. The sectors covered are aerospace, automation, automotive, electrical, mechanical and ICT. It has about 1,900 members.
- **Essenscia**, which covers the chemical and life sciences sectors. It has about 750 members.
- **FEBELFIN** is an employers' organisation for the financial sector in Belgium. It's the result of a merger of several smaller organisations in 2003 and is a federation of five associations covering about 235 financial institutions.
- **FEDUSTRIA** is the employers' organisation for the textile and woodworking sectors in Belgium. It is the result of the merger of Febeltex and Febelbois in 2006. It has almost 2,000 members.
- **Comeos** is the Belgian employers' organisation for commerce and distribution.
- FEVIA is the employers' organisation in the food sector with around 700 members.
- **Confederatie bouw** (Construction) organises around 16,000 employers in the construction, energy and environment sectors.
- **Federgon** is the federation of personnel service providers and private employment agencies.
- **Assuralia** is the employers' organisation in the insurance sector.

These sectoral organisations provide services to their members, training and lobbying. In terms of social dialogue, they act as employers' representatives and negotiate collective agreements in joint committees at sectoral level.

In some cases, sectoral organisations also provide support for **collective bargaining** at company level, as workers can ask experts to help them negotiate (e.g. Essenscia).

The first employers' federation: the Belgian Brewers

The first national employers' organisation in Belgium (according to some) was the General Association of Belgian Brewers, founded in 1869, which quickly attracted more than 200 brewers.

5.5. The state

Although most social dialogue in Belgium is bipartite (between employee and employer representatives), the 'third party', the state, plays an important role in the following ways: (1) as a major employer; (2) as a regulator of social dialogue through legislation; (3) as an enforcer of rules and through mediation and arbitration; and (4) through general economic and political policies (Williams, 2020, p. 24). The first three will be discussed in more detail below.

5.5.1. The state as an employer

A first role of the state in social dialogue is as an employer. The table below shows that around one in four employees in Belgium works in the broadly defined 'public sector'. This includes people working in local, regional and national government institutions, the army, the police, state-owned enterprises, but also education staff and employees of non-private hospitals (mostly linked to universities). A narrower focus shows that around 14% of employees in Belgium work as civil servants (*ambtenaren - fonctionnaires*).

Table 5.6 - Total and public sector employment

	Employees 2018/4	**% of total**
Total employees	4,037,512	
Public sector	1,082,666	27%
Public servants	549,206	14%
Bron: RSZ (2018)		

It is clear that the state intervenes in the social dialogue as the employer of these workers. And, as we shall see, the public services have different rules, working conditions and social dialogue mechanisms.

5.5.2. Regulating and facilitating social dialogue and the economy

In addition to its role as a direct employer, the state also plays a role in social dialogue in the private sector. It does so mainly through legal measures and, more specifically, by establishing social dialogue institutions and regulating their functioning. Most of the institutions discussed here have been established by laws passed by the Belgian Parliament, such as

- the 1948 law on the organisation of companies
- the 1952 law on the National Labour Council
- the 1965 law on labour regulations
- the 1968 law on joint committees and collective labour agreements

- the 1996 law on well-being at work
- the 1998 law on restructuring

More recent legal initiatives regulating social dialogue are

- The competitiveness laws (1989, 1996, 2017), which heavily regulate wage bargaining in Belgium by specifying how the wage norm should be set (maximum wage increase).
- The Peeters Law (2018) on adaptable and flexible work, which should increase flexibility at company level, provided that there are company agreements on these issues

There is a clear trend that the state, which used to intervene mainly to regulate the framework of bipartite social dialogue, is increasingly trying to intervene in the content of bipartite negotiations. The laws on the 'wage norm' are the main examples of how the state tries to limit the autonomy of the social partners in setting wages.

The state, through the public administration, has an important role to play in facilitating social dialogue at various levels. As such, the Belgian Federal Public Service for Employment, Labour and Social Dialogue (FOD WASO/ SPF ETCS) is the competent federal administrative service.

Another important role of the state is to make collective agreements at sectoral and national level "generally applicable" by giving them the force of law (see later).

Autonomy of the social partners vs. the primacy of politics

In Belgium, the social partners have a great deal of autonomy in their field. They can make agreements, which are generally subject to the rule of law. The idea is that the social partners, employers' and employees' representatives, should be able to decide on the rules and regulations for their field or sector without government intervention. This 'autonomy of the social partners' is even enshrined in law at EU level (Article 151 on the functioning of the European Union).

However, this autonomy of the social partners has always had a difficult relationship with another principle, the 'primacy of politics'. This concept states that it's the (democratically elected) politicians who should ultimately decide. Other parties, such as NGOs, trade unions and lobbies, lack democratic legitimacy and shouldn't have a decisive say in decision-making.

In recent years, this autonomy has come under serious pressure. The main example of this is the 'Competitiveness Act', which imposes a statutory ceiling on collectively agreed wage

increases. This law restricts the freedom of the social partners to freely agree on wages or working time.

5.5.3. Enforcing the rules and intervening in conflicts

The State, through the inspection services (part of the FOD WASO/SPF ETCS) and the labour courts, also plays an essential role in enforcing the procedures and substantive rules and regulations that shape and result from the social dialogue.

It does this by various means:

- the organisation of labour courts
- the work of the inspection services
- the work of social mediators

5.6. Institutions

The next section looks at the institutions of social dialogue in Belgium. The focus will be on the national, sectoral and company levels (see table below). The regional level will not be covered in this course.

In addition to a division by level, Belgian social dialogue institutions are also (generally) divided by the areas they cover: economic matters, social matters and matters relating to health and safety. The distinction between **economic** and **social matters** is not always very clear: economic matters relate to employment, the economy as a whole, tax policy and more. Social matters relate to everything concerning social dialogue, work organisation, personnel policy, etc. **Health and safety issues** obviously relate to all policies concerning risk factors for the physical and mental health of workers. This includes prevention policies, risk assessment, reintegration policies, etc.

At national and sectoral level there are separate institutions for social and economic matters. At regional and company level, however, there are institutions that cover both social and economic issues.

In most cases, social dialogue institutions are **bipartite**, meaning that there are only representatives of workers (trade unions) and employers. In other words, the state is not represented. In the regional bodies, however, the state is involved. These are therefore **tripartite** social dialogue institutions.

Table 5.7 - Social Dialogue institutions in Belgium

	Economic matters	**Social matters**	**Health and safety**
National	Central Economic Council, CRB-CCE	National Labour Council, NAR-CNT	High council for health and safety at work – HRPBW-CSPPT
	Group of 10		
Sectoral	Special Advisory Committee	Joint Committees – PC-CP	
Regional	SERV, CESRW		
Company	Works Council – OR - CE		Health and safety committee – CPBW - CPPT
	Union Delegation		

5.6.1. National level

5.6.1.1. Group of 10

Ironically, the first institution is not really an institution, being an 'informal meeting', but a very important one. The Group of 10 brings together all the leaders of the main social partners. It is an informal meeting and therefore less constrained by formalism and rules. It is in the Group of 10 that the most important political agreements are negotiated and concluded. These agreements are not formal collective agreements, but framework agreements which are then implemented in different ways, but mostly through collective agreements in the National Labour Council.

Curiously, the Group of 10 consists of **11 members**. 5 are from the trade unions (2 ACV-CSC, 2 ABVV-FGTB and 1 ACLVB-CGSLB), 5 are from the employers' side (2 VBO-FEB, 1 UNIZO, 1 UCM, 1 Boerenbond). In addition to these members, there's an 11th person, the president. Traditionally, the chairman is the president of the VBO-FEB. The meetings of the Group of 10 are also organised on the premises of the VBO-FEB.

Every two years the Group of 10 meets to negotiate an **inter-professional agreement**. Such an agreement is the main political compromise for the two years, including a compromise on the maximum wage increase. These agreements are then translated into technical collective agreements in the National Labour Council.

It's not uncommon for the Group of 10 to fail to reach agreement. As the table below shows, there were several periods in the 1970s and 1980s when no agreement could be reached. More recently, no agreement was reached between 2011 and 2016.

The table also shows the wide range of issues covered by these interprofessional agreements. While pay is obviously important, social partner agreements also cover issues such as paid leave, minimum wages, working time, training, the organisation of the trade union delegation, the pension system, etc.

Table 5.8 – Inter Professional Agreements

Period	Topics
1960-1962	Paid leave, child allowance, minimum wages
1964-1965	Paid leave
1966-1968	Paid leave, working time, pensions
1969-1970	Employment, working time (43-hour week), national holidays, pensions
1971-1972	Pensions, parental leave, union training, working time
1973-1974	Working time (41-hour week), paid leave, severance pay

1975-1976	Employment, working time (40-hour week), parental leave, minimum wages, union delegation
1977-1980	No IPA's
1981-1982	Wage moderation and working time
1983-1985	No IPA's
1987-1988	Employment, wage increase, working time (38-hour week)
1989-1990	Pension, protection of representatives, part-time and shift-work.
1991-1992	Minimum wage, unemployment benefit, training, pensions, parental leave
1993-1994	Paid educational leave, active labour market policies.
1995-1996	Employment, childcare, career interruptions, part-time work
1997-1998	No IPA
1999-2000	Wages, reduction of employer contribution, gender equality
2001-2002	Training, employment, wages, working time
2003-2004	Manual vs. non-manual work, employment
2005-2006	No IPA
2007-2008	Innovation, employment, minimum wages, educational leave, pensions
2009-2010	Time-credit, employment, reduction of social security contributions
2011-2016	No IPA's
2017-2018	Wages, restructuring, mobility, work organisation
2019-2020	Wage norm, minimum wages, early pension, mobility (*not signed by ABVV-FGTB)*
2021-2022	Minimum wages, pensions, overtime
2023-2024	Overtime, early pensions

Source: Martens, Van Gyes, Van der Hallen (2001), NAR (2020)

2011-2012: no agreement on harmonization.

After long negotiations, the social partners managed to agree on a draft interprofessional agreement. One of the issues discussed in the agreement (apart from wages, of course) was the status of manual and non-manual workers in Belgium. This is a very controversial issue, because harmonising the two statutes necessarily means that one group (white-collar workers) will see some of its benefits and rights reduced. As a result, the white-collar trade unions of the Socialist Confederation (BBTK-SetCA) refused to give their OK to the agreement. Finally, the ABVV-FGTB and the ACLVB-CGSLB refused to sign the draft agreement on the workers' side.

2015-2016: FGTB refuses to sign

After the massive wave of strikes against the Michel I government in autumn 2014, the Group of 10 almost reached an agreement for 2015 and 2016. After intense negotiations, a draft agreement was reached on 30 January 2015. However, the agreement was not a Group

of 10 agreement as only 8 of the 10 partners agreed. ABVV-FGTB stated that it would not support the IPA because it didn't compensate enough for the suspension of automatic indexation implemented by the government (Vande Keybus, 2015).

2019-2020: pending

Given that the economy was doing quite well, the unions were expecting a wage norm of more than 1.1%, more like 1.5%, when negotiating the 2019-2020 interprofessional agreement. However, when the Central Economic Council published its report, the maximum wage norm was set at 0.8%. This was clearly unacceptable to the unions. And this was a direct consequence of the Michel I government, which tightened up the law on competitiveness by including an additional safety margin of 0.5% and a correction margin of 0.5%.

By organising a national strike on 13 February, the unions were in effect calling on the social partners to break the law and agree a wage increase higher than the legal limit. Interestingly, a few days later the Central Economic Council revised its estimates and said that a wage increase of 1.1% would be possible. This was quickly agreed by the Group of 10.

Nevertheless, the ABVV-FGTB refused to sign the inter-professional agreement, claiming that the minimum wage adjustment was below the norm. The government implemented the wage norm while the issue of minimum wages remained under negotiation.

5.6.1.2. Central Economic Council

The Central Economic Council (CRB -CCE) is a national advisory body on socio-economic issues. It is bipartite and does not involve the government. For example, it has to advise on the functioning of works councils, mainly on economic and financial information.

It can set up special advisory committees (see below) for particular sectors.

Most importantly, the CRB-CCE is also involved in the preparation of a **biennial report on wage growth** in neighbouring countries. For this purpose, it prepares a technical report that determines the maximum wage increase for the next two years.

5.6.1.3. National labour council

The National Labour Council (CNT/NAR) is a bipartite body set up in 1952 with a threefold role: to advise, to negotiate collective agreements and to act as a joint committee of last resort.

The National Labour Council is made up of 26 members (with 26 alternates) who are representatives of the representative workers' and employers' organisations, namely:

ABVV/FGTB, ACV/CSC, ACLVB/CGSLB for the workers and VBO/FEB, UNIZO, UCM, Boerenbond, Féderation Wallone de l'Agriculture and UNISOC for the employers. In addition to these members, there is an impartial president appointed by the government, four vice-presidents (two from each side) and a secretary.

This means that the National Confederation of Professional and Managerial Staff (NCK-CNC) is not a member of the National Labour Council. There is, however, a consultative committee for managerial staff.

One of the powers of the CNT/NAR is to advise the government or parliament on 'any general social question', which is usually related to labour or social security issues. On an annual basis, the CNT/NAR gives around 50 opinions a year. In most cases, these advices are supported by all members of the CNT/NAR, while sometimes the opinion is 'divided' (Nationale Arbeidsraad, 2019).

Next, the CNT/NAR has the power to negotiate and conclude **national collective agreements,** which are usually made generally applicable by the government. This means that the CNT/NAR essentially has the power to legislate for the private sector. These collective agreements must be approved by at least 90% of the votes (Cox et al., 2011). The collective agreements of the National Labour Council are recognisable because they are numbered. These **'numbered agreements'** are important because they define the legal rules on many issues.

For example, the CNT/NAR collective agreements define the **minimum wage** that must be respected. This means that the minimum wage is not based on a law passed by parliament, but on a compromise between the social partners, which is then passed as a law by parliament. Although this is obviously an important issue, few people in Belgium are paid according to this 'inter-professional' minimum wage, as most sectors (joint committees, see below) have set higher sector-specific minimum wages. However, this inter-professional minimum wage serves as a reference and protects those workers who are not covered by a joint committee or who have weak bargaining power in their joint committee.

In addition to wages, national (numbered) collective agreements have been concluded on the organisation and rights of the trade union delegation (No 5), national holidays, collective bonus plans (No 90), teleworking (No 85), minimum wages, eco-cheques, privacy at work and many other issues.

On all these issues, it's not the government or parliament that decides the policy, it's the social partners who negotiate, come to an agreement and propose it to the government or parliament, which (usually) just implements it.

One reason for this is that the social partners are the real experts in their field, they know the reality and are better able to come up with solutions. Secondly, the policy on this issue is always a compromise between capital and labour, ensuring that there are no dramatic shifts to one side or the other.

The agreement on early pensions in 2015.

In October 2014 a new government was formed as a coalition of N-VA-MR-CD&V and Open VLD with Charles Michel as Prime Minister. The centre-right government immediately introduced several socio-economic measures that were not welcomed by the labour movement, including a temporary suspension of the indexation system and a two-year wage freeze. The result was a wave of strikes, including a national demonstration, several provincial strike days and a general strike.

Despite this, the social partners met in early 2015 to start negotiations on the next interprofessional agreement. The government immediately set a deadline for the negotiations, telling the social partners that if there was no agreement by 31 January, the government would decide on Belgium's so-called "wage handicap" compared to neighbouring countries. On 30 January, the social partners (excluding the FGTB) reached a draft agreement that includes very limited wage increases (0.5%) for 2016. However, the agreement also includes several changes to the early retirement system (brugpensioen). Essentially, it stated that 'older' unemployed people would be exempted from the obligation to actively look for work.

However, the government did not want to validate this part of the inter-professional agreement. It changed the provision (from passive availability to adapted availability) and reduced the duration of the collective agreements on early retirement.

While some of the social partners did not consider the changes significant (VBO-FEB), others were irritated by the mere fact that the government did not take over their agreement as it stood (e.g. UNIZO). The confederations were also unhappy that the government was changing part of an agreement that had been difficult to achieve. They therefore rejected the government's changes and announced a national demonstration.

5.6.1.4. High council on health and safety at work

The High Council for Health and Safety at Work (*Hoge Raad voor Preventie en Bescherming op het Werk - Conseil supérieur pour la prévention et la protection au travail*) is a bipartite institution that advises on all matters relating to health and safety at work. In recent years, it has played an important role in the development of policies on psychosocial risks.

Suddenly very relevant: Whereas before it was difficult to know what was going on in the High Council for Health and Safety at Work, the COVID-19 pandemic of 2020 suddenly showed its value and relevance. The Council developed a generic guide to help companies return to work after a lockdown. This guide provided examples of measures that could be taken to ensure a safe return to work and was used by many companies as a basis for finding local solutions.

5.6.1.5. Conclusion

The three institutions for social dialogue at national level are all bipartite. The National Labour Council is undoubtedly the most important, as it has the power to conclude collective agreements, which generally have the force of law. The powers of the other two institutions are mostly limited to consultation. Above these three formal institutions, there is a fourth informal body where the most important high-level agreements are reached.

The bipartite nature of the social dialogue at national level means that the social partners have considerable autonomy. From time to time, however, this autonomy clashes with the wishes of the government.

5.6.2. Sectoral level

In Belgium, the sectoral level is one of the most important levels of social dialogue and collective bargaining. There are several reasons for this: historical, political, economic and ideological:

- **Historical**: during the inter-war period and the Second World War, communist and radical workers tended to organise mainly at company level. By concentrating collective bargaining at the sectoral level, the moderate social partners sought to weaken the radical company unions.
- **Political**: By negotiating wages and conditions at the industry level, many of the potential conflicts of interest at the company level are 'evacuated' to a higher level. If wages are set at industry level, the social partners at company level can concentrate on other, less conflictual issues (such as work organisation).
- **Economical**: by setting wages and working conditions at sectoral level (and making them binding on all companies in the sector), companies compete on a level playing field in terms of working conditions (see below). Similarly, by organising vocational training or fringe benefits at sectoral level, risks and costs are spread across all companies in a sector.
- **Ideological**: The socialist union ABVV-FGTB was mainly in favour of economic participation and control, but through sectoral policies. According to them, co-determination at company level (for example through employee representation at board level) would lead to the working class thinking like capitalists. Control of the economy should therefore be organised at sectoral rather than company level.

The main institution of social dialogue at sectoral level is the joint committees. There are also some special consultative commissions for purely economic issues.

5.6.2.1. Special advisory commissions

In economic matters, special advisory commissions (*bijzondere adviescommissie - commissions consultative spéciale*) can be set up. Such commissions are intended to provide economic advice for a specific sector. Only a few such commissions exist. Sectors covered by such commissions are construction, leather production, chemicals, textiles, paper, food, distribution and hotels and restaurants (Arcq, 2008).

5.6.2.2. Joint Committees – paritaire comités

Much more important are the **joint committees** (*paritaire comité - comité paritaire*). They are the cornerstone of the Belgian system of social dialogue. Through the joint committees, collective agreements are made that set specific minimum wages by sector, type

of job and tenure (baremic grid) and working time. In addition, most joint committees set up training and social security funds to provide services to workers and companies in a particular sector.

A. Sector

The idea of sectoral social dialogue is to define similar working conditions for similar employees working in companies with similar activities. A first question is therefore: how to define which companies have similar activities?

This question will be dealt with on an ad hoc basis. The establishment of a joint committee (and therefore the definition of a specific sector) can be done on the initiative of the Ministry of Labour or at the request of one of the organisations involved. Such an initiative must include the name and the scope (which activities) of the joint committee (FOD WASO, 2021).

There are currently about 100 joint committees and more than 50 subcommittees, with more than 5,000 mandates for almost 3,000 people.

The joint committees in Belgium all have **a number** to indicate their activity and competence. There are the 100s, the 200s and the 300s. The joint committees with a number between 100 and 199 generally cover manual workers (*arbeiders*). The 200's cover white-collar workers (*bedienden*) and the 300's are mixed joint committees, which have jurisdiction over both blue-collar and white-collar workers in the sector. This means that some companies have to follow the rules of two different joint committees if they have a lot of manual and non-manual workers. This is the case, for example, in the chemical and petroleum sectors.

Every **company** needs to know which joint committee it belongs to. This is very important and can lead to heated discussions and even social conflicts (see the illustration of Carrefour below). It is not always clear which joint committee a company should belong to, especially if it has a variety of activities. Companies can ask the Ministry of Labour for advice on the correct joint committee. However, the labour court has the final say on which joint committee a company should belong to.

One company, many joint committees

It is not uncommon for employees in a single company (economic-technical unit) to belong to different joint committees. In many industrial companies there are at least two joint committees: one for manual workers and one for non-manual workers. But sometimes there are more: in a woodworking company, some manual workers belong to joint committee 125.03 for woodworking, while others are covered by joint committee 126 for wood and

upholstery. The white-collar workers are covered by Joint Committee 200, which is the auxiliary committee for white-collar workers.

Harmonising

There has long been a legal distinction between blue-collar workers (*arbeiders*) and white-collar workers (*bedienden*). However, in 2011 the Constitutional Court of Belgium declared that several differences between the legal statutes (e.g. severance periods) were contrary to the principle of non-discrimination. As a result, a process of harmonisation has begun, which should eventually lead to a 'single statute' (*eenheidsstatuut*). This has serious consequences for the joint committees, which are divided according to whether they apply to manual and/or non-manual workers. The harmonisation of the joint committees is/will be a difficult undertaking, as each joint committee has different acquired rights.

While the aim is for companies with similar activities to be members of the same joint committee, some sectors are too small or not organised enough to have their own joint committee. For these, **auxiliary joint committees** are set up. Over time, these auxiliary joint committees become quite populated. For white-collar workers, the auxiliary committee (PC 200) currently covers almost 500,000 employees.

By way of illustration, the table below shows the names and number of employees covered by the 20 largest joint committees in terms of the number of workplaces covered.

Table 5.9 - Joint Committees

No Joint Committee	Name NL	Name EN	Number of jobs
200	Aanvullend PC Bedienden	Auxiliary joint committee for white-collar workers	482,043
330	Gezondheidssector	Health sector	280,309
322	Uitzendarbeid -dienstencheque	Temporary agency work	265,651
302	Horeca	Hotels-Restaurants-Cafes	145,106
124	Bouw arb.	Construction - blue collar	141,052
111	Metaal arb.	Metal - blue collar	114,942
201	Zelfst. kleinhandel	Independent retail	95,002
140	Transport & logistiek	Transport & logistics	90,214
207	Chemie bed.	Chemistry - white collar	84,934
319	Opvoedings- en huisvestingsinrichten	Education and housing institutions	76,560
209	Metaal bed.	Metal - white collar	69,045
118	Voeding arb.	Food - blue collar	65,126
202	Kleinhandel voedingswaren	Retail of foodstuff	58,454
311	Grote kleinhandelszaken	Large retail	56,582
149	Metaalaanverwante sectoren arb.	Metal related sectors - blue collar	52,722
337	Aanvullend non-profit	Auxiliary joint committee for non-profit	51,895
226	Internationale handel en logistiek bed.	International trade and logistics	50,460
329	Socio-culturele sector	Socio-cultural	50,047
310	Banken	Banks	49,690
121	Schoonmaak	Cleaning	48,649

Source: FOD WASO (2021)

B. Composition

As the name suggests, the joint committees are made up of an equal number of representatives of workers and employers. The Ministry of Labour appoints the members of the joint committees for a period of four years.

In addition to these members, there is a president and vice-president, who are usually social mediators from the Ministry of Labour, and one or more secretaries, who are civil servants from the Ministry of Labour.

C. Competences

The powers of the joint committees are as follows: (1) to supervise the conclusion of collective agreements, (2) to prevent and settle disputes, (3) to advise the government or other institutions, and (4) to carry out any other function assigned to them by law (Humblet & Rigaux, 2005, p. 40).

The most important of these is undoubtedly the power to **conclude sectoral collective agreements**. Every two years (the odd years), after the negotiations of the interprofessional agreement, the sectors continue the negotiations for their sector in the joint committee. This usually covers wage increases, working time (holidays), pre-retirement arrangements, trade union delegation issues and baremic wages. These sectoral agreements set minimum working conditions and rights for all workers in the sector.

As this can be very complex, unions have generally produced 'sector books' which summarise all the rules, obligations and rights that apply to workers in a particular sector.

Baremic wages: One of the most important issues covered by sectoral collective agreements is baremic wages. For all functions in a particular sector, there are defined minimum wages according to the tenure or experience of the employee. This means that for each sector a number of occupations have to be defined and a wage grid has to be developed. One of the ideas behind this system of sectoral minimum wages is to organise a level playing field between companies in the same sector and thus exclude competition based on wages. According to this reasoning, companies can and should compete, but they should do so on the basis of productivity, innovation or service, not on the basis of employment conditions.

Wage increases: Every two years, after setting the wage norm (the maximum wage increase), the joint committees negotiate the minimum wage increase in their sector (see section on collective bargaining). This increase usually takes the form of a percentage increase in real wages, but more and more sectors are introducing extra-legal benefits (e.g. meal or environmental vouchers) to 'optimise' the wage increase.

Wage indexation: In relation to wages, the joint committees also negotiate and agree the automatic indexation of wages in the sector. In general, this means that the wages are adjusted to inflation according to a certain method. Contrary to popular belief, there is no general system of wage indexation, nor is there a single system of indexation. In general, two different types of systems are agreed in sectoral agreements: (1) a periodic adjustment of bare-metal wages and (2) an adjustment of bare-metal wages each time the 'pivot index' exceeds the 2% threshold. As wage indexation is part of the sectoral negotiations, there are still some joint committees that don't have a system of automatic wage indexation.

Working time: At sectoral level, the full-time working week can be set or revised. For example, in several sectors the statutory full-time working week of 38 hours has been revised to 37 hours (logistics) or 35 hours (banking, insurance, wholesale distribution, etc.). In other sectors, additional leave is provided for older workers. If a shorter working week becomes widespread in the majority of sectors, the legislator could follow by making it a legal requirement for all workers in all sectors.

Other issues that are often negotiated at sectoral level are compensation for commuting, bicycle allowances, pre-pension, overtime pay, time credit system, atypical working hours, trade union delegation and many more.

Baremic wages & wage grids

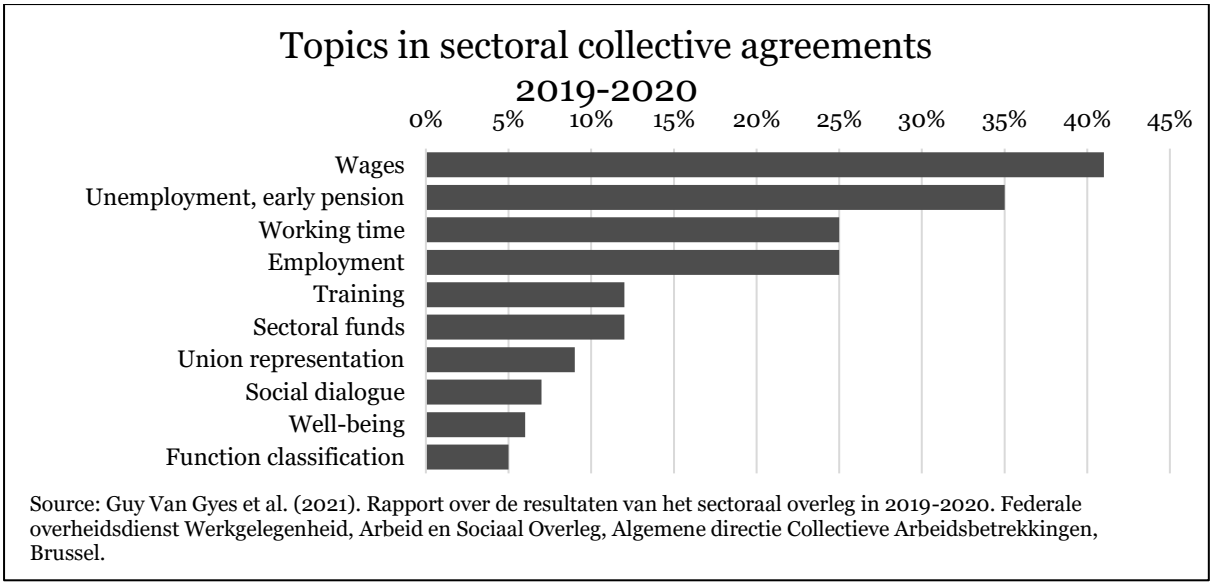
One of the most important issues in collective bargaining is the wage grid or baremic wages.

In a company or sector, the pay system is usually divided into different pay scales, which in turn are linked to different functions. Typically, these pay scales are further divided into different 'steps', often related to length of service and/or evaluation.

Let's take an example. In an organisation you may have a number of roles such as administrative assistant, junior project assistant, senior project assistant, project manager and policy expert. These functions are then linked to a certain salary scale. For example, the administrative assistant and junior project assistant will be linked to pay scale 1, the senior project assistant and policy expert will be linked to pay scale 2 and the project manager and policy expert will be linked to pay scale 3. Next, there may be different steps within these scales, with different salaries linked to the experience of the employee in that role.

Such pay scales bring a degree of transparency, fairness and predictability to companies' pay policies. At the same time, they reduce the flexibility of employers to set wages at will and make some progression automatically dependent on seniority rather than performance.

Every two years, the Ministry of Labour provides an overview of sectoral bargaining, including the issues covered by sectoral agreements. The figure below shows that wages, unemployment and early retirement schemes, working time and employment regulations are the most important issues in sectoral bargaining.



Source: Guy Van Gyes et al. (2021). Rapport over de resultaten van het sectoraal overleg in 2019-2020. Federale overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg, Algemene directie Collectieve Arbeidsbetrekkingen, Brussel.

Figure 5.5 - Topics included in sectoral collective agreements (% agreements with a specific topic)

D. Jurisdiction

Who is covered by collective agreements made by joint committees? In principle, all employees of an employer who is a member of a particular joint committee are covered by the agreements of that joint committee. This means, for example, that a cleaner in a metal company will be covered by the agreement for the metal industry and not by the agreement for the cleaning industry. However, if the metal company decides to outsource (part of) the cleaning work, the cleaners will be working in a company covered by the joint committee for the cleaning sector and may have different working conditions than the cleaners employed directly by the metal company.

However, some joint committees cover a specific group of workers. For example, professional sportsmen and women are covered by Joint Committee 223 wherever they work (Humblet & Rigaux, 2005, p. 41).

As it is virtually impossible (and pointless) to define all possible sectors in Belgium, there are three 'auxiliary' joint committees for those workers who do not clearly belong to any of the other joint committees. These are numbered 100, 200 and 300 and over time they cover a fairly large number of workers and companies.

5.6.2.3. Sectoral training funds

Vocational training is valued by both employers and employees, but there is a collective action problem because the employer who invests in vocational training may see the jobs (and his investment) go to another company. For this reason, some joint committees set up training funds. A percentage of workers' wages is deducted and used to finance training

courses for all workers in the sector (Wouters & Denys, 1998). The training funds are managed jointly by the employers' and employees' organisations.

The basis for the training funds is the 1988 interprofessional agreement in which employers and employees agreed to spend 0.18% of the companies' gross wages on training and employment promotion initiatives. Where no sectoral training fund exists, the contributions are transferred to the national employment fund (CEDEFOP, 2008).

While most of the training efforts are directed at employees working in the sector, some training funds also invest in training students or new entrants (e.g. in the construction sector).

Training funds in practice

The SERV (Social and Economic Council of Flanders) lists 38 different sectoral training funds on its website.

Cevora is the training fund of Joint Committee 200, which, according to its website, covers more than 55,000 companies and 450,000 employees. A small part (0.23%) of the total wage mass of this sector is reserved for the social fund (see below) that finances CEVORA. This fund is managed by the social partners in the sector, namely the unions (ACLVB, ACV Puls, CNE and BBTK) and the employers (VBO, UNIZO and UCM). Through this fund, employees of large and small companies can receive vocational training,

Co-valent is the training fund for manual and non-manual workers in the chemical, life sciences and plastics sectors (joint committees 116 and 207). Like CEVORA, it is managed by the social partners and provides training, career guidance and subsidies for company-organised training. It is financed by automatic payroll deductions of 0.2%.

5.6.2.4. Sectoral social security funds

It is not uncommon for a joint committee to set up a social security fund (*fonds voor bestaanszekerheid, sociaal fonds*) through a collective agreement. These funds generally provide additional social benefits to employees in the sector. These social benefits are generally related to early retirement mechanisms, 13th month pay, costs related to the training of trade union representatives and the trade union bonus. There are currently around 180 sectoral social security funds, which are jointly administered by employers and unions.

The idea of these funds is to collectivize some sector-specific risks and costs. The money in these funds comes from a percentage of workers' contributions.

Sectoral social funds in practice

The **PC 200 Social Fund** is the social fund for the employees of Joint Committee 200. As mentioned above, it is financed by an automatic contribution of 0.23% of the companies' payroll and is responsible for financing the sectoral training fund (Cevora), financing measures to promote employment and additional compensation for time credits.

The **Social Fund PC 127** is the social fund for the fuel distribution sector and is responsible for the payment of supplementary social benefits (e.g. 13th month, supplementary compensation for early retirement, pension bonus and compensatory days), training for employees in the sector and human resources consultancy for employers.

5.6.2.5. Importance of joint committees

The sectoral level is generally considered to be the most important level of social dialogue in Belgium. In practice, however, the importance of the sectoral level varies. Van Gyes et al. (2018) distinguish six types of coordination between the company and sectoral levels (see table below). It can be seen that the sectoral level is less important in some sectors with highly capital-intensive work (e.g. the metal sector), where wage aspects represent only a minor cost. Conversely, in sectors that are labour intensive (e.g. security, cleaning, beauty, hospitality) and less open to international competition, the sectoral level (the joint committees) plays a much more important role in setting wage and other standards (No 2).

Table 4.5.10 - Importance of sectoral level

No	Category	Key examples
1	Horizontal coordination between joint committees via pattern bargaining.	Social sectors (health, social work, social profit)
2	Collective agreement at the sector level accompanies by a limited number of company agreements in large companies	Joint committees 106, 118, 119, 121, 124, 130, 140, 201, 226, 303, 304, 314, 317, 327. Construction, retail, hospitaliy, graphical, transport, arts, hairdressers, cleaning security etc.
3	Sectoral collective agreements followed by additional agreements in the largest companies	Garages, textile, electricity, food retail, large retail
4	Sectoral agreements which provide a framework for company bargaining	Non-ferro and metal manufacturing
5	Sectoral agreements acting as a substitute if there are no company level agreements	Petro-chemical, chemical, auxiliary committees for blue and white-collar workers (100 & 200). Banking
6	Only company agreements.	Steel and paper industry
Source: Van Gyes et al. (2018, p. 76)		

While the quantitative importance of company-level agreements is increasing, there is no general trend towards decentralisation of social dialogue at the company level. Such trends can be observed in some specific sectors, mainly due to changing employer positions (Van Herreweghe et al., 2018).

Importance of a joint committee: Carrefour 2008

As mentioned above, the joint committee is very important because it determines a lot of the working conditions of the employees. And there are a lot of differences between different joint committees, depending on the strength of the unions in that joint committee. These differences can lead companies to try to fall under a particular joint committee in order to give workers lower wages and worse working conditions.

An example of such 'joint committee shopping' happened in 2008 at Carrefour in Bruges. As you may know, Carrefour has small shops, but also some hypermarkets where they also sell small furniture, electronics, etc. Normally, such hypermarkets are part of Joint Committee No. 312 for shops with more than 50 employees.

However, for the Bruges hypermarket, Carrefour set up a separate structure called 'Bruges Retail', which would fall under the 202.01 joint committee for small distribution shops with more than 20 employees. This joint committee is intended for small shop owners, but as the Bruges hypermarket will be managed by a franchise, Carrefour has chosen the 202.01 joint committee.

However, this joint committee has much lower standards than the PC 312. This would mean that employees in this supermarket would earn less than their colleagues in other hypermarkets and that it would be much easier for them to stay open on Sundays. According to some sources, wages would be around 25% lower because of this difference in the joint committee (Capron, 2011).

The unions wanted to defend the workers' rights, but also make sure that this wasn't used as a precedent for other supermarkets.

On 22 October 2008, around a thousand trade unionists blocked the opening of the new hypermarket, and on Saturday, 6 hypermarkets went on strike, which Carrefour tried to break through court orders. On 30 October 2008, 14 hypermarkets went on strike.

In the end, the Minister of Labour (Sophie Du Bled) appointed a social mediator and on 13 November a draft compromise was drawn up. The hypermarket would continue to operate under Joint Committee 202.01, but with some of the benefits of Joint Committee 315, such

as a 35-hour week, no interrupted working hours, a minimum of 18 hours for part-time workers and the right to organise a trade union delegation. Carrefour also had to sign that Bruges would remain an exception.

What this example shows is, firstly, that employers try to use the joint committee to employ workers under worse working conditions. Secondly, too many joint committees for similar activities can lead to conflict and unfair competition.

5.6.3. Regional level

Reading tip:

- Ongena, O., (2011) Geschiedenis van het regionaal overleg. In C. Devos, M. Mus, & P. Humblet, *De toekomst van het sociaal overleg* (pp. 13–25). Academia Press.

The social dialogue institutions at regional level will not be discussed here. Suffice it to say that they are mostly tripartite and generally cover both social and economic issues.

5.7. Company level

Reading tip:

- Cox, G., Humblet, P., & Rigaux, M. (2011). Een polaroid van het sociaal overleg (voor dummies). In C. Devos, M. Mus, & P. Humblet, *De toekomst van het sociaal overleg* (pp. 27–43). Academia Press.
- Humblet and Rigaux (2005). Belgian Industrial Relations Law. Intersentia (pp. 44-66)

While the cornerstone of Belgian social dialogue is undoubtedly the sectoral level with the joint committees, it is the social dialogue institutions at company level that are closest to the employees and require the most work from HR staff.

This section focuses on the company level by first discussing the different social dialogue institutions and actors that are relevant for social dialogue at company level. However, the section goes a little further and also discusses some issues relating to employee representation at company level.

The table below gives an overview of the different institutions that may be present at company level. These are discussed in more detail below. The main difference is between the health and safety committee and the works council on the one hand and the trade union delegation on the other

In reviewing all the actors in industrial relations at company level, Van Gyes (2015) concludes that the main idea of the Belgian system is to favour a **constructive but vigilant** trade unionism at company level. Constructive, as the trade unions and employee representatives are supposed to think together with company management about how best to organise work and manage 'human resources'. But vigilant, because the union also has a role to play in monitoring the application of social legislation, making demands on working conditions and defending workers against management.

For the constructive element, institutions such as works councils and health and safety committees are set up. At the same time, the vigilant element is guaranteed by the trade union delegation and the trade union monopoly on representation in companies.

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Table 5.11 - Company level institutions

	Health and Safety Committee	**Works Council**	**Union Delegation**
Composition	Parity	Parity	Unitary (union)
Management representatives	Management appointed	Management appointed	*Not present*
Workers' representatives	Elected through social elections	Elected through social elections	Mostly appointed by the union
Topics	Health and safety	Financial and Economic situation Work organization, HR	Collective and individual interests and conflicts
Competences	Information Consultation Co-decision	Information Consultation Co-decision (work rules & financial controller)	Negotiation Assistance Information Consent
Frequency of meetings	Monthly	Monthly	Variable
Employee thresholds	50	100	Variable
Regulation	Law	Law	Collective agreement

Another general observation is that the basic compromise is clearly reflected in the structures of social dialogue at company level (see the section on the Social Pact). On the employer side there is a clear recognition of trade unions, and on the employee side participation is limited to information and consultation. There is only co-determination on a limited number of issues.

Before discussing 'company level' institutions, it is useful to reflect on what a company really is. What are the limits of a company or enterprise and what is the value of purely legal structures for social dialogue? In order to prevent abuse by employers through the creation of a multitude of small separate legal entities, Belgian legislation uses the concept of an 'economic-technical unit' or 'technical operating unit' (*technische bedrijfseenheid*). These concepts designate that part of the enterprise (or group of legal entities) which has a certain degree of autonomy in its functioning. The boundaries of what is (and what is not) part of such a technical unit are based on economic (legal entity) and social (common work experience, common personnel, common management) criteria, but are mostly defined by consensus between the social partners.

5.7.1. Health and safety committee

Further reading/watching: The Belgian ministry of labour (FOD WASO) made a nice 20 minute video about the health and safety committee. It has Dutch and French subtitles, unfortunately not English. You can watch it here: https://www.youtube.com/watch?v=-6XM9IU7_GY&t=1s

Basic characteristics:

- Parity composition: employers and employee representatives as members
- In companies with 50+ employees
- Staff representatives elected through social elections
- Information, consultation and a bit co-decision
- Competences mostly related to the health and safety
- Should meet once a month
- Regulated by law (1952, later updated by 1996, 1999)

The health and safety committee (*Comité voor Preventie en Bescherming op het Werk - Comité pour la Prévention et la Protection au Travail*) is a consultative body that informs and consults employee representatives on all matters relating to health and safety at work, including psychosocial risks at work. In Belgium, a health and safety committee can be set up in all companies with 50 or more employees.

5.7.1.1. Composition

The Health and Safety Committee is a joint body (parity composition), i.e. it is made up of employee and employer representatives, with the employer delegation never being larger than the employee delegation. The two delegations have the right to vote:

- The employee representatives are elected every four years in social elections and can be elected from three different electoral colleges: manual workers, white-collar workers and young workers (see part 5.8.3.3). The number of employee representatives depends on the number of employees in the company, starting with a minimum of 4 and going up to 22.
- The employer representatives are chosen by the company management from the first two hierarchical levels.

In addition to these two delegations, several other experts may attend the H&S meetings in an advisory capacity. These include the internal prevention adviser (*interne*

preventieadviseur), the environmental coordinator (*milieucoördinator*), the prevention adviser/occupational physician (*preventieadviseur*), the confidant (*vertrouwenspersoon*) for psychosocial prevention issues and other invited experts.

The **secretariat** of the H&S Committee is provided by the internal prevention advisor. The tasks include attending H&S meetings, providing advice, sending out the agenda for meetings, drafting minutes, drafting opinions and informing staff. The prevention adviser should be able to carry out his duties independently and therefore cannot be both an employer and employee representative.

The **chair** of the H&S committee is an appointed member of the employer delegation. This person must be able to make decisions on behalf of the management.

Employer delegation needs to have decision making power.

One medium-sized family-owned company had a very negative view of social dialogue and trade unions. They tried in various ways to 'keep the union out'. In the end they were forced to organise social elections and set up a health and safety committee and a works council. But the owner saw the meetings as a waste of time and refused to attend. The HR director attended the meetings but had little decision-making power. Any agreement reached at the meetings had to be discussed with the owner afterwards. This was a serious obstacle to constructive social dialogue. The law therefore provides that the employers' delegation present in the social dialogue institutions should have decision-making power.

5.7.1.2. Meetings

H&S meetings should be organised at least once a month. Extraordinary additional meetings can be organised at the request of at least one third of the employee representatives.

The meetings should take place on the company's premises and it is the employer's responsibility to provide the necessary resources (meeting rooms, meeting materials) for the meetings.

Meetings should take place during company working time and should be counted as working time for the employee representatives. Even if the meetings take place after working hours, the time spent in the meetings will be counted as normal working time.

Finding a date and time

Finding a good time to meet may seem easier than it is in reality. In a medium-sized metalworking company, employees work in different shifts. This means that the employee representatives are not all in the company at the same time. Often meetings are arranged

when not all the employee representatives can be present, which creates a certain amount of suspicion about management's intentions to keep certain people out of the meetings.

In most cases, the workers' (and employers') delegations will organise **preparatory meetings** some time before the H&S meetings and **debriefing** meetings afterwards. At these meetings, the two delegations meet separately to discuss the issues they want to raise at the meetings and to agree the positions they will take. These meetings should take place during working time and employees can be assisted by their trade union officer (*vakbondssecretaris*) during these meetings.

While the law gives some guidelines on the organisation of the health and safety committee, virtually all health and safety committees also adopt **internal rules** (*huishoudelijk reglem*ent) to clarify issues relating to competences, meetings, deadlines, voting procedures, pre- and post-meetings, the presence of experts and other issues relating to the day-to-day functioning of the health and safety committee.

5.7.1.3. Competences

The thematic competences of the health and safety committee relate to 7 areas of well-being at work (wet welzijn, art. 4 §1):

1. Safety at work
2. Protection of employees' health
3. Psychosocial aspects of work
4. Ergonomics
5. Industrial hygiene
6. Embellishment of the workplace (*verfraaiing van de arbeidsplaatsen*)
7. Environmental measures that affect the previous topics

In terms of decision-making power, the H&S committee's competences relate to (1) information, (2) consultation, (3) control and (4) co-decision.

- The **information** competences cover all issues related to health and safety policy in the company. This means risk assessments, the development of prevention policies and policies to eliminate risk factors in the workplace.
- The **consultation** competences generally relate to the same issues, and the H&S Committee therefore has the power to give prior advice on any policy that may affect the well-being of employees.
- The **control** competences relate to checking that the legislation on health and safety at work is correctly applied in the company, the functioning of the internal or external prevention services, the annual action plan on health and safety at work, etc.

- The H&S committee also has a certain amount of **co-decision-making power** with regard to the internal rules of the committee itself, the appointment of the prevention adviser, the appointment of trusted third parties and the anti-bullying policy.

In the absence of a works council, an H&S committee can take over some of its responsibilities.

Psychosocial terror at work: France Telekom

Psychosocial well-being is important, and company policies can contribute to it or be responsible for its absence. In 2019, the CEOs of France Telekom (now Orange) were sentenced to prison and heavy fines for their responsibility in terrorising staff, indirectly responsible for 35 suicides.

The events took place between 2006 and 2010, when France Telecom was undergoing several restructurings. A total of 22,000 employees had to leave the company and, in the words of the CEO, this could be done "by the door or by the window". What followed was a policy of psychological terror in which employees were given unattainable targets, frequently moved from office to office and city to city, given no work and asked several times a day if they wanted to leave the company. This policy was specifically designed to put pressure on employees, resulting in many depressions, some people committing suicide by jumping out of windows or even setting themselves on fire.

5.7.1.4. Informing the staff

As the health and safety committee is a representative body, it's important to keep staff informed about what's going on at these meetings. Therefore, at least eight days before the H&S Committee meeting, staff should be informed of the time, place and agenda of the meeting. Similarly, eight days after the meeting, staff should be informed of the decisions taken by the H&S Committee. It is the responsibility of the employer to provide the necessary means for this communication to the staff.

5.7.1.5. Relevance of the H&S committee

The health and safety committee is often seen as the little brother or sister of the works council. The place where more trivial issues are discussed, as opposed to works councils where company policy and complicated financial data are discussed. In the office environment, the risk of serious accidents at work seems to be lower. However, health and safety at work is still a major concern for both manual and non-manual workers.

Firstly, the number of accidents at work is higher than you might think. In 2016, there were almost 12,000 serious accidents at work, and this number is not decreasing over the years.

According to an analysis by the ACV, the number of accidents at work per 1,000 employees is currently higher than in the 1980s (ACV, 2018). Obviously, the number of (serious) accidents is much higher for manual workers than for non-manual workers.

Second, according to SERV's "workability" monitor, psychosocial risks are on the rise. While the likelihood of a serious physical accident is relatively low in office jobs, there are 'psychosocial' risks related to stress, work pressure, harassment and bullying at work.

The health and safety committee has the competence to work on preventive and other measures on all these issues. At a time when there is much talk of burn-out epidemics, the work of the health and safety committee can play an important role.

Health and safety committees in practice:

After the COVID-19 pandemic in 2020, health and safety committees played an important role in ensuring that everyone could return to work in good health.

In a distribution company, the annual report of the internal prevention services showed that testing of electrical equipment had been reduced as a form of cost-cutting. The report also showed an increase in safety incidents with customers. Through the health and safety committee, employee representatives put pressure on management to ensure the necessary testing and measures to prevent safety incidents with customers.

In one metal company there was no H&S committee for a long time. In 2012, for the first time, candidates stood for the social elections and an H&S committee was organised. This also meant a much more serious H&S policy in the company, including an annual action plan for health and safety at work and risk assessment (Van Eyck, 2017).

In a paper and cardboard company, employee representatives on the health and safety committee requested the installation of a refrigerator to preserve employees' lunches. After ten years and the arrival of a new HR director, this request was finally granted.

5.7.2. Works council

Basic characteristics:

- Parity composition: employers and employee representatives as members
- Chair: employer; Secretary: employee
- In companies with 100+ employees
- Staff representatives elected through social elections
- Information and consultation
- Competences mostly related to the company organization and financial information
- Should meet once a month
- Regulated by law (1948 + royal decrees)

The works council (*Ondernemingsraad - Conseil d'entreprise*) is a joint committee at company level that aims to promote cooperation and consultation between employers and employees (Humblet & Rigaux, 2005, p. 45). It is similar to the health and safety committee in terms of its operation, composition and powers. It is mainly an information and consultation body that discusses the economic and financial situation of the company, work organisation, working conditions and human resources management policies.

The operation and establishment of works councils is governed by the law of 20 September 1948, but many of their powers are conferred by collective agreements.

5.7.2.1. Composition

A works council is a joint body, i.e. it has both employee and employer representatives, and the employer representation can never be larger than the employee representation:

- Employee representatives are elected every four years in social elections. Candidates for the works council can be elected from four electoral colleges: manual workers, non-manual workers, young workers and managers.
- Employer representatives are appointed by management from the top two levels of the company hierarchy. As with the health and safety committee, it is important that the employer delegation has the power to make decisions that are binding on the employer.

Management can appoint the **chair** of the works council. The chair must be a member of senior management (the first two levels of management). This person must have decision-making power and therefore the authority to speak on behalf of the employer.

The **secretary** is appointed by the employee representatives. The secretary is usually elected by consensus. If there is no consensus, the internal rules of procedure should set out how the

secretary is appointed. As a general rule, the list of candidates with the most votes will appoint the works council secretary.

The secretary's role is to send out invitations to works council meetings, collect all the documents relating to the works council, take the minutes of the meetings and carry out any other tasks assigned by the internal rules.

Filling chairs

In a industrial company, the workers representatives have eleven mandates in the works council. Because the management did not want to be in the minority, they also insist on having eleven employer representatives in the room. They therefore summon managers to sit into the works council meetings, without having any kind of contribution. The fact that there are so many people in the room does, however, impair fluent communication and discussion.

5.7.2.2. Establishment

Works councils must be set up in the private sector, including industry, services and non-profit organisations such as private universities, private schools, hospitals, etc. (Humblet & Rigaux, 2005, p. 46).

In fact, there is no obligation to set up a works council, but there is an obligation to hold social elections to set up a works council once a company has at least 100 employees. As will be discussed later (social elections), in some scenarios there may be no works council at all in companies with more than 100 employees.

The legal details of which workers should be counted as employees and how, over what period of time workers should be counted and what an 'undertaking' really is will not be discussed here. The interested reader can easily find this information in Humblet and Rigaux (2005, p. 47).

5.7.2.3. Meetings

The works council should have a regular meeting at least once a month.

Extraordinary meetings are possible on the initiative of the employer or at least a third of the employee representatives. The employer should call an extraordinary works council meeting in the event of restructuring, a significant drop in company turnover, incidents such as fires or significant changes in the structure of the company (e.g. mergers).

In large companies with more than one technical business unit (*technische bedrijfseenheid*) and therefore more than one works council, an interseat (*interzetel*) meeting can be

organised to bring together the staff representatives of the different works councils in one meeting.

As with the health and safety committee, the works councils draw up internal working rules (*huishoudelijk reglement*) to facilitate the meetings. These rules determine who the chairman and secretary are, how the agenda is set, when and where the meetings are held, how decisions are made, etc. Note that the law prescribes a number of obligatory topics that should be included in any internal rules of procedure for works councils.

Agenda setting: from fixed to variable

There is a great deal of variation in what works councils discuss and how agendas are set. In some companies the agenda for works council meetings is very predictable, structured and fixed. Half the meeting is basically taken up by management giving detailed information about the company's performance, changes in staffing etc. Often it is only in the final 'any other business' item that employee representatives are able to discuss some current problems or issues.

In other works councils the agenda is very flexible and is usually set by the employee representatives, who ask for information on issues and put topical issues on the agenda for ad hoc discussion with management.

Works council meetings should be held on company premises and it's the responsibility of management to provide the necessary resources for these meetings. Time spent at works council meetings is considered normal working time and should be remunerated as such.

Minutes of the meetings should be taken by the works council secretary. The minutes should include the agenda items discussed, the proposals made during the meeting, the questions asked, a summary of the discussions and the decisions taken. The idea of the minutes is that other employees can follow the discussions without attending the meetings. In other words, they should be able to see what was said during the meeting, not just the final outcome of the discussions.

Minutes are also important documents in the event of disputes and can be used by the labour courts. Inspectorates will often look at these minutes to assess whether the works council is operating in accordance with the regulations.

In most companies works council meetings are preceded by **preparatory** meetings and followed by **debriefing** meetings, where the employer and employee delegations meet separately. These meetings are essential to prepare the positions, agree who will say what at the meeting and follow up decisions taken.

Experts can be invited to works council meetings in accordance with the internal rules of procedure. The employer can object to the presence of an expert invited by the employee delegation, but only twice. After that a conciliation procedure is organised. During the preparatory meetings, employee delegates can invite experts without the employer delegation's agreement.

5.7.2.4. Competences

The works council's **responsibilities** relate to (1) information, (2) consultation, (3) codecision and (4) management of social programmes. On most issues the works council's competence is limited to information and consultation, with co-decision only on a few issues. It is not easy to get a complete overview of all the specific competences, as they can be found in different sources. The main sources are the Works Councils Act of 20 September 1948 and CLA 9, but many other laws and CLAs give works councils additional powers and tasks. The list below is therefore not exhaustive:

The **information and consultation** powers relate mainly to: economic and financial information (see below), employment policy, working conditions, training, human resources policy, induction, recruitment criteria, new technologies, job classification, structural changes, bankruptcy, night work, paid training leave, teleworking, video surveillance, time credits and other matters.

The **co-decision** competences are more limited and concern (among others)

- the internal rules of the works council,
- the company's work rules (*arbeidsreglement*),
- annual holidays,
- the appointment of the company auditor
- the planning of educational leave
- the planning of career breaks and parental leave,
- the criteria for collective recruitment and dismissal
- the choice of outplacement agency,
- the protection of remuneration,
- the supplementary pension scheme.

The works council can also help to manage social programmes in the company. This could be, for example, a company pension fund.

The works council should be **informed** and **consulted before** management takes decisions. It can give advice and the employer should respond as to how it will (or will not) follow the advice.

Chairing a works council without understanding a word

In a Belgian subsidiary of a Japanese multinational, the Japanese CEO attended every works council meeting as chairman. However, he did not understand a word of the discussions because he does not understand Dutch.

5.7.2.5. Economic and financial information

One of the specific responsibilities of the works council is economic and financial information. The idea is that employees should have a clear, detailed and up-to-date picture of the economic, financial and social situation in their company. So the works council regularly receives this information and discusses it at length.

There are four types and times for this works council duty:

- Firstly, at the beginning of the term of office of the new employee representatives, the company should provide the employees with **basic information** about the company and discuss this in a meeting of at least 8 hours.
- Second, every year the company should give the works council the **annual economic and financial information** and discuss it at a special works council meeting of at least eight hours.
- Thirdly, every three months the company should provide the works council with **quarterly economic and financial information**, which should be discussed at a special works council meeting with sufficient time for in-depth discussion.
- Finally, the company should provide the works council with **occasional information** when there's an important event or decision to be made, which should be discussed at a special works council meeting with sufficient time to discuss the information in detail.

The basic economic and financial information is quite detailed and includes information on the company's statute and structure, competitive position, productivity, personnel costs, investment policy, state aid, research and development, organisation chart, etc. The annual economic and financial information includes an update of the basic information, the company's financial statements, the report of the Board of Directors, the CEO's remuneration policy and the innovation policy.

The annual economic and financial information includes an update of the basic information, the annual accounts of the organisation, the annual report of the Board of Directors, the remuneration policy of the CEO and the innovation policy.

In all these meetings, the company's **auditor** plays an important role (see below).

Economic and financial information: In a distribution company the works council meeting on economic and financial information is well prepared. The employee representatives discuss the information with the trade union expert and prepare over 50 questions. The company's auditor is always invited to the preparatory meeting to talk to the employees alone. However, in order to do this, the company had to change its contract with the auditing company (Vandormael, 2019).

5.7.3. Union delegation

Basic characteristics:

- Unitary composition: only employee representatives
- Right to request depending on sectoral agreements
- Union representatives (mostly) appointed by trade union, depending on sectoral agreement
- Negotiation, information, communication and some information and consultation
- No fixed meeting schedule
- Regulated by collective agreement (cao n. 5 + sectoral agreements)

The trade union delegation (*vakbondsafvaardiging*[11] – *delegation syndicale*) is very different from the works council and the health and safety committee. It is the **'demanding'** institution in the company, the institution that makes demands, for example for better working conditions, and negotiates with management. And if that fails, it can take industrial action.

There are a lot of differences with the health and safety committee or the works council: the legal basis, the composition, the mission, the competences, etc.

Unlike the works council and the health and safety committee, there is no law on trade union delegation, only a national collective agreement (CLA 5, 1971) and sectoral collective agreements. This collective agreement sets out the framework for the operation of the union delegation. Unlike many other collective agreements, it has not been made generally applicable. It therefore applies only to the signatory parties, which are essentially the main employers' organisation and the trade unions.

5.7.3.1. Establishment

The national collective agreement is just a framework that needs to be fleshed out in sectoral agreements. These set out how a union delegation should operate in a particular sector.

One consequence of this is that there is **no general rule** about where and when a union delegation can be set up. Most industry agreements specify the threshold at which employees can request the establishment of a union delegation. This is different from works councils

[11] In dutch, reference is also frequently made to the *syndicale delegatie, vakbondsdelegatie* or *syndicale afvaardiging*.

and health and safety committees where the initiative for social elections must come from management.

The thresholds for setting up a trade union delegation vary but are never higher than 50 employees (the threshold for setting up a health and safety committee). In some cases the threshold is 20 employees and in a limited number of sectors it is even 10 employees or less (e.g. the graphical sector).

5.7.3.2. Composition

The members of the union delegation are **only employees**. Employer representatives are not members of the union delegation, although they are members of the works council and the health and safety committee. So the union delegation is not a joint body.

The number of mandates is also set by collective agreement, as is the appointment of the members of the union delegation. In general, members are **appointed** by the union officer.

The term of office for union delegates is usually the same as for the works council or health and safety committee. However, it is important that the union officer **can withdraw** the mandate of a particular person at any time. While the mandate of an employee representative (works council or health and safety committee) is linked to elections and therefore to the person, the mandate of the union delegation is in the hands of the union.

United or divided

There is no legislation on the composition of union delegations, they are set by collective agreement. In some companies there is a single union delegation for all types of employees, while in others there are separate delegations for manual, non-manual and middle management.

5.7.3.3. Competences

The **responsibilities** of the union delegation are also quite different from those of the works council and the health and safety committee. Firstly, the union delegation is **not** an information and consultation body. It is a representation and negotiation body.

According to CLA No 5, the union delegation is responsible for: industrial relations in the company; negotiating company collective agreements; applying social legislation (collective labour law, work rules and individual labour law). This list is not exhaustive.

In addition to these general responsibilities, the union delegation has the right to be **consulted** by the employer, to **support** individual employees in discussions with management, to **distribute information** to staff through written or oral communications

or through staff meetings, and to seek the **assistance** of the union officer in the event of a dispute.

The union delegation also has some important powers in that it has the right to **authorise** overtime due to a temporary increase in workload, the use of temporary agency workers and the posting of workers.

In principle, the union delegation is responsible for defending the interests of union members in the workplace. But what about non-union members? Strictly speaking, the union delegation has neither the duty nor the competence to represent and defend them. However, as union membership is secret, this is difficult to check.

Where there is no health and safety committee or works council, the union delegation can take on some of these roles and responsibilities[12].

The core or the periphery of social dialogue

As there is no prescribed agenda or frequency of meetings for the union delegation, the role of this institution varies greatly from company to company. In some companies the union delegation is the real core of the social dialogue and has (very) frequent meetings with and without management. In others it is rarely or never used and exists only on paper.

In a chemical company, the union delegation is where the real work of representation takes place. They have weekly meetings in the presence of the union officer and the employer. This is where the real discussions and negotiations take place, while the works council and the health and safety committee are used more for information purposes.

In an automotive company both management and employees agreed that the social dialogue was not working properly. An external mediator advised to organise more frequent meetings with the trade union delegation. They now meet every week, which means that problems can be dealt with quickly. This has greatly improved the meetings of the works council and the health and safety committee and the overall climate of social dialogue in the company.

In a wood processing company there is an active works council and health and safety committee, but no trade union delegation. The employer refuses to negotiate at company level and only complies with the minimum industry standards.

[12] De 'afgeleide bevoegdheden'

In a large metalworking company, the union delegation meets with management every day. Personal and collective issues are discussed every day. Work organisation issues are also discussed and agreed. In this way the union delegation is involved in the day-to-day organisation of work, which ensures a degree of social peace that does not exist in similar companies.

The trade union delegation in practice:

Flexibility: In a large banking company, the works council adopted a charter on flexible work organisation by introducing flexible working hours to improve the work-life balance of employees. The charter was agreed in the union delegation and later implemented in the work rules and adopted by the works council (Van Eyck, 2018).

Welcoming new employees: In one textile company, the union delegation receives a list of all new employees every week. The delegates use this list to go and talk to each new employee to introduce themselves and propose that they join the union. During this meeting the workers are informed about their rights and responsibilities in case of illness or accident.

5.7.4. The European works council

For more information on the European Works Councils, see the course on international and European social dialogue.

In multinational companies of a certain size (1000 employees in the EEA with at least 150 in two different EEA countries), a European Works Council (EWC) can also be set up. The establishment of an EWC requires an official initiative on the part of the employees or the employer. The functioning and powers of the EWC are set out in a negotiated EWC agreement.

In general, an EWC is similar to a works council, except that it should deal with 'transnational issues' (i.e. economic and social issues of importance to the whole company or at least two countries). Its powers are limited to information and consultation in general.

5.7.5. Facilities for employee representatives

Employee representatives need sufficient time and resources to carry out their duties. Although the facilities provided to employee representatives are regulated separately for works councils, health and safety committees and trade union delegations, they are similar and will be discussed together here.

Firstly, the company is required to give employee representatives the **'necessary time'** during working hours and using company resources. This means that the company has to provide materials, office space and meeting rooms for the employee representatives.

Employee representatives also have the right to take part in **union training** during working hours. Such training is organised by the unions and gives employee representatives an insight into the role, duties and rights of the works council and their role as union representatives.

Works council **meetings**, even if they are held outside working hours, are considered working time and give the right to overtime pay if necessary.

The idea is that there should be **no advantage or disadvantage** to being an employee representative. This means that if there is a bonus system in the company, it has to be adjusted so that employee representatives have equal rights and opportunities to receive these bonuses if a certain amount of their time is spent on union activities.

Employee representatives have a right and a duty to inform the workforce about the work of the works council. This means that they can distribute newsletters with information, talk to staff about issues or organise meetings with staff to inform them and get their views.

In some larger companies, some employees are completely **released** (*vrijgesteld*) from their work to work full time on representation activities.

The 'necessary time' according to employers

CLA 5 on trade union delegation says that the employer must provide the time needed, as defined by the social partners. This means that the social partners can (and should?) get together and define how much time is needed for representation work. Manou Doutrepont (2019) carried out a study for the VBO on how companies deal with this. According to the results, just over half of the companies have made concrete agreements.

5.7.6. Conclusion

The Belgian system of workplace representation is, obviously, complex. There are several institutions with sometimes overlapping responsibilities, and often the same people act as employee and employer representatives.

In a sense, the Belgian landscape is the result of a combination of very different visions of employee representation. While the socialist trade unions wanted strong, demanding institutions, the Christian Democrats wanted strong co-decision structures. The employers, for their part, wanted to preserve the right of managers to manage. And all wanted to give the established unions the right to represent employees in order to reduce the potential for radical unionism at company level.

The result was a plethora of structures, all with relatively little power to really influence company policy on the basis of legislation alone. In practice, the power relations in the company will determine how workers and unions can use the institutions to exercise real power.

Innovating workplace representation ?

Is there no room for innovation in such a complex landscape? There are certainly enough ideas on how to change the current structures. The problem is that they go in very different directions, depending on who they come from. Employers want to simplify the system, for example by merging the health and safety committee with the works council. On the other side, trade unions are arguing for more resources and rights for works councils. The problem is that with every proposal there is a great fear of losing some rights for employees and some control for managers. That's why I've previously argued for opening up the possibility of experimentation in social dialogue at company level, by giving the social partners the space to tailor the representation they want, but only on a temporary basis and with clear fall-back

rights to ensure that experiments don't lead to a weakening of the workers' voice (De Spiegelaere, 2020a).

Some of the proposals can be found here: De Spiegelaere, S. (2020). Het sociaal overleg op ondernemingsniveau: Innovatie met de experimenten Hansenne. Minerva paper, 12. http://hdl.handle.net/1854/LU-8677809

5.8. Beyond the institutions: company level social dialogue

5.8.1. The employee representatives

5.8.1.1. The profile, role and position of the workers representative

Several studies have been carried out on the **profile of workplace representatives**. Liagre et al. (2011) studied company level representatives in the Metal and Textile Union of ACV-CSC (METEA) and concluded that union representatives are more likely to be: middle-aged (25-49) and working full-time. They also found that around two-thirds of representatives were members of youth movements.

With regard to the **motivation** of employee representatives, several studies have looked at why people stand for election and want to represent their colleagues. Klandermans & Visser (1995) looked at employee representatives in the Netherlands and concluded that there are three main motivations: (1) ideal-collective motivations, which refer to the possibility of influencing the working and living conditions of employees, (2) individual motivations, which refer to the idea that being an active union member could bring some personal development and benefits, and (3) social motivations, which refer to the influence of parents, friends and colleagues who, through expectations and pressure, motivate people to become active union members.

The aforementioned research based on ACV-CSC company level representatives (Liagre et al., 2011) distinguished between motivations based on:

- The **workers' interests**: motivation based on making other people aware of the company's problems, trying to help people in trouble, trying to improve the situation in the company;
- **Job position**: motivation based on the idea that a person's tenure and position in the company makes them well placed to be a representative; or that being a representative can give a person more job security;
- **Social roots**: a motivation based on family traditions, experience of other voluntary work, ideological convictions;
- **Skill development**: a motivation based on the opportunity to learn and be better informed about issues.

According to this study, the main motivators were employee interest and skill development, rather than job position or social roots.

What are the main **priorities** of employee representatives? Two studies have looked at this question. One study, the Belgian Employee Relations Data (Martens et al., 2001), is based on a sample at company level of companies with a representation structure, while the second, Militant 2020, is based on a sample of representatives from the ACV-CSC. Both studies give a similar picture: employment is the main priority, followed by industrial relations (social dialogue) and working conditions. To a lesser extent, working time and pay were seen as the main priorities for union representatives at company level.

In terms of the main tasks of employee representatives, the largest group (41%) said that their main role was to be a 'staff mentor' through representation, problem solving and being an ally to staff. Some 16% said their main role was to gather and provide information to staff and a similar proportion said their main role was to ensure that social legislation and agreements were respected. About 10% said they saw themselves mainly as someone who's building a union and another 10% saw themselves mainly as someone who negotiates and mediates with management.

Looking at these tasks and priorities, it is clear that an employee representative has to combine many different roles. He/she has to be a mentor, a negotiator, an expert and an organiser. In addition, the vast majority of employee representatives remain employees who do all this in addition to their normal full-time job and private life. Clearly, being a workplace representative can lead to some serious **role conflicts**. Some of the areas of tension that an employee representative has to deal with are:

- Being an employee who needs to follow instructions vs. being a representative who needs to question, confront and demand.
- Receiving information that is often confidential vs. having the responsibility and duty to inform staff about company issues.
- Doing a lot of (extra) work vs. receiving little formal or informal recognition
- Contributing to the life of the company vs. having much less to do to receive pay rises, bonuses or promotions.
- Working in the long-term interests of employees (and the company) vs. defending employees' short-term opinions and views.

Being an employee representative in practice

In production environments and formalised service contexts, hours spent on union work have to be directly compensated by other workers taking their place or shifts. This often leads to discussions where the representatives are seen as freeloaders who avoid doing the real work.

In large companies some employee representatives are exempt from work (*vrijgesteld*). This means that they can use all their working time for union-related activities such as preparing for meetings, holding meetings, talking to colleagues, etc. While this solves the problem of having to replace representatives in the production process and makes them accessible to their colleagues, it also creates some envy among colleagues.

5.8.1.2. The daily life of the employee representatives in a company

So what about the everyday life of employee representatives in a company? Thanks to a study by Van Herreweghe, Hermans & Van Gyes (2017), we get a unique insight into this daily life.

First of all, it is important to know that in most companies trade union work is done in what we call the 'core' (*kern*), which refers to the more or less fixed number of active trade union and employee representatives of a particular union or all unions. The size of these nuclei tends to vary according to the size of the company. In companies with less than 100 employees the average size is between 3 and 4, in larger companies with more than 500 employees the average size of this core group is between 9 and 10. In any case, it's clear that these core groups tend not to be very large.

These core groups are usually made up of elected employee representatives and members of the union delegation. In some cases other active union members are included in these meetings, but this is quite rare.

These groups meet about once a month during working hours (57%), usually just before there's a meeting with management. Some also meet outside working hours (34% a few times a year). And there's often a meeting with the other unions for consultation (51% once a month or more). The presence of the union officer at these meetings varies. 28% say they are always present, 17% most of the time, 35% sometimes and 20% never. During these meetings, the majority (68%) say that they mostly discuss issues that have arisen recently.

These core groups tend to communicate with staff quite frequently. Most often they do this through face-to-face meetings with colleagues, distributing information, sending emails and newsletters, and holding staff meetings or general assemblies.

It is important to recognise the different (potential) roles of employee representatives. A representative can be:

- A negotiator with management who needs technical and strategic skills
- A helping hand for employees who needs to be accessible and open
- An expert who can help colleagues with technical and legal issues
- A mobiliser who knows how to get people moving in the same direction

- An organiser who can chair meetings, organise work and follow up on activities
- A mediator who can sometimes help colleagues get along with their superiors
- A compromiser who can find the middle ground and explain concessions made

5.8.1.3. Protection against dismissal

Reading tip : Hermans, Maarten. "Zijn werknemersvertegenwoordigers 'overbeschermd'?" Brussels: Denktank Minerva, 2016. https://www.denktankminerva.be/analyse/zijn-vertegenwoordigers-overbeschermd.

Because the role of employee representatives at company level is difficult, to say the least, the law gives them special **protection against dismissal**. To be clear, in practice there is no prohibition on dismissal. The Belgian legislator has opted for a model where the employer can always dismiss employees, including employee representatives. However, it is more difficult (and more expensive) to dismiss a representative. And this extra cost is intended to protect employee representatives.

There are two types of protection for employee representatives, depending on their mandate:

- For **elected** employee representatives (and candidates) on the works council or health and safety committee there's **general protection** against dismissal.
- For **appointed** union representatives on the union delegation, there's **limited protection** against dismissal.

In order to understand the issue, it's important to look at the objective protection against dismissal, without going into too much legal detail.

The general protection against dismissal applies to elected employee representatives on the works council and the health and safety committee, as well as their deputies and non-elected candidates.

Interestingly, the protection starts 30 days *before* the date on which the candidates have to present themselves. These 30 days are called the **'occult period'** because the manager doesn't officially know who the candidates are, but they are already protected. The reason for this is that a company should not be able to quickly dismiss all potential candidates before they can officially present themselves.

An employer can still dismiss a protected employee on two grounds and following two procedures. First, dismissal for urgent reasons (*dringende reden - faute grave*) is possible after a procedure before the labour court, including a period of negotiation and conciliation. If the reason is accepted, the employer can dismiss an employee representative without

paying any compensation. Secondly, dismissal for economic reasons is possible after a procedure before the company's joint committee. If the joint committee accepts the economic reason for dismissal, the employer can dismiss the protected employee in accordance with the general rules on dismissal.

However, if the employer decides to dismiss a protected employee for a reason other than those mentioned above, or without following the procedure, the employee representative or the trade union *can* demand the reinstatement of the employee in the company. The company isn't obliged to reinstate the dismissed employee, but refusing to do so carries a heavy price tag of between two and four years' salary, depending on the employee's length of service[13], plus the salary for the remainder of the period that the employee delegate would have had a mandate as a representative.

Members of the **union delegation** have a different kind of protection against dismissal, which is more **limited** and governed by CLA 5. This is not general protection, but only protection against dismissal for reasons related to the mandate as a union representative. Essentially, an employer who wants to dismiss a union representative must inform the union and the union delegation. They then have seven days to respond and voice their objections, which is followed by a procedure before the Joint Committee and, if necessary, the Labour Court. If these procedures are not followed, or if the employer dismisses a union representative for a reason that is not accepted by the joint committee or the labour court, the employer must pay the employee compensation equal to one year's wages.

The reason for this protection is to ensure that representatives can play their role without fear of retaliation from the employer. Without sufficient protection, a representative who confronts the employer with mistakes, demands the application of the law, asks for better working conditions or defends colleagues in difficulty could quickly risk losing their job. For this reason, workers must be protected against dismissal.

If the protection is not sufficient, and workers could be dismissed or treated less favourably because of their representational activities, there could be a "chilling effect", with some workers deterred from standing as a candidate for employee representation.

At the same time, if the protection is too general, there's a risk that it will be abused, with workers' representatives no longer respecting the authority of the employer, or that there will be a selection effect, with workers who might be made redundant being the first to put themselves forward for social elections.

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[13] If the employee has less than 10 years of tenure it's 2 years, if the employee has between 10 and 20 years tenure it's 3 years and for employees with more than 20 years tenure it's 4 years.

In other words, protection should be neither too little nor too much.

Little research has been done on this question. In the aforementioned study by Liagre et al. (2011), the representatives were asked whether they considered the legal protection to be sufficient or not. In this sample, 26.8% of respondents said that protection was insufficient or largely insufficient. 54.8% considered it sufficient, while the remaining 18.4% considered it largely sufficient.

Hermans (2016) refers to a 2014 survey of more than 3,000 ACV-CSC employee representatives in which respondents were asked whether they had been treated worse and/or feared for their job security because of their trade union activities. According to this study, one in four representatives agreed that they had been treated worse and 14% agreed that they could lose their job as a result of their trade union activities.

Promotion period in laying-off employee representatives

As mentioned above, the protection for employee representatives has a fixed part (2-4 years depending on the term of office) and a variable part (remaining term of office). This means that in some periods it is more or less expensive for employers to (unfairly) dismiss employee representatives. The cheapest period is just before the 'occult' period, when the variable part is the shortest. In the trade union context this is called the ‘solden period' because employers use this opportunity to sack some representatives.

A few examples: 2008: dismissals at De Keyser Thornton, 2016: dismissals at VOPAK, 2020: dismissals at Fnac (for economic reasons) and vzw Levenslust.

Selected and controlled by management

In a small metalworking company, there was only one candidate for the last social elections. All the previous representatives had 'left' the company, and the one candidate was approached by management to ask if he wanted to be a representative because management trusted him. On the surface everyone seems to be happy, but are they really?

5.8.2. The union on the company level

5.8.2.1. The union officer

The trade union officer (*vakbondssecretaris, regionale secretaris, syndicaal vrijgestelde, permanent syndicale)* is a paid employee of a trade union. He or she is **not an employee of a company**, but plays a key role in the social dialogue in several companies. Neither the

management nor the employee representatives of a company have any real influence on who the trade union officer is. It is the sectoral union that decides.

The main tasks of a union officer are (1) to support and help the representatives, (2) to negotiate and sign collective agreements, (3) to nominate union representatives and (4) to submit lists of candidates for company elections.

The role of the union officer can be very important, but it can vary greatly depending on the context. In some workplaces the union officer is the one who pushes the representatives forward, pushes them into action. In other companies/cases, the union officer can be a mediator between management and employee representatives.

The degree of involvement also varies from company to company. In some (larger) companies union officers are very involved in the day to day work and interaction with management, in others they only play a role during negotiations and in others they are rather absent.

One way in which trade union officers can play an active role in the day-to-day running of social dialogue is as invited external experts in works councils. Works councils can invite experts to their meetings, and in some cases they always invite the union officer to such meetings.

Another way is to attend a preparatory meeting of employee representatives. In this way, the presence of the trade union officer does not require the agreement of management. According to a survey of works council members at ACV-CSC (Van Herreweghe et al., 2017), the union officer is usually or always present at preparatory meetings according to 45% of works council members, sometimes according to 35% and never according to 20%.

Can the union officer enter the company premises?

The trade union officer is not an employee of the company, but an employee of the union. When she/he enters a company to discuss issues with the union delegation, this regularly causes employers to question her/his right to do so. Does a trade union official have free access to company infrastructure?

The answer is somewhat complicated. Firstly, the shop steward clearly has a (potential) role in social dialogue at company level. She/he is the person who signs company level collective agreements, can be invited as an expert to works council meetings, has the right to assist the union delegation, appoints union delegates and submits lists of candidates for company elections.

The employer can refuse to allow the union officer to attend works council meetings as an expert, but not more than twice. The union delegation is also free to invite any expert (including the union officer) to preparatory or debriefing meetings.

These rights do not mean that the union officer has free access to company premises. The preparatory meetings could, in principle, be held off-site. In most cases, the union officer will give advance notice of his or her presence at the workplace, or local arrangements will be made.

5.8.2.2. The union premium

Joining a trade union means paying monthly membership fees. These fees vary according to the union, the sector, the region and the type of work (full-time or part-time) in which the worker is employed. In any case, the fees are not insignificant and are in the region of €20 per month. In a number of sectors and companies, collective agreements require employers to reimburse workers for a certain amount of union fees. This is called the union premium (*vakbondspremie*). The way this is done is usually through a fund into which the employers put some money, which is then used to reimburse some of the members' fees (Humblet & Rigaux, 2005, p. 8).

The trade union bonus first appeared in Belgium in the post-war period. First in the cement sector and later in the gas and electricity sectors. In the 1960s there was an attempt to extend the system to the interprofessional level, but this failed. At present, many sectors have such a system (Doutrepont, 2021).

The union bonus is generally administered by sectoral social funds.

The rationale behind the union bonus is as follows. First, it compensates members for their financial contributions to unions that fight for general social progress, which also benefits non-union members. Second, it ensures that unions have a broad membership base, which makes them legitimate bargaining partners. Thirdly, a broader membership base would lead to more moderate unions and demands.

The union bonus is often criticised for several reasons: (1) it provides a financial 'benefit' (although it's more of a compensation) depending on union membership and could go against the negative freedom of association, (2) this compensation is currently not taxed, so if it is seen as a real bonus or income, it could be seen as an untaxed and therefore illegal benefit.

5.8.3. Other company level actors/institutions

5.8.3.1. The company auditor

Employee representatives regularly receive 'economic and financial information' from the company. This information should enable the representatives to get a good picture of the state of the company, the possible consequences for employment and the financial risks. This information is very important for employee representatives, but often quite complex.

For this reason, the role of the **company auditor** (*bedrijfsrevisor - réviseur d'entreprise*) is not only to declare that the annual accounts correctly reflect the situation of the company and to certify the documents, but also to provide the works council with an analysis and explanation of the information. In other words, the auditor has a **didactic and educational role** towards the works council. This means that the auditor has to participate actively in the meetings and answer questions.

This also means that the company auditor may be invited to preparatory meetings of employee representatives and should in principle participate in these meetings.

As mentioned above, the company auditor is appointed and reappointed by an explicit decision of the works council by a double majority. An implicit extension of the auditor's mandate is invalid.

The vast majority (>80%) of employee representatives consider the role of the company auditor to be very important or even extremely important. Employer representatives confirm this, albeit to a lesser extent (Van Gyes et al., 2015). This is because employee representatives often have limited skills and training in reading, analysing and interpreting financial reports. The educational role of the auditor helps them to do so and makes the information process more useful for both parties.

Making most of the company auditor

At Retail Partners Colruyt Group (better known as SPAR) the union delegation tried to get more out of the economic and financial information meetings by insisting on receiving financial information earlier and inviting the company's auditor to the preparatory meetings. This meant that the company had to revise its contract with the auditing firm. The auditor now comes to the preparatory meetings for half a day and can explain and teach the delegates the financial details of the company without the management being present (Vandormael, 2019).

5.8.3.2. The work rules (arbeidsreglement – règlement de travail)

One of the most important documents the works council can influence is the 'work rules' (*arbeidsreglement, règlement du travail*). All companies are required to have work rules, and where there's a works council, the work rules must be discussed and agreed by the works council. This is one of the few areas where the works council has co-determination rights.

The work rules are a document that sets out the rules for working in a particular company. It is compulsory that the work rules include the following information:

- the hours of work for full-time and part-time workers, breaks and collective holidays.
- the forms of control of work performance
- the method and timing of payment
- the notice periods to be observed in the event of dismissal
- the rights and obligations of supervisors
- Behaviour that may lead to sanctions and dismissal
- the rules on harassment in the workplace.

In addition, the work rules may contain any other information on which there is agreement between the employers and the employees.

Any change to the work rules must follow a procedure that starts with an initiative for change. This draft change must be communicated (*aanplakking - publicité*) and discussed in the works council. If the works council agrees, the change is signed and should be made available to all employees. All employees should also receive a copy of the new rules or changes. If there's no agreement, there's a complicated procedure involving mediation by the labour inspectorate. In 2016, the labour inspectorate had to intervene in a consultation in more than 250 companies on changes to work rules that employees and employers could not agree on (Activiteitenverslag 2016).

5.8.3.3. Other company level actors

In addition to the institutions and actors mentioned above, there are a number of other actors involved in social dialogue at company level, which will not be discussed in detail here:

- the prevention adviser, who acts as the secretary of the health and safety committee;
- the person(s) of trust, who has competence in the psychosocial health of workers (even if only in an informal way) and who has to report from time to time to the health and safety committee;

- the social inspector, who monitors the functioning of the works council and the health and safety committee and can be consulted in case of conflict;
- the social mediator, who is a civil servant who can mediate in collective conflicts.

5.9. The social elections

Basic facts:
- Every four years
- Private sector
- Electing employee representatives for the works council and H&S committee
- Different electoral colleges
- The organization is obligatory for the employer
- Long and complicated procedure

One of the key events in Belgian social dialogue is the four-yearly social elections. These elections determine the strength and legitimacy of trade unions in companies.

Every four years the mandates of employee representatives at company level have to be renewed. This is done through social elections. The first social elections were organised in 1950 and have been held every four years since then. Only twice have the social elections not been organised, and in 2020 they had to be postponed due to the outbreak of COVID-19.

Social elections are organised in the private sector and in some parts of the public sector (De Lijn, TEC, STIB, etc.). The social elections are based on a legal framework that specifies in detail what should happen and when.

It is not the aim here to explain all the steps and legal details. It is important to note that the procedures and deadlines are strict and the responsibility lies with the employer. If the procedures and deadlines are not followed, the social elections will be considered invalid.

Invalid elections at FN

The 2020 social elections at FN Herstal did not go smoothly, to say the least. Employees received ballot papers by post, but on many those ballots a certain box was already ticked. After protest, new ballots were sent out, but as the company now allowed voting in person, there was general confusion and many ballots (and therefore votes) were lost. Also, when the votes were counted, there was a discrepancy between the number of votes registered and the number of votes counted. One union took the case to the Labour Court, which ordered a re-run of the vote.

The interested reader can find very detailed explanations of all the steps in the process in publications by the Ministry of Labour (FOD WASO), the various trade unions and/or various social secretariats.

5.9.1. Who can be a candidate?

Not everyone is eligible to stand for social elections: (1) the person must be an employee of the company (and therefore cannot be in his or her severance period), (2) cannot be a member of the top management or have the role of prevention officer, (3) must have been employed in the company for at least three months, (4) must be at least 25 years old, and (5) must belong to the category of employees for which he or she is standing as a candidate (FOD WASO, 2019).

In addition to these conditions, there's also an implicit condition: trade union membership. In Belgium, only unions that are considered 'representative' can put forward candidates for the social elections (with the exception of managerial staff). By definition, therefore, all candidates must be union members, which means that all representatives are by definition union members.

5.9.2. Who can vote ?

Similar to being a candidate, there are some conditions for voting, which are (1) being part of the company as an employee (can also be an agency contract), (2) not being part of the top management, (3) being employed in the company for at least three months at the time of the elections. There are some different rules for temporary workers.

Union membership is not a condition for eligibility to vote. All employees who meet the above conditions can vote for their representative.

5.9.3. Different categories of workers

Although there has been a lot of talk about the 'unitary status' (*eenheidsstatuut - statut unitaire*) and the harmonisation of the status of manual and non-manual workers (*arbeiders-ouvriers and bedienden-employées*), there are still two legally distinct forms of employment. For this reason, during the 2020 social elections, there was still a separate election and representation for the different categories of employees, namely

- manual workers, if there are more than 25 manual workers in the company
- non-manual workers, if there are more than 25 non-manual workers in the company
- Young workers (up to 25 years of age on the day of the election), if there are more than 25 young workers in the company;
- Managers, if there are more than 15 managers in the company and only for the works council.

If the thresholds are not met for certain categories of employee, the election is held on a joint list.

The calculation of the number of mandates and the distribution of the mandates among the different categories is quite complicated and goes beyond the scope of this text. For more information, see the brochure on the social elections of the Ministry of Labour (FOD WASO, 2019).

In addition to these categories, the top managers (*leidinggevenden*) are part of the first two lines of the hierarchy. They cannot vote or stand as a candidate in the social elections. Only they can be part of the employer's delegation on the works council and the health and safety committee.

5.9.4. The election procedure

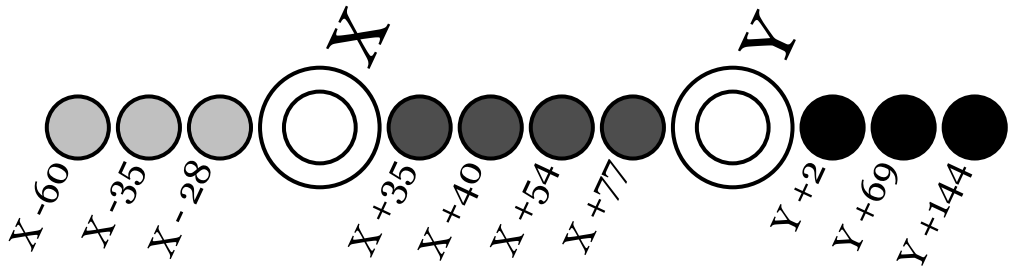
The election process is quite complicated and long (150 days). Without going into detail, it is important to know that it is the responsibility of the management to follow the different steps in the process.

There are two key dates in the process:

- Day X: the day on which the date of the elections (Day Y) is announced;
- Day Y: the day of the elections.

And these days make a distinction between three periods: (1) the pre-election period, (2) the election period and (3) the post-election period.

Figure 6 - Social elections timeline - simplified version



The pre-election period: The process starts on X-60 with the initial preparations, which include the description of the number of employees in the companies of the different categories. This written communication is followed by a round of consultation until X-35. On this date a written decision is sent to the employee representatives. They have until X-28 to appeal against the decision to the labour court.

On **day X** the date of the social elections must be announced. This date is usually set in consultation with employee representatives (works council, health and safety committee or trade union delegation). Day X is also day Y-90, as the elections must be held within 90 days of the announcement of the election date**.**

Election period: The next important date is X+35, when the lists of candidates must be submitted. Five days (X+40) later the employer must announce the candidates to the workforce.

During a certain period, objections can still be raised against these lists of candidates. A second announcement of the lists of candidates is made on X+56, after which there is still a possibility of appeal. The final lists of candidates are published on X+77.

During this period, the election process could be stopped in the following scenarios

- Complete stop: there are no candidates
- Partial stop: there are no candidates for certain categories of staff
- Partial stop: there is only one list of candidates which has the same number of candidates or less than the number of mandates available.

On **day Y** (X+90) the election takes place by physical, postal or electronic voting.

Post-election period: Two days after the election (Y+2), the results of the election, including the composition of the employee representatives, must be communicated to the employees.

There is then an appeal period during which the parties can ask for the elections to be annulled. Such appeals to the Labour Court can be made until Y+69. Final decisions by the Labour Court must be made by Y+144, which also marks the end of the social elections process.

In the meantime, about 43 days after the social elections, the first meetings of the new health and safety committee and works councils should be convened.

Note that this is a very simplified and incomplete description of the whole process. The full procedure involves many more steps, consultation requirements and opportunities for objections.

5.9.5. Studies on the social elections

A number of studies (Op den Kamp & Van Gyes, 2006, 2010; Van Gyes, 2001) have tried to analyse social elections and assess their democratic character. They have looked at the number of companies where elections take place, the number of candidates and the turnout:

- **The number of companies and employees**: in absolute terms, the number of companies involved in social elections is impressive (+ 6,000 for the health and safety committee and +/- 4,000 for the works council), as is the number of employees eligible to vote (+ 1,500,000). However, if we look at the proportion of employment covered, the results are less impressive: less than half of the employees in Belgium work in a company that could organise social elections.
- **Candidates**: It is not because there are elections that they are always organised. If there are no candidates, there are no elections, and if there are fewer candidates than the number of mandates available, the mandates are allocated without elections. Once again, the absolute number of candidates is impressive: more than 100,000 Belgians put themselves up for election. However, in more than 15% of the companies where a health and safety election could be held, there were no candidates. This is also the case in around 10% of workplaces where a works council election could be held. This proportion is increasing over the years.
- **Voter turnout**: The vast majority of employees who can vote for a representative do so. Voter turnout is around 80%, and this is without any obligation to vote.

Based on employee surveys, Randstad (2020) also measures employee interest in social elections. According to their findings, around 55% of employees said they were interested in the social elections and a majority (around 60%) said they would be willing to vote if given the opportunity.

5.10. Public sector social dialogue

So far, the focus has been on the private sector. However, in addition to the private sector, there is also the public sector. The public sector is a very important sector in Belgium, employing around 750,000 people.

Unfortunately, there is not just one 'public sector' in Belgium, as there are federal and various regional public sectors with different working conditions and types of social dialogue. It is also unfortunate that there is less literature on the public sector than on the private sector. In addition, social dialogue in the public sector is quite complicated as workers are covered by very different legal regimes. For example, there are civil servants who have 'statutory employment', there are 'contract workers' and all kinds of workers who work in ex-public or semi-public organisations.

At the same time, the challenges for social dialogue are many. The recurrent discussions on the right to strike of railway workers, prison guards and care workers illustrate this.

The following sections are by no means intended to provide an exhaustive and detailed overview of social dialogue in the public sector, but rather a general introduction to the subject that will enable future public sector employees and HR managers to orient themselves in this field.

Statutory employment, it started with the French revolution

Employment in the public sector generally takes the form of 'statutory employment', which is very different from a normal employment contract in the private sector. Firstly, a statutory civil servant is appointed by a unilateral appointment by the government and an acceptance of the person, rather than by an agreement between two parties. This means that the government also has the power to unilaterally change the conditions of employment. Secondly, statutory civil servants enjoy a high degree of job security, their positions are 'fixed', compared to the generally 'open-ended' contracts in the private sector. Employment can only be interrupted for the reasons specified in the 'statute'.

The idea of statutory employment and the job security that goes with it dates back to the French Revolution. This revolution broke with the previous system of public services, which were mainly occupied by the aristocracy. From then on, civil servants were selected on the basis of their skills and education. To protect civil servants from political interference in their work, they were given a high degree of job security. As such, civil servants can be objective in their work and can work for governments of different political persuasions.

Social dialogue in the public sector is organised by the Law on Trade Unions in the Public Service of 19 December 1974 and several implementing decrees. This law obliges all governments to negotiate with representative trade union organisations before taking general decisions that affect employees' working conditions.

In other words, there is an **obligation to negotiate** on issues such as the general conditions of the civil service statute, pension arrangements, the organisation of social services, working time, work organisation and vocational training.

Such negotiations result in **protocols**. A protocol does not have the value of a collective agreement in the private sector as it is mostly a political commitment. It can specify the issues on which there is agreement or, alternatively, list the issues on which there is no consensus.

There is also an **obligation to consult** on issues relating to very specific decisions on vocational training, working time, work organisation, health and safety at work and any proposals to increase productivity. Such consultation should end with a 'reasoned opinion'.

As in the private sector, there are negotiations and consultations at local and higher levels. These negotiations are organised in several committees:

- **Committee A**, chaired by the Belgian Prime Minister, is logically the highest committee, responsible for general working conditions in the federal, regional and community public services. It is also responsible for the social dialogue in the public sector. As a rule, Committee A negotiates a general social programme law every two years. It is the public service equivalent of the National Labour Council.
- **Committee B** is chaired by the minister responsible for the public sector. It is responsible for issues that affect workers in more than one sector (committees D).
- **Committees D** are federal, regional or community committees responsible for a specific sector, such as the regions, communities, social security, postal workers, foreign affairs, etc.
- **Committee C** is responsible for issues that affect workers in several local level committees E.
- **Committees E** are organised for a single commune, province, etc.

Finally, there are consultative committees for individual services in a commune, province or government sector.

5.11. Collective (wage) bargaining

Suggested reading: Vandaele, K. (2019), "Belgium: stability on the surface, mounting tensions beneath", Collective Bargaining in Europe: Towards an Endgame. Volume I, II, III and IV, European Trade Union Institute, Brussels, pp. 53–76.

The cornerstone of industrial relations and social dialogue is the process of collective bargaining and the resulting collective agreements. Through this process, employer representatives (trade unions) and employers (and their organisations) jointly regulate the labour market at different levels.

5.11.1. The collective agreement

A collective agreement is an agreement between one or more workers' organisations (trade unions) and one or more employers or employers' organisations.

Collective agreements are **collective** because they apply to more than one employee and often to more than one employer. They therefore create rights and obligations for the signatory parties and their members. This means that when a trade union signs an agreement, it is by definition signing on behalf of its members, as are the employers' organisations.

Collective agreements are **labour** agreements because they contain agreed terms on pay, working conditions, working hours, etc.

Collective agreements are **agreements** because they are the result of a collective bargaining process and are signed by both parties. Both parties have the option not to sign the agreement. Collective bargaining refers to negotiations between employee representatives and employer representatives. The agreement creates rights and obligations for both parties. Failure to comply with the agreement can be punished by law or by the other parties. Most collective agreements mainly create obligations on the employers' side to respect certain working conditions. From the other side, collective agreements create an obligation for 'social peace'.

5.11.2. Why should we bargain collectively

The reason why workers might want to engage in collective bargaining seems simple: by banding together they want to get a better deal from employers. This is true at company level, but also at sectoral or national level. The more pertinent question is why employers are motivated to bargain collectively and why the state might be inclined to facilitate it. To answer this question, Traxler (1998) listed the motivations for collective bargaining, as shown in the figure below.

He distinguishes between motivations for company level bargaining on the one hand, and sectoral bargaining on the other.

Company level bargaining:

- From the perspective of **workers**, collective bargaining provides a degree of protection through decent working conditions, a voice through consultation or grievance procedures, and a certain redistribution of the wealth generated.
- For **employers**, collective bargaining has the function of maintaining social peace in the workplace and providing a degree of legitimacy to management power.
- As far as the **state** is concerned, collective bargaining to some extent relieves the state of the burden of regulating the (conflictual) employment relationship in detail.

Sectoral bargaining has additional functions for all three parties:

- For **workers** and unions, it generalises the protection, voice and redistribution of company-level bargaining to a higher level, but also pools workers' power across different companies. Uniform sectoral wage floors also prevent workers from competing for available work by accepting lower wages (Webb & Webb, 1897b; Windmuller et al., 1987).
- For **employers**, multi-employer bargaining also can have some benefits.
    - First of all, multi-employer bargaining can have a cartelizing effect, as it removes wages from competition by setting sectoral standards (Chamberlain & Kuhn, 1986, p. 230). By making sectoral agreements about minimum wages per function, wages are basically taken out of the inter-firm competition. As all have to respect the same minima, the employers can more easily pass the wage increases to the consumers which translated in more less coordinated prize increases. In a similar way, defining high minimum wages through multi-employer bargaining can also **stifle competition** by making low-cost production strategies more difficult. As such, sectoral collective bargaining makes sure the sector doesn't have 'cowboy' employers.

- Second, it can remove contentious wage discussions to the sectoral level, thereby limiting disputes at the company level.
- Third, for smaller companies in particular, multi-employer bargaining could reduce transaction costs. The single employer does not need to prepare and conclude a whole negotiation process on its own but just pays a part of the central process.
- Last but not least, in some cases, employers preferred multi-employer bargaining because it strengthened their individual bargaining position (Windmuller et al., 1987, p. 85).
- Last but not least, by evacuating most of the bargaining to the sectoral level, the so-called 'management prerogative' at the enterprise level was stronger than in company level bargaining (Windmuller et al., 1987, p. 85).

- From the perspective of the **state**, multi-employer bargaining may help macroeconomic governance by establishing sectoral norms through which sectors can be steered in a particular direction.

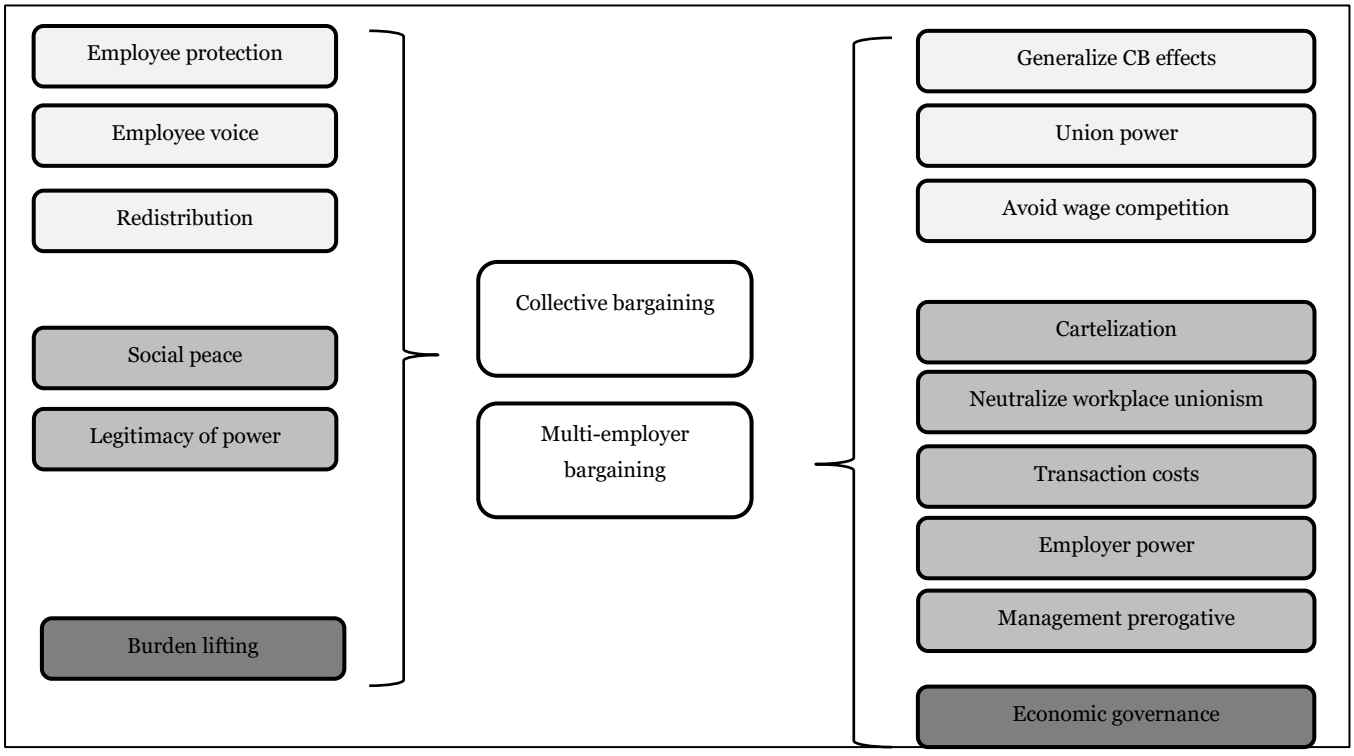


Figure 5.7: Motivations for (multi-employer) collective bargaining. Author's adaptation of Traxler (1998)

5.11.3. Levels of collective bargaining

In Belgium there are three levels at which collective bargaining takes place and collective agreements are concluded: (1) the national interprofessional level, (2) the sectoral level and (3) the company level.

5.11.3.1. National level

The highest level of collective bargaining is the national level. National bargaining officially takes place in the National Labour Council, but the main political agreements are made in the 'Group of Ten' (see above) and are set out in biennial inter-professional agreements (IPAs). Such an IPA sets the national wage norm (maximum wage increase) for two years and basic compromises on other issues. These political compromises are then implemented through national (numbered) collective agreements.

5.11.3.2. Sectoral level

The most important level of collective bargaining in Belgium is the sectoral level. Sectoral bargaining follows a two-year cycle, which is linked to national bargaining. Every odd year, a two-year national collective agreement is negotiated, which includes, among other things, the permitted wage increase (IPA). This national agreement is then implemented at sectoral level through sectoral agreements. For this reason, the number of sectoral agreements is significantly higher in odd years than in even years.

Sectoral bargaining takes place in the **Joint Committees** and the agreements made at this level do not just cover pay and conditions. It is also at this level that decisions are generally made about union delegation in the sector, working time, early retirement schemes and much more.

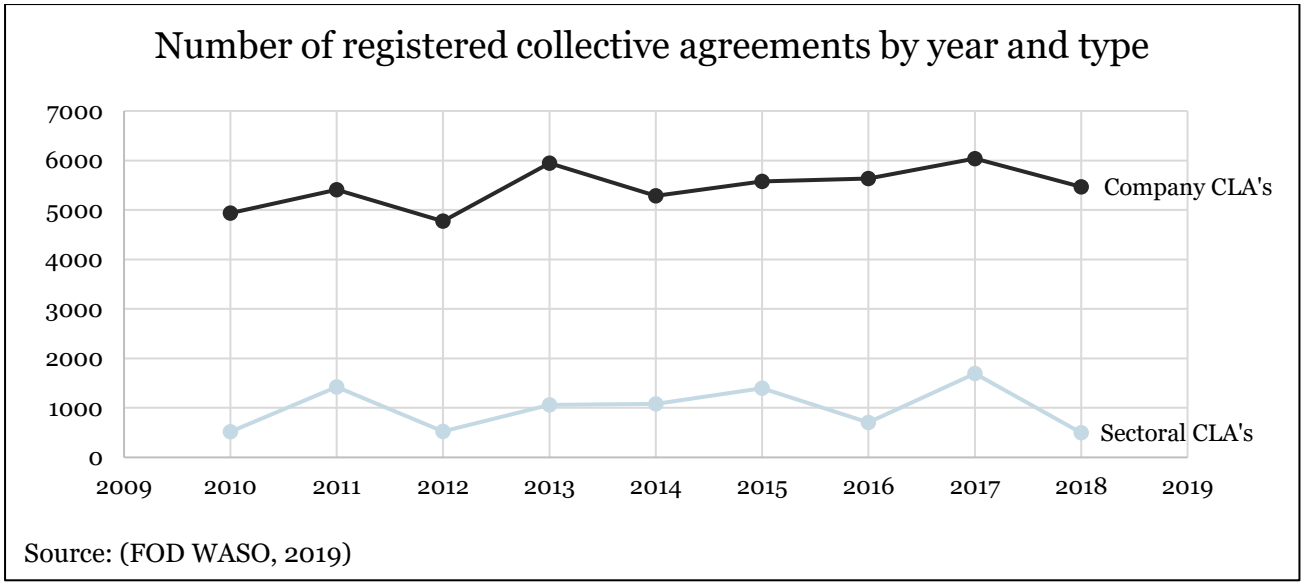


Figure 5.8 Collective agreements on the sectoral and company level, Belgium, 2010-2018

Some agreements at industry level do not leave much room for further negotiations or derogations at company level, others set minimum conditions that can be renegotiated at company level, and still others set a general framework within which company level negotiations on a particular issue must fit.

5.11.3.3. Company level

The third level of collective bargaining is the company level. At this level collective bargaining takes place between the union delegation and the employer. The resulting collective agreement must be signed by union officials and submitted to the Ministry of Labour. Company level agreements can cover working conditions, extra leave, pay, recruitment policy, teleworking policy, etc. In terms of content, there is no real limit to the issues that can be covered by company level bargaining.

While the industry level remains the most important level of bargaining, the number of company level agreements has been steadily increasing over time. The growth in company level bargaining can be linked to a number of trends:

- More **delegation**: Some industry agreements delegate the implementation of certain measures to company level, with a fallback arrangement if no solutions are found at company level. An example is the collective agreement of Joint Committee 200 of 01/07/2019. Through this collective agreement, all employees in the sector were granted a 1.1% pay increase, which was to take effect on 1 September. However, at company level and through a collective agreement, companies could choose to provide an "equivalent benefit".

- More schemes **requiring company level agreements**: Various schemes have been introduced that could or should be triggered by company level collective agreements. An important example is Collective Agreement No. 90, which introduced a collective bonus scheme. Such a system enjoys a favourable tax regime, but is to be introduced through a company level agreement.
- Some **decentralisation** of collective bargaining. In some sectors, the main employers are less and less willing to negotiate at industry level, preferring to negotiate at company level. This is the case, for example, in the banking sector.

Sub company level? IKEA

Company level is generally considered to be the lowest level at which a collective agreement can be made. However, some of these company level CBAs refer to a lower level, the plant or department level. For example, a collective agreement at IKEA on the issue of night work defines the general framework of rules on night work, but it's up to individual stores to decide whether or not to implement it and adapt it to their needs (Vermeir, 2018).

5.11.4.Generally applicable collective agreements – extension

A second type of distinction can be made between collective agreements according to their legal status and whether they apply only to the signatory parties or to all companies in a particular sector or the whole country.

Normally, an agreement **applies only to the signatory parties**. In the case of a collective agreement, it applies only to employees in companies that are members of the employers' association that signed the collective agreement. In Germany, for example, there are sectoral collective agreements that cover, for example, working time, but they don't apply to companies that are not members of the sectoral employers' association.

As this would undermine many of the benefits of sectoral bargaining (see previous box), collective agreements in Belgium are generally 'extended' or 'made generally binding' (*algemeen bindend verklaard - rendue obligatoire*).

Making a collective agreement **generally binding** means that a joint committee or the National Labour Council asks the government to give the collective agreement the force of law. The Minister of Labour decides whether or not to make the agreement universally applicable.

In Belgium **almost all** national and sectoral collective agreements are made universally applicable and therefore have the force of law. One exception is Collective Agreement No. 5 on trade union delegation.

The practice of making collective agreements 'universally applicable', together with the institutionalisation of joint committees by law and the strength of employers' and workers' organisations, results in a very **high level of collective bargaining coverage**. This refers to the proportion of employees covered by a collective agreement as a proportion of all employees in the private sector. It is estimated that more than 96% of private sector employees in Belgium are covered by a collective agreement. The remaining percentage of employees is made up of those working in organisations that negotiate collective agreements (trade unions and employers' organisations) and some categories of managerial staff.

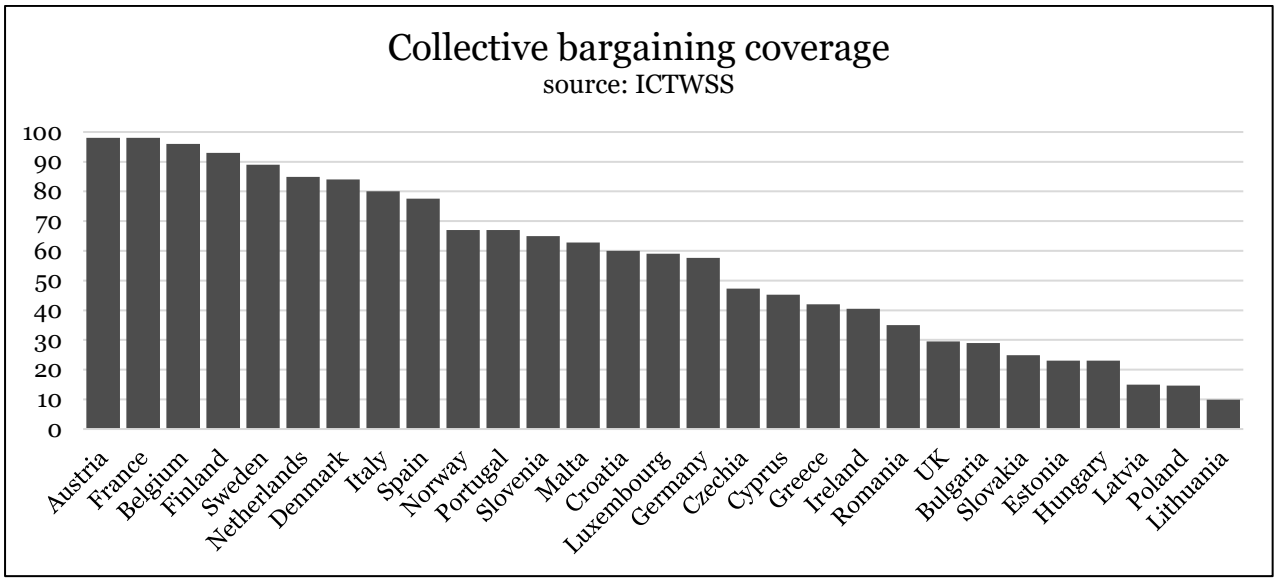


Figure 5.9 - Collective bargaining coverage (source: ICTWSS, latest year available)

5.11.5. Hierarchy of norms

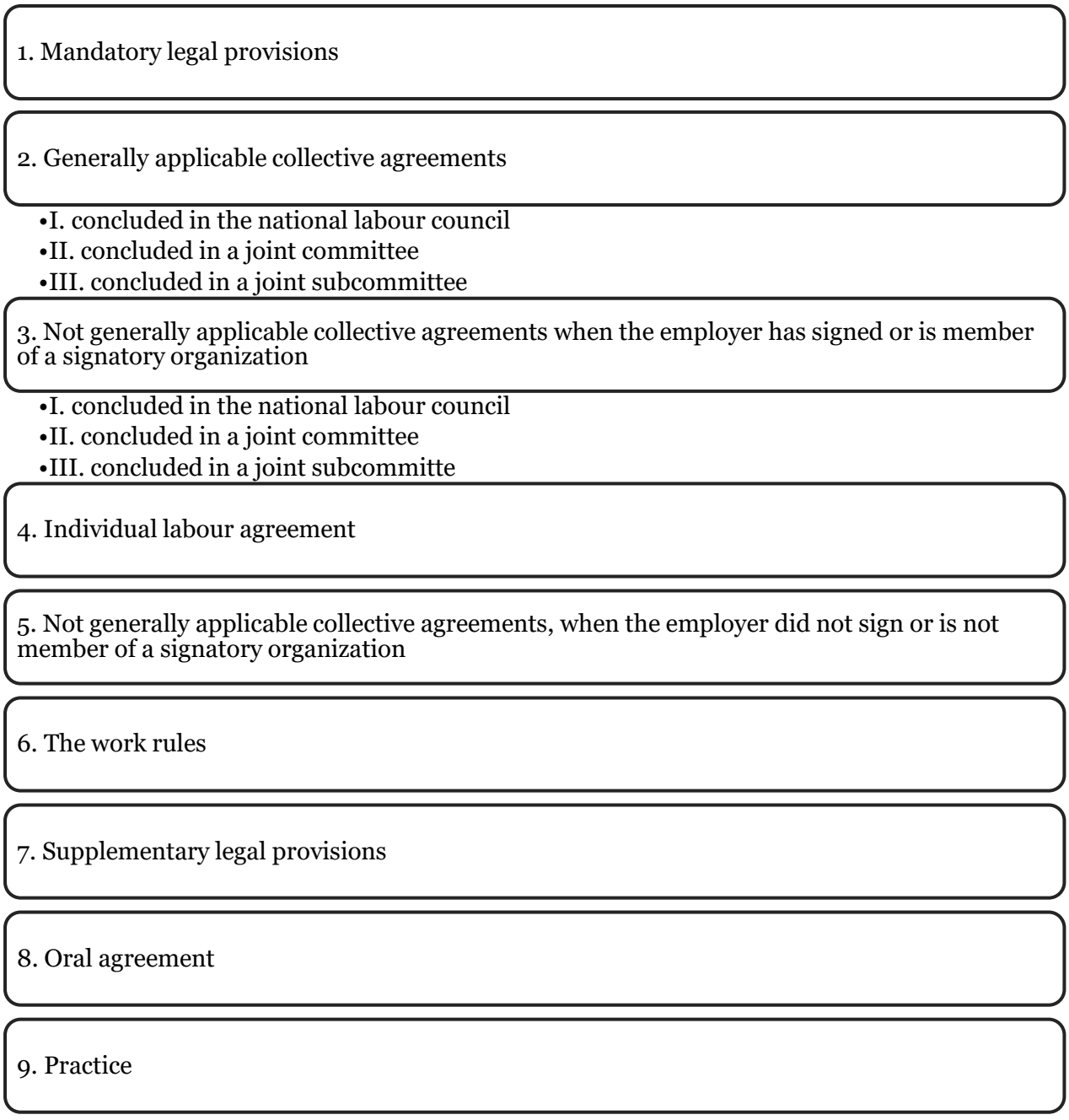
The collective agreement (in its various forms) occupies a central place in what's known as the 'hierarchy of norms'. This hierarchy determines which rules apply to the employee and, in the event of conflict or contradiction, which rules take precedence. The hierarchy, as defined in Article 51 of the Collective Agreements Act of 5 December 1968, is shown in Figure 4.6.

This hierarchy gives a central place to collective agreements. If an individual contract of employment conflicts with a collective agreement at local, sectoral or national level, the rules of the collective agreement apply, even if the employee has signed the individual contract of employment.

Often a lower level standard can positively deviate from a higher level standard if it is more beneficial to the employee. For example, a company collective agreement may reduce the working time in a company and an individual agreement may provide for a higher salary.

But this is not a general rule. If a sectoral agreement stipulates that the maximum overpayment for working on Sundays is 60%, for example, a company's work rules cannot legally provide for a higher payment (ACV, 2017). If the industry agreement were to set a minimum of 60%, the work rules could provide for higher compensation.

Figure 5.10 - Hierarchy of norms



5.11.6.Wage bargaining in Belgium

Throughout the material, the **'wage norm'** is mentioned several times. This refers to the maximum wage increase allowed by law. This wage norm and the law on which it is based strongly structure wage bargaining in Belgium and involve most of the institutions discussed above. In the following paragraphs we will discuss how wage bargaining takes place.

The **biannual** process starts with the **Central Economic Council**, which publishes a report comparing wage growth in Belgium with that in Germany, France and the Netherlands. Based on these calculations, a maximum wage increase is set for the next two years. Before 2017, this norm was largely indicative, but since the recent legislative changes, it has become mandatory and a correction and safety margin should be deducted.

In a next step, the **Group of 10** negotiates the negotiated wage norm (based on this maximum wage increase). In principle, the G10 can set a wage norm that is lower than the norm set by the CEC, but in practice in recent years (because the maximum wage increases are low) the G10 has generally confirmed the maximum wage increase (while the trade unions have seriously protested the whole structure).

Once the G10 has agreed on a maximum wage norm, this agreement is codified by a collective agreement in the **National Labour Council**. If no agreement is reached in the G10, the government can set the wage norm by royal decree.

Once the wage norm has been set at national level, negotiations continue at sectoral level in the **joint committees**. There, the minimum wage increase for the sector is negotiated, which of course cannot be higher than the maximum wage increase.

Once the minimum increase for the sector has been set, negotiations can continue at **company level**. This is the case if the sector cannot agree on a minimum wage increase, or agrees on a minimum that is lower than the maximum, or if the sectoral level allows companies to negotiate the form of the wage increase. The latter means that companies can choose to 'optimise' the wage increase by increasing extra-legal benefits (eco vouchers, meal vouchers) instead of giving a general increase in brut wages.

If companies or sectors grant wage increases that exceed the wage norm, they can be fined between €250 and €5,000 per employee concerned, with a maximum of 100 employees.

As can be seen, the wage bargaining regime in Belgium is quite structured and involves a large number of actors. As already mentioned, it is becoming less and less effective in practice as the maximum wage increases have become quite limited, so that the sectors often

agree on a minimum that is equal to the maximum, leaving little or no room for bargaining at company level.

The graph below shows the evolution of the wage norm over the years. Although the graph looks simple, it needs some explanation. The grey bars refer to the health index. This is the wage adjustment that is automatically guaranteed for most workers through the indexation system. The blue bars are the negotiated wage norms, the maximum wage increases for the two years. Thus, in 2001-2002, there was a 4.7% adjustment of wages to inflation and an additional 2.3% wage increase. In 2015-2016, on the other hand, inflation was 1% and the maximum wage increase was 0.8%.

The reason for the two shades of blue is that until 2009 the social partners concluded 'all-in' agreements, meaning that they negotiated a wage increase that included inflation. In 2001-2002, for example, a wage norm of 7% was negotiated. Inflation 'ate' 4.7% of this, leaving a net increase of 2.3%. Given the high inflation in 2007-2008, this meant that the negotiated wage increase turned out to be negative, as adjustments for inflation were higher than the wage norm. As a result, the social partners started to negotiate inflation-adjusted increases from 2009 onwards.

Irrespective of these technical remarks, the observation remains that the wage norm (the blue parts) tends to decline over time. Whereas in the 1990s and early 2000s negotiated wage increases hovered around 3%, in recent years they have barely reached 1%.

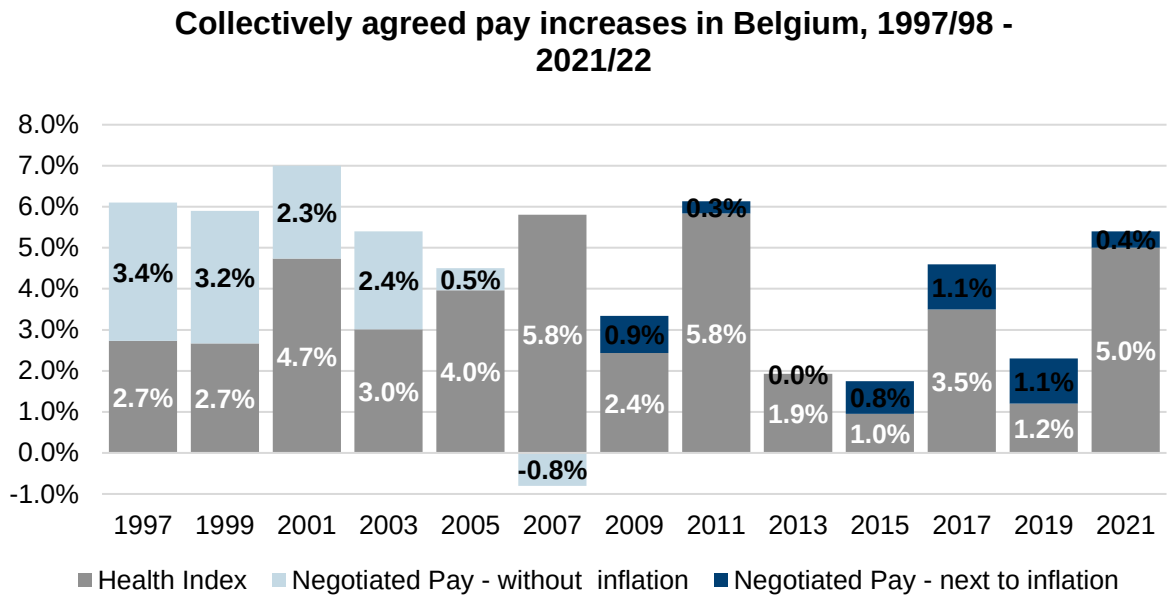


Figure 5.11 - Wage norm evolution in Belgium (source: Sem Vandekerckhove)

2017 stricter wage norm

In 2017, the centre-right government of Michel I revised the 1996 wage norm law to make it more stringent. Apart from some technical (but not unimportant) changes to the calculation of the wage norm, the main changes relate to the fact that the wage norm has become more enforceable, as it has to be set by collective agreement or by royal decree. In addition, two changes concern the level of the wage norm. On the one hand, an 'ex-post correction mechanism' has been introduced to correct unjustified increases in the past. In essence, this means that half of the possible wage increase can be deducted to correct the 'historical backlog'. In addition to this deduction, there is a safety margin of one quarter of the possible wage increase, with a minimum of 0.5%. Employers who do not comply with the wage norm can be fined between €250 and €5,000 per employee whose wage violates the norm (Van Gyes et al., 2018).

The wage norm in practice

In some companies there is a tendency for unions to demand higher pay rises than the maximum permitted. Although this is illegal, some employees are open to such demands because they are engaged in a war for talent and want to attract new employees by offering higher salaries and benefits.

5.11.7. The automatic wage indexation

One of the controversial issues surrounding collective bargaining in Belgium is the system of automatic wage indexation. Most employees in Belgium have their wages automatically indexed to inflation. According to the system's supporters, this guarantees that wages keep pace with the rising cost of living and prevents inequality from increasing. Critics argue that the system is inflexible, will fuel inflation and lead to less competitive wages in Belgium.

Regardless of the political debate, it is important to understand this system so that you, the student, can form an informed opinion.

First of all, it is wrong to talk about "**the system of automatic wage indexation**" because the system is not universal and there is no single system (Van Gyes et al., 2018, p. 73).

To understand this, it is important to know that wage indexation systems are **introduced through (usually sectoral) collective bargaining**. It is the employers and employee representatives who decide whether or not to introduce such a system in their sector. The consequence is that some sectors have not introduced wage indexation, which means that

some workers in Belgium don't see their wages automatically adjusted to the rising cost of living. This means that the system is not universal (although it is often proclaimed to be), and whether there is such a system or not is not a political question, but part of the freedom of the social partners to negotiate.

Nor is there a single system. Through collective bargaining, sectors can decide for themselves how to implement wage indexation. Broadly speaking, there are two systems: (a) the periodic adjustment of wages and (b) the pivot index (*spilindex*):

- **Periodic adjustment** of wages: Wage indexation by periodic adjustment is a system in which wages are adjusted to the rising cost of living at set intervals (e.g. once or twice a year). Depending on the rate of inflation, this adjustment may be significant, very small or even negative (although it is often not applied in such cases).
- **Pivot index**: The pivot index system changes wages whenever the index increases by 2% compared to the previous indexation. At that moment, wages will increase by 2%. This means that the increase is predictable, but the timing of the adjustment depends on inflation. In some cases this can be relatively quick, in others there's a long wait between two wage indexations.

Now that we know a bit more about the sectoral system, let us turn to the question of what exactly 'the index' is. We have discussed that wages are adjusted to the rising cost of living, but how is this measured?

The first type of index is the **'price index'**, which measures the price development of a selection (*de korf*) of products. It is based on a household budget survey (*huishoudbudgetenquête*) in which over 6000 families report their expenditure. This data is combined with data from retailers and web-scraping data on prices. In other words, this index measures the price evolution of what families 'normally' spend their money on. The 'normal' selection (*de korf*) is updated regularly. In 2021, for example, several new products were added, such as vitamins, psychological counselling, computer mice and keyboards. Products such as individual GPSs and cotton handkerchiefs have been removed from the range.

In a second step, a number of products are removed from the price index to obtain the **health index**. The products removed are those considered to be unhealthy, such as tobacco and alcohol. In addition, products that are sensitive to price fluctuations (such as petrol) are also removed. The health index was introduced in 1993 with the official reason being to discourage people from buying them. In practice, the health index slows down wage indexation.

In a third step, the health index is **smoothed** by taking the average price increase over the last 4 months. The aim of this smoothening is that sudden price increases don't translate into sudden wage increases. In practice, however, this smoothening again means that wage indexation is slowed down.

5.12. Summary

- The Belgian system is the result of a historic compromise made during and around the two world wars.
- The three representative Belgian unions are strong players, involved in the administration of unemployment benefits and have a monopoly on employee representation.
- The three representative Belgian unions are divided along ideological lines, but the differences are diminishing over time.
- Employers' organisations are relatively strong players. They are organised according to company size and sector of activity.
- Both employers' and employees' organisations are organised at sectoral, regional and national level.
- The state plays an important role in the structuring of social dialogue in Belgium.
- At national level there are institutions for social, economic and health and safety issues. Political agreements are made in the informal Group of 10.
- At sectoral level, social dialogue takes place mainly in the joint committees, which are the cornerstones of Belgian social dialogue. They reach sectoral agreements not only on pay but also on a wide range of other issues.
- At company level, there are information and consultation bodies (works council and health and safety committee) and a demand and negotiation body (trade union delegation).
- At company level there may be a European Works Council (EWC) in multinational companies.
- Employee representatives are protected against dismissal, but have a difficult job balancing different roles and demands.
- The trade union officer plays a central role in the social dialogue at company level and is not an employee of the company.
- One of the main powers of the works council is to draw up and adopt work rules.
- Employee representatives are elected through social elections held every four years.
- Collective agreements are made at different levels. They generally have the force of law in Belgium.
- Wage bargaining takes place every two years and is highly structured by the Wage Standards Act.

5. Social dialogue in Europe

6. Social dialogue in Europe

6.1. Introduction

According to 2018 statistics, there are more than 200,000 multinational companies operating in Europe, employing 40 million people. Of these, 150,000 have their headquarters in the European Union and around 50,000 outside Europe (Eurostat, 2020).

The chances that you will work for a company that operates in other countries, or has the ambition to do so, are therefore quite high. In such cases, it makes sense to have an idea of how social dialogue works in other countries.

In addition, inspiration for change often comes from practices abroad. Knowing about other traditions and systems will give you a broader view of social dialogue, enable you to put the Belgian experience in context, develop ideas about how it could work differently or make you appreciate the Belgian specificity more.

Without going into too much detail, this section of the course gives an introduction to the different systems of social dialogue in Europe and to social dialogue in multinational companies through European Works Councils.

What is missing?

Much more could be said about social dialogue and Europe than is presented here. Therefore, this section does not deal with the involvement of the social partners in the decision-making process in the European Union, the sectoral social dialogue at European level or the actors at European level.

6.2. Social dialogue in Europe

Suggested Reading : For those who want to know all about collective bargaining in Europe, check this three volume publication including chapters about all EU countries: Müller, T., Vandaele, K., & Waddington, J. (2019). *Collective bargaining in Europe: Towards an endgame*. European Trade Union Institute.

In May 2021, the European Commission met with the social partners and various other stakeholders in Porto. The aim of the meeting was to 'stimulate political dialogue at the highest level on how to reinvigorate our European social model and shape a vision for 2030' (European Commission, 2021). By stating that there is such a thing as a 'European social model', the EU is suggesting that there are some characteristics that EU member states share in the social field that are quite different from the rest of the world.

What are these basic features of the European Social Model? Focusing on issues related to social dialogue, Jelle Visser (2006) identified five main pillars that would more or less define the European way of doing social dialogue:

- **Relatively strong and independent unions**: Compared with the US, for example, European unions are relatively strong, independent and have considerable capacity to act. In addition to union membership, the widespread existence of workplace representation systems adds to the overall power of workers and their organisations.
- **Participation in policy-making.** In most EU countries there are ways in which the social partners are involved in policy-making in one way or another, whether through bipartite or tripartite institutions. This consultation and involvement exists at national level, but also at European level.
- **Extensive universal social rights**. Most EU countries have statutory minimum wages that serve as a universal wage floor, while others have functional equivalents. Beyond the wage floor, there is legislation on equal pay, information and consultation, collective redundancies, parental leave and many other issues that provide a decent floor of social rights for all workers and citizens.
- A degree of **solidarity in wage setting**: Most European countries have (more or less effective) systems of some kind of negotiated and solidaristic wage setting through forms of collective bargaining. While in some areas (West, CEE) collective bargaining is under serious pressure, coverage remains higher in the majority of non-European countries.
- **Information, consultation** and sometimes co-determination in the workplace. Based on European and national legislation, employees in companies generally have the right to representation, which must be informed and consulted by management. Although there are significant national differences, employees generally have the opportunity to express their

collective voice. In some countries these rights even extend to forms of co-determination, where employee representatives decide together with management on company policy.

While these five pillars distinguish the European model of social dialogue from, for example, the American, Canadian or Chinese models, within the European social model there are considerable differences between countries.

Within this European model, five different models of social dialogue are often distinguished: (1) the Northern, (2) the Central-Western, (3) the Southern, (4) the Western and (5) the Central-Eastern model of social dialogue (Industrial Relations in Europe 2008, 2008). The table below. gives a comparative overview of these models.

Note that it is difficult to place Belgium in one of the clusters, as it combines elements and characteristics of the central-western and southern types of social dialogue in Europe.

Single vs. dual channels systems

A basic distinction between different types of workplace representation in European countries is between **single-channel and dual-channel** systems. In a single channel system, all representation functions are carried out by a single actor, the local trade union. It is the union that does the collective bargaining with the company, the day-to-day information and consultation and sometimes even co-determination. A typical example is Sweden.

In a **dual channel** system there are two systems of representation operating at the same time in a company. There's a trade union, which usually does the collective bargaining, and there's another institution, often a works council, which does the information and consultation. In a pure dual channel system the members of the works council are not necessarily union representatives. A typical example would be Germany and the Netherlands.

To complicate matters, many countries have **mixed systems** where there are formally two institutions, but one is dominated by the other. An example would be Belgium, where there is a works council (information and consultation) and a trade union delegation (collective bargaining), but the works council members are all trade union members and often trade union delegates.

Table 5.6.1 – Social dialogue regimes in Europe

	North	Centre-West	South	West	Centre-East
Social climate	Cooperative	Cooperative	Conflictual	Conflictual	Fragmented
Union density	High	High	Varied	Low	Low
Information rights	+++	+++	++	+	+
Consultation rights	+++	+++	++	+	+
Co-determination rights	++	+++	-	-	+/-
Principle level of bargaining	Sector	Sector	Sector	Company	Company and sector
Role of social partners in public policy	Institutionalized	Institutionalized	Irregular	Rare	Irregular
Role of state in social dialogue	Limited	Regulator	Interventionist	Non-intervention	Regulator
Employee representation	Single channel Union	Dual channel Works council	Mixed Union dominated works council	Single channel Union	Mixed Union and/or works council
Countries	Denmark, Finland, Norway, Sweden	Germany, Luxemburg, Austria, Netherlands, Slovenia (Belgium)	France, Greece, Italy, Portugal, Spain, (Belgium)	UK, Ireland, Cyprus, Malta	Bulgaria, Romania, Czechia, Slovakia, Hungary, Poland, Latvia, Lithuania, Estonia

Authors' adaptation of Visser & Kaminska (2009) and van den Berg et al. (2013)

6.3. Centre-West: Germany

Suggested reading :

- Pries, L. (2019). Workers' Participation at Plant Level in Germany: Combining Industrial Democracy and Economic Innovation? In S. Berger, L. Pries, & M. Wannöffel (Eds.), *The Palgrave Handbook of Workers' Participation at Plant Level* (1st ed. 2019 edition, pp. 343–362). Palgrave Macmillan.
- Müller, T., & Schulten, T. (2019). Germany: Parallel universes of collective bargaining. In T. Müller, K. Vandaele, & J. Waddington, *Collective bargaining in Europe: Towards an endgame* (pp. 239–264). European Trade Union Institute.

The centre-west type of social dialogue includes countries such as Austria, Germany, the Netherlands, Luxembourg, Slovenia and (to a lesser extent) Belgium. What these countries have in common is that there's a notion of social partnership between the social partners. This means that there are frequent negotiations and bargaining rounds which are relatively compromise oriented. Collective bargaining in these countries generally takes place at sectoral level, although there's a recent trend towards organised decentralisation, with sectoral agreements defining the scope and company agreements the detail.

The role of the state is generally focused on regulating how the social dialogue should operate and is not as interventionist in terms of what the social partners should agree. In other words, there is strong institutional support for collective bargaining. This is often visible in the state organising and facilitating bargaining rounds (Belgium), the state extending collective agreements (Belgium, the Netherlands and Slovenia) or sometimes compulsory membership for companies in the organisation responsible for collective bargaining (Austria) (Müller, 2021).

Germany is selected as a prime example of the centre-west type of social dialogue because it is an important reference country in Europe, both economically and in the social field. Its (relatively unique) system of social dialogue gives a lot of institutional power to employees through works councils and board level representation.

6.3.1. German unions

The German trade union landscape is dominated by one very large confederation, the DGB (*Deutscher GewerkschaftsBund*), which includes several sectoral unions such as IG Metall (metal sector), Ver.Di (services sector) or IG BCE (chemical and energy sector). The DGB has around 6 million members.

In addition to the DGB and its affiliates, there are other confederations such as the DBB (*Deutscher Beamtenbund - civil servants*) or the CGB (*Christlicher Gewerkschaftsbund* - Christian Trade Union Confederation), but they are much smaller than the DGB affiliates. The DBB has around 1.3 million members from unions that organise mainly in the public sector. Furthermore, there is some debate as to whether the CCB can actually be called a 'union' as it lacks independence and assertiveness vis-à-vis the employer (Pries, 2019, p. 348).

In practice, if you are an employee in a company, there is often only one union active (a DGB affiliate) and you don't have a real choice of unions. This is why we say that Germany has a 'single trade union'.

Union density is currently around 18%, down from 25% in 1998.

6.3.2. Workplace representation

Germany has a **dual system** of representation, which means that at workplace level there is (often) a works council and trade union representation, with different but sometimes overlapping responsibilities.

The **works council** is an information and consultation body, but it also has significant co-decision powers. It has general information rights, which allow it to ask management for data on the economic performance of the company, but also for personal data on specific employees. The works council also has the right to be consulted about changes in work organisation, the introduction of new technologies and the planning of workplaces. In addition, the German works council has more developed rights to object to redundancies. As such, the works council can demand to be heard on the matter and if this is not the case, the dismissal is considered null and void (Pries, 2019, p. 350).

Going one step further, the works council also has certain **co-determination** rights where it has to decide with management before it can implement a measure. This right of co-determination applies to issues such as the code of conduct in the company, working hours and breaks, types of working time and the use of overtime and the planning of holidays.

Importantly, and unlike the Belgian works council, the German works council has only employee members (so management is not a member of the works council).

Strong but not everywhere.

While the German works council system is often held up as an example of effective and influential employee representation, the system is in decline in terms of numbers. In 1996, over 11% of all workplaces in Germany had a works council, covering over 43% of the workforce. By 2016 this had fallen to 9% of all workplaces, but still covered roughly the same proportion of the workforce (Pries, 2019, p. 351).

Employee representatives on the works council are not necessarily union members, although many are. But non-union members can also be elected and sit on the works council. The works council has a dual loyalty (*Doppelloyalität)*, which means that it has to promote the interests of both the employees and the company as a whole. This also means that the German works council cannot call a strike or other industrial action (*Friedenspflicht)*..

The **trade union representation**, on the other hand, will carry out the necessary collective bargaining and negotiations on working conditions. They have the right to call a strike, but they don't have a legal duty to promote the interests of the company.

6.3.3. Collective bargaining

Given the dual structure of workplace representation in Germany, collective bargaining at company level also has a dual structure. One law (*Tafivertragsgezetz*) regulates collective bargaining between unions and employers at company and industry level. Another law (*Betriebsverfassungsgesetz*) says that works councils can also make agreements (*Betriebsvereinbarung* - works agreements) that look like collective agreements. However, they cannot deal with pay and working conditions.

The German system of collective bargaining has changed rapidly in recent decades. It used to be very much focused on sectoral agreements, but there has been a strong trend towards decentralisation. This decentralisation began in 2004 when IG Metall concluded a major agreement with an 'opening clause'. Such a clause allows some companies to be exempted from the agreement under certain conditions. In practice, this means that companies do not have to provide for wage increases unless (for example) they are in dire economic circumstances. Subsequently, the use of such opening clauses spread rapidly to other sectors, essentially reducing the impact of sectoral agreements.

The weakening of trade unions and the withdrawal of employers' associations from sectoral bargaining also led to a rapid decline in collective bargaining coverage.

Germany unions and the minimum wage

Until recently, German trade unions were opposed to a legal minimum wage. This may seem strange, but they preferred not to have a legal universal minimum wage because they wanted to set minimum wages themselves, sector by sector, through collective bargaining. However, as collective bargaining coverage declined, the number of workers without a minimum wage increased rapidly and began to put pressure on wages in other sectors. The German trade unions therefore changed their position and started campaigning for a statutory minimum wage, which was introduced as such in 2015.

6.3.4. Co-determination (board-level employee representation)

Germany has by far the best known (but not necessarily the most effective) system of board-level employee representation, known as *'Mitbestimmung'*. This general term actually covers a variety of systems where, depending on the sector and size of the company, employee representatives may have the power to elect a third or even half of the members of the supervisory board. This supervisory board has considerable power as it appoints members of the management board, reviews their performance, advises on company strategy, etc.

This system of board-level employee representation, together with works council co-determination, gives employee representatives in German companies considerable power.

6.4. Southern system: France

Suggested reading:

- Rehfeldt, Udo. (2019). Workers' Participation at Plant Level: France. In S. Berger, L. Pries, & M. Wannöffel (Eds.), *The Palgrave Handbook of Workers' Participation at Plant Level* (1st ed. 2019 edition, pp. 323–341). Palgrave Macmillan.
- Vincent, C. (2019). France: The rush towards prioritising the enterprise leve. In T. Müller, K. Vandaele, & J. Waddington, *Collective bargaining in Europe: Towards an endgame* (pp. 217–238). European Trade Union Institute.

The Southern European model of social dialogue can be found in countries such as France, Greece, Italy, Portugal and Spain. It is characterised by more adversarial relations, with more frequent use of the strike weapon, combined with an interventionist state. Unions are strong bargaining actors, but not strong in terms of overall membership and union density.

Most collective bargaining takes place at the sectoral level, resulting in a high level of collective bargaining coverage. The state ensures this high coverage through the frequent use of extension mechanisms.

As these countries were largely affected by the 2008 economic crisis, there has been pressure to decentralise collective bargaining and to overturn or abolish the favourability principle[14] (Müller, 2021).

6.4.1. French unions

If you found the German system complicated, you will find the French system inexplicable. It starts with the trade union landscape, where there are not one (as in Germany) or three (as in Belgium or Sweden), but seven confederations: (1) CGT (Confédération Générale du Travail), (2) CFDT (Confédération Française Démocratique du Travail), (3) FO (Force Ouvriér), (4) CFTC (Confédération Française de Travailleurs Chrétiens), (5) CFE-CGC (Confédération Française de l'encadrement), (6) UNSA (Union nationale des syndicats autonomes) and (7) USS (Union syndicale solidaire).

Although there are many union confederations, overall union density is interestingly low, hovering around 10% in the private sector and 20% in the public sector.

The CGT (the socialist/communist union), the CFDT (the 'socialist-humanist' union with a Christian background) and the FO (another socialist union) cover 80% of union members and clearly dominate the landscape.

[14] The favourability principle states that lower-level agreements can divert from higher-level agreement and rules, but only if it improves the conditions and standards for the employees. In practice this means that, e.g., an individual labour contract can include different provisions on working time than the collective agreement, but only if it means better conditions for the workers (i.e. less working time for the same wage).

Nevertheless, the French trade union landscape is characterised by a high degree of fragmentation. Moreover, relations between different unions are not always constructive.

Although the unions are relatively weak in terms of membership, their power is still considerable because of their **ability to mobilise**. When French unions mobilise for demonstrations or actions, they can wield considerable power and have been able to change government policy through mass action.

6.4.2. Collective bargaining

Collective bargaining in France takes place at company, industry and national level. Collective bargaining coverage is quite high (over 90%) due to the extension of collective agreements.

Collective agreements are negotiated between representative trade unions and employers' organisations. There are currently more than 600 sectors with collective agreements, often covering only a specific region. These so-called sectoral agreements often cover no more than 5,000 employees. Accordingly, the legislator's aim is to reduce the number of sectors to around 200 (Vincent, 2019, p. 224).

The situation before 2004 was very similar to the Belgian system, where there was a clear **hierarchy** of norms, with sectoral agreements having more power than company agreements. In 2004, and later in 2016, this changed with company agreements taking precedence over sectoral agreements (on some issues). This means that company agreements can agree worse working conditions than those defined at sectoral level (but not on pay rates).

6.4.3. Workplace representation

Fortunately for students involved in social dialogue, the French system of workplace representation was changed in 2017, making it much simpler. The main information and consultation body is the Comité Social & Economique (CSE), which has merged the previously existing works council, employee delegates and health and safety committee.

These councils must be set up in workplaces with more than 11 employees. The role and powers of the committee vary according to the number of employees in the workplace. Unlike German works councils, but similar to Belgian works councils, the French CSE is made up of both employee and management representatives. The employer chairs the meetings.

The employee members of the CSE are elected by the company and there is a complicated system for involving the trade unions. In a nutshell, in the first round only (some) unions can submit lists of candidates. If they don't get (together) half of the eligible votes, a second round is organised in which non-union candidates can also stand.

The CSE is primarily an information and consultation body. But it can also play a social role in organising social and cultural activities such as canteen, sports and social clubs. For this the CSE receives funding from the employer. Where there is no trade union delegation, the CSE can also negotiate collective agreements at company level.

In addition to the CSE, trade unions can also be established in companies by setting up a local trade union section and, if they have sufficient support, appointing trade union delegates.

A final important aspect is that in workplaces with more than 50 employees the CSE has the right to appoint an expert paid for by the employer. This expert can look at the strategic direction of the company, it's economic and financial situation and the social situation. These experts often play an important role in restructuring and enable the CSE to develop an independent view of the company's situation.

6.4.4. Co-determination (board-level employee representation)

Following legislation in 2013 and 2015, France has introduced a fairly comprehensive system of board-level employee representation. In companies of a certain size (+1,000 employees in France or +5,000 worldwide), one seat on the board of directors is reserved for an employee representative.

However, this employee representative on the board cannot be a member of the CSE or the trade union. In practice this means that the employee representative has to resign from all other functions when he or she becomes a board member.

In addition to this full member, the CSE can also attend board meetings and has the right to raise issues and have them answered. As these CSE members are not full board members, they do not have the right to vote.

6.5. Western system: UK

Cyprus, Ireland, Malta and the United Kingdom have a different model of social dialogue, which could be described as a more 'liberal-pluralist' model. This model is based on a **voluntarist tradition** with little legal state intervention, although the degree of intervention has certainly increased in recent periods. Trade union membership is in decline.

Collective bargaining generally takes place at company level between individual employers and unions in the private sector. There is **no state support** (e.g. through extension mechanisms) for collective bargaining at sectoral level, which results in a relatively low number of employees covered by a collective agreement.

State intervention in the system has increased in recent decades, with the introduction of statutory minimum wages and greater state control over how trade unions can operate. This is often the case with 'union recognition', where unions have to prove their representativeness before they can legally engage in collective bargaining.

The UK is a prime example of how systems of social dialogue can disintegrate in a relatively short period of time. In the last ten years, the UK has gone from being a country with relatively strong unions to one with weak unions, from being a country with strong collective bargaining coverage to one with weak coverage. The UK used to be a country with a strong voluntarist tradition, whereas in the last ten years there has been a lot of legal intervention in social dialogue. Last but not least, the UK has seen a strong decentralisation of its collective bargaining system.

6.5.1. UK unions

In terms of trade unions, the field is quite complex. Unlike some other countries, there is no clear guiding principle in the UK that organises unions, such as ideology (e.g. Belgium and France) or occupation (e.g. Sweden). As in Germany, there is one dominant trade union confederation, the Trade Union Congress (TUC), which has the vast majority of unions as members. Unlike in Germany (which also has a dominant confederation), the unions that are members of the TUC are not clearly divided along sectoral lines.

The TUC's three largest affiliates are (1) Unite, (2) Unison and (3) the GMB. Unite was formed in 2007 as a merger of several unions and is what we might call a 'general' union, as it organises workers from all sectors. Unison mainly organises public sector workers and the GMB is also a general union, organising mainly manual workers. There are also a number of smaller unions that organise specific industries or occupations, such as the Communication Workers Union (CWU), which only organises postal and telecommunications workers.

Overall, the rate of unionisation is around 25%, with a marked difference between the private (14%) and public (56%) sectors.

In the UK, there is an interesting link between trade unions and the **Labour Part**y. Given that the Labour Party was founded by the trade unions, half of TUC members are members of the party.

IWGB challenging the status quo

In 2013, a new union called the Independent Workers Union of Great Britain (IWGB) was formed as a breakaway from Unite and Unison. Its members are mainly low-paid migrant workers in London who work in cleaning and the gig economy.

ARTE made a nice documentary about their struggle at the University of London, which you can watch here: https://wwwarte.tv/en/videos/088023-000-A/an-eternal-struggle/

6.5.2. Collective bargaining

Collective bargaining in the UK is mainly at **company level** and covers less than a third of all employees in the UK (Fulton, 2013b). There is still some sectoral bargaining in some sectors (e.g. textiles), but even where it exists, individual employers are not legally bound by collective agreements signed by employers' organisations.

Employers do not have to bargain collectively with unions unless the unions are officially 'recognised' (see below). In most cases, however, employers will voluntarily engage in collective bargaining where unions are strong local players (regardless of their official recognition).

American-style **union recognition** was introduced in 1999 and is a way of forcing employers to bargain collectively with a union if it can prove that it represents a majority of workers in a particular bargaining unit. A bargaining unit is the employees covered by a collective agreement and can be a unit, a workplace or a group of workplaces. The union can prove that it represents a majority in such a unit by having more than 50% of the employees as members, or by winning a majority of votes in a secret ballot. However, most employers voluntarily recognise a union as representative without going through the full legal process.

As the **right to strike** is an important part of the collective bargaining debate, the UK's peculiar system merits discussion. Legislation passed in the 1980s and 1990s severely restricted the right to strike in the UK. Without going into detail, before a union can legally call a strike, it has to organise a ballot in which a majority of workers agree to strike. After this ballot, the union still has to respect a notice period to avoid the strike. Sympathy strikes are banned and the union can be held liable for any damage caused by unlawful industrial action.

Restrictive rules: British airways

An illustration of how these rules really make strike action difficult came in 2009 at British Airways. At the time, 92% of cabin crew voted in favour of industrial action, but the union was unable to call the strike because of some minor irregularities in the ballot.

6.5.3. Workplace representation

Unlike many other European countries, there is no single, universal system of workplace representation in the UK. There are a variety of structures that can be set up for workplace representation, such as (i) a local recognised union, (ii) an unrecognised union, (iii) a joint consultative committee or (iv) a non-union type of representation.

Joint consultative committees can be set up in companies if 10% of the workforce request them. Such a request triggers negotiations on how the committee should operate. If there is no agreement, fallback rules apply.

6.5.4. Co-determination (board-level employee representation)

There is no system of board-level employee representation in the UK. The TUC is officially in favour of such a system, and in 2017 the then Prime Minister Theresa May promised to introduce one, but to no avail.

6.6. Centre-East system: Poland

It is difficult to speak of a single Central and Eastern European model of social dialogue, as practices in these countries tend to vary. Nevertheless, some common features can be found in the historical legacy of the communist system and the current neo-liberal ideological tendency of the system.

Coming from a tradition of (almost) compulsory union membership in the Soviet era, trade unions in the CEE countries have seen their **membership decline** significantly over time. This decline coincided with a change in the role of unions, which in the Soviet era were strong in service provision and not so strong in collective bargaining. Current union density is rather low (< 20%).

The **neo-liberal economic strategy** of these countries focuses on attracting foreign investment by keeping labour costs low and providing flexibility to enterprises. The state intervenes by setting minimum standards for employment, but does not generally support collective bargaining.

As a result, collective bargaining is **fragmented** and coverage is low (< 25%), with some variation between countries. There's very limited development of collective bargaining at sectoral level, with most bargaining taking place at company level.

Poland is an interesting country to focus on as it is a large country with a population of around 38.5 million, making it the 5th largest country in the EU in terms of population. Like the other CEE countries, Poland was part of the Soviet bloc until 1989. In its transition to capitalism, Poland followed the so-called 'shock doctrine', meaning that it moved very quickly and abruptly from a state-controlled economy to a full market economy. Economically, the country has performed well in recent years and was one of the few countries to remain largely unaffected by the post-2008 economic crisis. It's economy is still mostly national (not so much export based), but with a strong presence of foreign investment and multinationals.

6.6.1. Polish unions

Poland has a low trade union density (around 13%), with large differences between the public sector (+/- 60%), the foreign-owned private sector (+/- 33%) and the domestic private sector (8%).

There are three main trade union confederations: NSZZ Solidarnosc, OPZZ (All Polish Trade Union Confederation) and PZZ (Trade Union Forum). NSZZ Solidarnosc is the largest confederation and is famous for having managed to organise itself as an independent union under communism. It played an important role in Poland's transition and its most famous leader (Lech Walesa) even became Poland's first democratically elected president in 1990. Today, Solidarnosc is a relatively right-wing union with a strong Christian background. The total membership of the union is disputed, but is thought to be between 700,000 and 900,000. The second largest union is OPZZ, which has around 500,000 members and is a continuation of the former communist unions. The third largest union, FZZ, is much smaller and has around 300,000 members.

In addition to these large confederations, Poland also has a number of smaller, **anarchist**-inspired unions, such as the Workers' Initiative and some smaller, radical agricultural unions.

6.6.2. Collective bargaining and social dialogue

Collective bargaining is very **weak** in Poland. Total coverage is around 15%. During the communist era there was no independent collective bargaining and currently there is only company level bargaining. Sectoral bargaining is virtually non-existent. Collective bargaining can only take place through trade unions.

As far as national social dialogue is concerned, the Polish system is also quite **state-dominated** and weak. There are only tripartite institutions in which the state plays a central role. For example, the Tripartite Commission for Social and Economic Affairs collapsed in 2013 when all the trade unions left the commission in protest against unilateral government measures. A new Social Dialogue Council, also tripartite, was established in 2015.

6.6.3. Workplace representation

In terms of workplace representation, Poland has a kind of **dual system** of representation with works councils and trade unions. However, there are very few works councils and very little union representation. The works council system has to be triggered by a request from 10% of the workforce.

Until 2009 the trade union had a monopoly on works council members, but a Constitutional Court ruling allowed non-union members to stand for election to the works council.

Local unions can be formed for representation purposes with as few as 10 members, resulting in a large number of local union organisations. The powers of both the works council and local union representation are largely limited to information and consultation. In some cases (such as collective redundancies) there is also an obligation to try to reach agreement.

6.6.4. Co-determination (board-level employee representation)

With the exception of some state-owned companies, there is no system of employee representation at board level in the private sector in Poland.

6.7. Nordic system: Sweden

Suggested reading :

1. Kjellberg, A. (2019). Sweden: Collective bargaining under the industry norm. In T. Müller, K. Vandaele, & J. Waddington, Collective bargaining in Europe: Towards an endgame (pp. 583–603). European Trade Union Institute.

Social dialogue in the Nordic countries is rooted in a strong **voluntarist** tradition, in which the state minimises its involvement in the how (procedures, rules) and what (subjects of negotiation) of social dialogue. As a result, most Nordic countries do not have a statutory minimum wage. Minimum wages are set by collective agreements at sectoral level, and where there is no such agreement, there is no minimum wage.

This voluntarist tradition is supported by **very strong players** (> 70% union density) and a consensual, cooperative tradition of social dialogue. Most countries have a variant of the Gent system, in which unemployment benefits are paid to workers through union-related funds. Moreover, in contrast to the Belgian system, unemployment funds are voluntary, which means that there is a public alternative for those who are not members of such a fund.

Collective bargaining coverage in the Nordic countries is **particularly high**, based on a strong tradition of sectoral bargaining. The state doesn't usually 'extend' collective agreements, but there is good coordination between collective bargaining due to strict subsidiarity principles (i.e. company level agreements can only improve sectoral standards). Coordination is also mostly through **pattern bargaining**, where the agreement in one sector (often industry) serves as a reference for agreements in other sectors.

6.7.1. Swedish unions

Trade union density is particularly high in Sweden (around 70 per cent), although it has recently shown some signs of decline. Unions are divided along occupational and educational lines (Fulton, 2013a). There are three main unions: LO, TCO and Saco. LO organises mainly blue-collar workers, has a social democratic tendency and organises over 1.2 million workers. TCO organises mainly white-collar workers and has about 1 million members. Saco organises professional and academic staff and has just over half a million members. Together they represent about 70% of all employees in Sweden.

The high level of membership is supported by various institutions, one of which is the **Ghent system** in Sweden. In order to receive unemployment benefits, workers must be affiliated to a state-supported but union-related employment fund. Without such membership, the unemployed worker is not entitled to unemployment benefits. While in theory fund membership is separate from trade union membership, in practice they often go hand in hand. However, a change in the rules on these links in 2007 was associated with a drop in union membership of around 6%, showing the importance of this system.

6.7.2. Collective bargaining

Collective bargaining coverage is particularly **high** in Sweden (88%), even though the extension mechanism is not used. The high level of employee and employer organisation and multi-level bargaining ensure high coverage.

Bargaining takes place at national, industry and company level, but the most important level is the industry level.

At national level, collective bargaining is organised every three years. It establishes an **'industry norm'** (*Industriavtalet*), which serves as an implicit wage norm. The norm sets the wage increase for the industry, and in principle no wage increase can be higher than this industry norm.

Subsequently, wages are negotiated at industry level on the basis of the industry norm. Note that as there is **no extension mechanism**, employers who are not members of the employers' organisations are not bound by the collective agreement and can apply wages below those negotiated. Therefore, there is often pressure from the unions for these employers to join the employers' organisations.

Solidarity strikes in the Nordic countries

Solidarity strikes (also called sympathy or secondary strikes) are used in the Nordic countries as a way of 'convincing' (read: forcing) employers to participate in the Nordic social model, to accept trade unions and to engage in collective bargaining. A famous example comes from Denmark with the arrival of McDonalds. When the fast food company came to Denmark, it tried to operate outside the system by not following the existing (but not generally binding) industry agreement. After several years of trying to get the company to comply with the system, the unions realised that there was no alternative but to call a sympathy strike: dockers refused to unload containers for McDonalds, construction workers stopped building McDonalds outlets, printers and advertisers refused to put the logo on cups or publish advertisements, and truckers refused to deliver food or beer. There was also a widespread boycott. After some time, McDonald's said it would abide by the industry's collective agreement. As a result, McDonald's workers in Denmark are comparatively well paid, have good sick pay and enjoy 6 weeks paid holiday (Bruenig, 2021).

6.7.3. Workplace representation

The Swedish system is a typical example of a **single-channel** system of representation. In other words, there is no works council. All workplace representation is through the local union, which is responsible for both bargaining and information and consultation. In the workplace the union representation is often called a 'club'. If there is no club in a workplace (which is often the case in smaller companies and workplaces) the local branch negotiates collective agreements.

Relations in Sweden are typically based on trust and close cooperation between employers and unions. As in other countries, the employer is required to inform, consult and negotiate with the local union branch about any significant changes in the employer's activities or working conditions.

While there is a legal basis for workplace representation, collective agreements usually extend the influence and power of these workplace representatives and the practical details of how representation is organised are left to local bargaining. As a result, the influence of local union branches in the workplace depends largely on their local power.

6.7.4. Co-determination / Board-level representation

A system of employee representation at board level was introduced in Sweden in 1973 and was strongly opposed by employers. At the request of one of the parties (often the local union) the union has the right to appoint two-thirds of the board.

Board-level employee representation is widespread, with almost all companies with more than 25 employees covered by the system (Fulton, 2013a). However, employee representatives will always be in the minority on these boards.

Board-level employee representatives have the same rights (and duties) as other board members, except when discussing collective bargaining and industrial action (or other issues where there is a clear conflict of interest).

Importantly, unlike the German system, the Swedish system has a unitary board structure. In Germany the employee representatives are members of the supervisory board, whereas in Sweden there is no such supervisory board.

6.8. Conclusion

This brief discussion of the different systems of social dialogue in Europe shows that there is enormous diversity in how trade unions are organised and how strong they are, how collective bargaining takes place and how workers are represented at workplace level. Some European legislation (such as the Information and Consultation Directive) tries to ensure that all workers in Europe have a similar basic floor of rights to representation, collective bargaining and organising, but in practice where you work determines many of the rights you have.

One consequence is that there is a great need for culturally sensitive communication in multinational companies. Communication that recognises and acknowledges that you come from different cultures of social dialogue.

Exercise: where does Belgium fit?

Looking at the different systems, where do you think Belgium fits best? What does it have in common (and what does it not) with the central-western, northern and southern systems of social dialogue?

6.9. Social dialogue in multinationals

In multinational companies, decisions are often taken not by the managers present at the German, Belgian or Dutch works council meeting, nor by those who inform and consult the Swedish or Polish trade union delegation. Important decisions are often taken at transnational level, by central management.

Gradually, policy-makers and social partners have recognised the need for some form of transnational social dialogue in multinational companies. In Europe this takes the form of (1) information and consultation in European Works Councils and (2) negotiation of transnational company agreements.

The Hoover case 1993

To understand the motivation behind European Works Councils, it is useful to go back to 1993 and the so-called 'Hoover case'. Hoover is a company that makes vacuum cleaners and washing machines. In 1993 it had three factories in Europe, one making washing machines in Wales and two making vacuum cleaners in Scotland and France. The company faced stagnating demand and therefore overproduction in Europe. Over the years, production at the two vacuum cleaner plants was reduced, but in 1993 it was decided to concentrate production by closing one of the plants. As the Scottish plant was operating at the lowest capacity, it was decided that the French plant should be closed first and all production transferred to Scotland. This would mean that over 600 of the 700 employees would lose their jobs. In Scotland it would mean the creation of around 400 jobs.

But Hoover's management didn't just want to close the French plant. They wanted to make the most of the restructuring in two other ways. First, they set the regions in competition with each other to get the best deal. Both regions promised the company more than 10 million euros in aid. Second, they put the workers in competition with each other. In short, they proposed to the Scottish unions that they sign a collective agreement that would lower their working standards in return for the company moving it's production to Scotland.

The list of measures in the 'agreement' is considerable and includes an 11-month pay freeze, 50 minutes extra working time without extra pay, longer working hours, no more paid overtime, the introduction of four shifts, a reduction in an existing bonus scheme, a compulsory merger of the three existing unions, a reduction in the number of union representatives, more flexible working hours, the introduction of a two-tier system of employment, with new recruits having less job security and no pension rights for the first two years, and the end of seniority-based promotions. In a separate agreement it was also decided that the group pension fund could be used to make investments in the company. And as the icing on the cake, a social peace clause banning all stoppages or industrial action for about 2 years.

The Scottish union, which had no contact with its French counterparts, had to accept. In their own words, they were negotiating "with a gun to their head" because the alternative was a plant closure in a region already facing massive unemployment. It was less a negotiation than an unconditional surrender.

When the French workers were told that their plant would be closed as a result of the Scottish 'agreement', there was a long occupation of the company and several actions.

The issue was widely covered in the European press, highlighting the unacceptable imbalance in Europe. The economic integration of the European Union has given employers additional leverage over workers, while workers have no means of responding. Companies can freely move products across borders and choose where to locate their factories, making it possible to pit workers in one factory against those in another. At the same time, workers in these companies have no way of responding, lacking transnational organisation and even communication.

This imbalance was considered unacceptable. The European Union's response was to push through an old plan to give workers from different countries the opportunity to communicate and possibly cooperate on a transnational level by introducing European Works Councils.

Read more:

De Muelenaere, M. (1993), "Hoover: quand une multinationale ecrase la protection des travailleurs bise sociale sut l'europe", *Le Soir*, 2 May, available at: https://www.lesoir.be/art/hoover-quand-une-multinationale-ecrase-la-protection-de_t-19930205-Z06CX4.html (accessed 10 April 2020).

Deloince, V. and Sohlberg, P. (1993), "Les leçons de l'affaire Hoover.", *Alternatives Economiques*, 4 January, No. 106, available at: https://www.alternatives-economiques.fr/lecons-de-laffaire-hoover/00013116 (accessed 10 April 2020).

EIRR. (1993), "The Hoover affair and social dumping", *European Industrial Relations Review*, No. 230, pp. 14–19.

Lapeyre, J. (2018), *The European Social Dialogue The History of a Social Innovation (1985-2003)*, European Trade Union Institute, Brussels, available at: https://www.etui.org/content/download/34951/347580/file/Social-dialogue-Lapeyre-WEB.pdf.

6.9.1. European works councils

In multinationals operating in European countries, a 'European Works Council' (EWC) can be set up. Such an EWC looks like a Belgian works council, but operates on a transnational level. It brings together employee representatives from different (European) countries with the transnational management of the company for information and consultation purposes.

In principle, EWCs are responsible for information and consultation on **transnational issues**, i.e. all company decisions that affect more than one country in the EU or are of such importance that they are relevant at transnational level.

Let's take an example. Volkswagen is a large German car manufacturer with more than 600,000 employees worldwide. In Europe alone, it has plants in Germany, France, Italy, Turkey, the Czech Republic, Poland, Spain, Slovakia, Belgium and other countries. It is a huge multinational. The German or Belgian works council alone cannot influence the management of the company worldwide. That is why a European Works Council was set up. In this EWC there are about 20 representatives from all over Europe. They meet a few times a year to discuss employment trends, the group structure, new

technological developments, etc. If there is a major restructuring, the EWC would meet exceptionally to discuss the issue in detail. The information from these European meetings is then used by the representatives at national level to provide a context for some decisions at plant level.

Watch it: What are European Works Councils

Here is a video of a couple of minutes explaining what EWCs are and what they should do

https://www.youtube.com/watch?v=3cxdEok6Ido

Compared to national works councils, the organisation of European works councils is quite different. At the Belgian level there is a law and a number of collective agreements that specify what a works council should do, how it should do it, who should be a member of a works council, etc. The problem is that you cannot do this at the European level.

The problem is that this is not possible at European level. The national traditions of social dialogue are too different for there to be a one-size-fits-all solution for European social dialogue. Practically, this is difficult, because in some countries you have works councils, in others trade unions, and in others nothing. But a one-size-fits-all solution is also politically difficult, because each country would like to see its model applied to the whole of Europe, and very few would be prepared to accept another country's model.

This is why the EWC regulation is called **'flexible regulation' or 'regulated self-regulation'**. The idea is that each company, in negotiation with its employees, can set up its own tailor-made European Works Council.

The idea behind flexible regulation is that, under certain conditions, the law obliges employee representatives and managers to sit down and negotiate. This negotiation must cover (at least) a number of pre-defined criteria, but the parties are free to agree on anything they like and are free to discuss and negotiate other things as well. So the rules are mostly about the procedures that should be followed in the negotiation.

6.9.2. What rules apply to European Works councils?

After this brief introduction, let's take a closer look at the rules that apply to European works councils. In a national works council this is generally quite straightforward: the law and/or the existing collective agreement. Unfortunately, because EWCs are based on European Union legislation, it is a bit more complicated. Without trying to explain the ins and outs of European decision-making, here's a concentrated explanation.

The main framework for European Works Councils is set at European level by a directive (1993) and a recast (2008) of that directive. This directive defines what an EWC is, where it can be set up, what procedures should be followed and what the EWC should do. However, a European directive is not like a European law that is immediately applicable. It is binding on the Member States, which must 'transpose' or 'implement' the directive into national law before it can have any effect.

The aim of such **transposition** is to enable Member States to make the rules in such a way that they achieve the objectives of the Directive. In other words, they have to take it on board and make it compatible with existing legislation. The national transposition laws are therefore not identical. The German transposition law differs from that of France and Italy, and in Belgium transposition is not by law but by collective agreement. In terms of content, these transpositions are very similar to the original directive, but are more specific on some issues and link it to existing laws and institutions. For example, they will be specific about how EWC members can be appointed (by the union, by a works council vote...).

It is these **national laws** that companies have to follow. However, as mentioned above, the law only sets out and defines the basic procedures and fallback provisions. In other words, the law provides a framework for negotiations on how to organise an EWC. The rules that an EWC has to follow on a day-to-day basis are part of what is called the **EWC agreement**.

So in short, when there is a discussion about the practice of an EWC, the first reference is the EWC agreement, if it doesn't specify what needs to happen, is too vague or there is a discussion about the validity of the agreement, the next reference is the national law and only then the EWC Directive.

6.9.3. How does the negotiation develop?

As we have seen, it is up to management and employee representatives in a particular multinational company to reach an agreement on the operation of the European Works Council. The way in which this negotiation should take place is laid down in the EWC Directive.

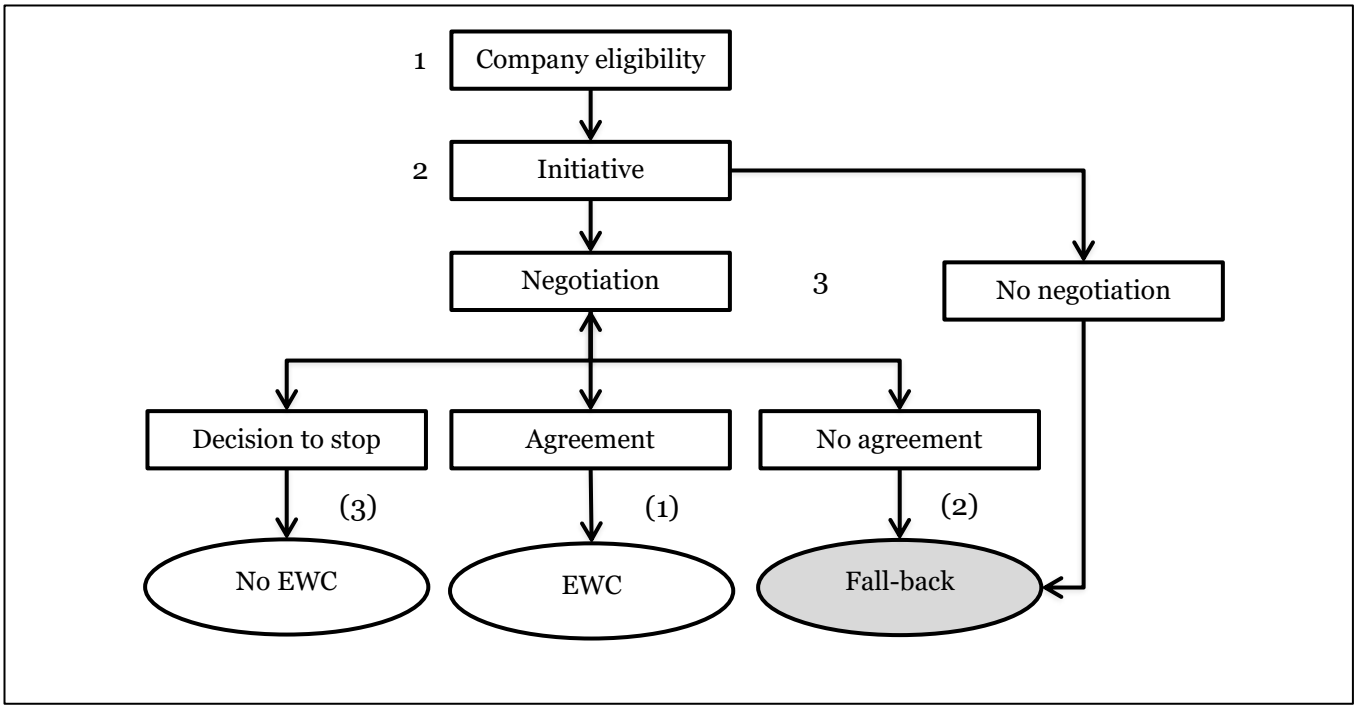


Figure 6.1: EWC establishment

1. **Eligibility**: The first thing to know is whether the company falls within the scope of the EWC rules. To do so, it must have at least 1000 employees in the EEA as a whole and 150 in at least two EEA countries. While this may seem a straightforward task, it is not always easy. Many companies don't publish the number of employees they or their subsidiaries have in other countries. Therefore, employees and trade unions have a right to ask for this information and the company has an obligation to provide it.
2. **Initiative**: Once it's clear that the company falls within the scope of the directive, an initiative can be taken. In other words, a company with more than 1000 employees is not obliged to set up a European Works Council. Someone has to ask for it. This initiative can come from management (which is rare) or from employees.
   For the employee initiative to be valid, it needs to be a written request from 100 employees (or their representatives) from at least two different member states. This could be, for example, two employee representation bodies (works councils, local trade unions) representing at least 100 employees who sign an official request to set up an EWC.
3. **Negotiate or not**? Once a valid request has been made, the company has two basic options: to negotiate or not to negotiate. If it chooses not to negotiate, an EWC will be set up on the basis of fall-back provisions. The company can do this by doing nothing for 6 months. If it chooses to negotiate, it must set up an SNB within six months.
4. **Negotiation**: If the company chooses to negotiate, the SNB has three years to discuss with management how it wants to tailor its EWC. This can result in:
   (1) an agreement, which means that the EWC will operate according to the rules of that agreement;
   (2) no agreement after three years, after which a fall-back EWC can be set up; or;
   (3) a decision to terminate negotiations, which means that no EWC will be established and no new request can be made for two years.

6.9.4. Subsidiary requirements

At several points in the process, the **subsidiary requirements** play an important role. These subsidiary requirements are a kind of fall-back rules that apply if the SNB cannot reach agreement or if no negotiations are started. The requirements are like a basic EWC agreement that specifies how the EWC should be set up and what it should do. So it sets out some issues for information and consultation, it says that there should be an annual meeting, that there's a right to training and expertise.

So the subsidiary requirements serve as a kind of **floor** for negotiations. It is the best alternative to a negotiated agreement, so negotiators will rarely agree to anything below the level of the subsidiary requirement. The subsidiary requirements are a floor for bargaining, but they are also a **sticky floor** because, on the other hand, employers may have little incentive to agree to much higher standards, knowing that the subsidiary requirement will apply if they just wait long enough.

Subsidiary requirements

If no agreement can be reached on how the European Works Council should operate in a particular company, fall-back rules should be applied. These rules include the following

- Informing employee representatives on a range of issues such as the company's financial position, production trends, sales forecasts, etc.
- Informing and consulting employee representatives about employment trends, employment developments, new technologies, etc.
- That employee representatives should be given time to express their views and receive a reasoned response from management.
- That the EWC should meet with central management at least once a year.
- That extraordinary meetings should be allowed in some exceptional circumstances.
- That employee representatives can be assisted by an expert, the cost of which should be borne by management.

These rules give an indication of what should happen, but they are so broad that it is advisable to find an agreement that makes these general rules applicable in the company.

6.9.5. A closer look at two agreements

To get a better understanding of what is in such EWC agreements and how they work, let's take a closer look at two agreements: one from the Solvay EWC (2018) and one from the Lactalis EWC (2019) (see the table below).

The Solvay agreement states that all countries in Europe where Solvay operates are covered by the agreement, regardless of the number of employees. The agenda for meetings is set by agreement and there is no limit on the number of training days for employee representatives. There's also a select committee, a smaller group of employee representatives who do the day-to-day work and can meet as often as they need to. The EWC can be supported by experts such as an accountant, a subject expert and a trade union coordinator. If Solvay's central management wants to take a transnational initiative, it will inform and consult the employees before a final decision is taken, and the EWC can form an opinion to which management will give a reasoned response. Employees can communicate everything that happens in the EWC to their members and colleagues, except for what is explicitly designated as confidential by management. In other words, the Solvay EWC is given sufficient rights and resources to become a truly independent and active body for transnational employee representation.

The Lactalis agreement is much stricter. If there are less than 100 employees in a country, that country is not covered by the agreement and cannot send a representative. The agenda of the EWC meeting is set by the human resources manager, and comments can be submitted 45 (!) days in advance. There is a clear

limit on training for EWC members, which is a maximum of 1.5 days per year, and the training is to be provided by the company's HR department. The expert who might assist the EWC members should also be an internal company expert. Importantly (and against the law), the agreement even states that the EWC will be informed of transnational changes after they have been decided by management, leaving little or no room for influence. Last but not least, all documents received at meetings are to be considered confidential information, which means that they cannot be shared and discussed with the rest of the workforce.

Table 6.2 - Two EWC agreements

	Solvay 2018 (12 pages)	**Lactalis 2019 (21 pages)**
Scope (+ Brexit)	No limitation	> 100 employees, opt-in of UK
Agenda	By agreement	Chair (HR), remarks 45 days before
Training	No limit, languages as much as possible	1,5 days, by HR. Language outside hours
Select committee	Yes, should meet often	Not really
Expert	Accountant + one expert + union coordinator	Lactalis expert
Time-off		Secretary 2 days, other 1 day
Transnationality	2 countries + potential impact	2 countries
Inf & Con	Before + reasoned response	After the fact
Exceptional circ.	As early as possible, meeting, working group. No implementation during consultation	Video + sectr & concerned country
Confidentiality	Expressly communicated as confidential	All documents
Reporting back	Obligation, access to sites	Nothing
Termination	No agreement -> directive	Agreement stays in force

Obviously, the 'self-regulation' part of the EWC legislation leaves a lot of room for good and bad examples. In the case of Lactalis, it could even be debated whether the agreement is legally valid, as it sets standards that are lower than those required by the legislation.

6.9.6. The debate about EWCs

Few would argue that we do not need some form of information and consultation at European level. At the same time, some have argued that EWCs are insufficient (and even harmful) to create a genuine transnational employee voice. These pessimists have many arguments:

- On the one hand, it is argued that the structure of the EWC with national representatives will not lead to a real European voice, but mostly to an addition (or competition) between different countries. The

German representatives will defend the interests of German workers, and the Romanians will do the same.

- Secondly, regulated self-regulation opens up the possibility of substandard agreements and EWCs (e.g. Lactalis) and the subsidiary requirements are not strong enough to guarantee good EWCs. In other words, works councils are too weak.
- Thirdly, the enforcement of works council rights is a problem. Who's going to check that they're working, given the lack of a European labour inspectorate? And even if an EWC goes to court, the sanctions are really low.
- Fourthly, EWCs are not trade union bodies. The representatives in many countries are neither trade union members nor local employee representatives. In this case, the EWC operates in isolation from what's happening at local level.

In summary, the critics see the EWC solution as inherently flawed and would prefer alternatives that are stronger, have more rights and guarantee trade union presence.

The optimists in the debate acknowledge the shortcomings but point to the promise and potential. Even if it is not perfect, they say, the EWC creates a transnational network of employee representatives that was largely lacking before. They also say that with time, training, trade union coordination and good will, EWCs could learn to function and become strong information and consultation actors.

6.10. Transnational company agreements

The European Works Council is an information and consultation body that is not necessarily made up of trade union members. So a student of social dialogue and industrial relations might ask: where's the trade union in this picture? At Belgian level there are information and consultation bodies and there's a trade union delegation that negotiates and concludes collective agreements. Is there an equivalent in multinational companies?

The answer to this question is: not really. There is no real, universally recognised equivalent of a trade union delegation. However, some multinationals do sometimes negotiate Transnational Company Agreements (TCA), which could be seen as an (imperfect) equivalent to a national collective agreement.

The following paragraphs provide a brief and rather superficial introduction to these TCAs and the role of trade unions in multinational companies, without going into the (numerous) details and nuances of the debate on TCAs.

The main problem is the lack of a strong legal framework for TCAs, which makes defining them a thorny issue. At the national level in Belgium, there is a clear law (cao wet, 1968) that regulates what a collective agreement is, who can negotiate and sign it, what should be mentioned in an agreement, etc. This is not the case at international level. Therefore, there is no strong definition, but we can use the working definition of Leonardi (2012, p. 8), a TCA is *"agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more*

representatives of a company or group of companies on the one hand, and one or more workers' organisations on the other hand".

Looking at the working definition, several aspects are important. First, TCA's are 'agreements', meaning that several parties with diverging interests have found more or less explicit common ground on an issue. Second, a TCA contains 'reciprocal commitments', meaning that the parties to the agreement agree (not to) do something. Third, the agreements are transnational in the sense that they cover employees/workplaces in several countries. Fourthly, they are concluded by representatives of a company and workers' organisations. Note that this working definition does not use the word trade union, but the more general term workers' organisations.

In layman's terms, a TCA is basically a collective agreement concluded at the transnational level of a company. This can be for the whole multinational (global agreements) or for a specific region (e.g. European agreements).

A TCA can cover any issue it deems appropriate. The global agreements generally cover broad issues relating to the application of certain ILO Conventions in the company, such as freedom of association, the right to information and consultation, etc.

The European TCA's are somewhat less vague and tend to cover issues such as restructuring, social dialogue, health and safety issues, HRM policies, training issues or data protection (Broughton et al., 2020; Telljohann et al., 2009)

Most TCA include a general commitment by the company to respect certain rights in all its workplaces, to respect certain principles in the application of management policies or to be transparent on issues. For this reason, TCA's are sometimes referred to as European or global 'framework agreements', as they essentially set out a general framework within which national social dialogue should operate.

Global framework agreement at Inditex

You are probably familiar with the clothing brand Zara. What you might not know is that Zara is part of a much larger company called **Inditex**, which also owns Bershka, Pull&Bear, Massimo Dutti and more. The company operates in almost 100 countries and directly employs more than 150,000 people.

The Spanish company signed a global framework agreement in 2007, which was renewed in 2019. The agreement recognises freedom of association and the right to collective bargaining, and refers to several ILO conventions and international guidelines such as the OECD Guidelines for Multinational Enterprises.

A Global Unions Committee will be established to share best practice on how to promote these rights. Importantly, the global agreement includes a paragraph on 'access', stating that local unions will have 'reasonable access' to Inditex suppliers (the factories). Unions in countries with Inditex suppliers on their territory can use this agreement to make it easier to organise workers. While this is obviously an

advantage, experience shows that such agreements do not make it much easier for unions to effectively contact and organise workers.

In the absence of a legal framework, the **implementation and enforcement** of TCA's is a rather difficult issue. At national level (in most countries) a trade union can go to court if a collective agreement is not respected. In Belgium, the social inspectorate even checks that companies comply with collective agreements that have been made generally applicable. This is not possible at transnational level. For this reason, TCA's have to rely on much weaker enforcement instruments.

One way of ensuring implementation of (mostly European) TCA's is to transpose the content of the TCA into a national collective agreement, which is not voluntary but binding. Secondly, industrial action could help to ensure that a TCA is implemented. However, in addition to the many practical problems, national legislation on industrial action often interferes and makes such action impossible. In not a few cases, implementation is therefore monitored by (internal or external) committees (ITC, 2018).

However, the most sensitive issue in the debate on TCA's is undoubtedly who negotiates with management and concludes the agreements. At the global level, the issue is clear. It is the sectoral Global Union Federations (GUFs) that have the authority to negotiate and conclude a TCA. At European level it is equally clear that, in theory, it is the European Trade Union Federations (ETUFs) that should negotiate and conclude TCA. In practice, however, the EWCs set up in these companies often play a more or less important role in initiating, negotiating, concluding and implementing TCA's (De Spiegelaere et al., 2021).

The role of EWCs in negotiating and concluding TCA's is controversial because (1) they are bodies for information and consultation, not negotiation, (2) they often have non-union members as employee representatives and, most importantly, (3) they do not have the right to strike.

Collective bargaining without the right to strike is collective begging. Without power behind you, bargaining is a tricky business. For this reason, many trade unions believe that EWCs should not be involved in negotiating transnational collective agreements and that this should be the exclusive competence of the trade unions.

Towards and optional legal framework for European TCA's?

The lack of a legal framework makes it difficult to enforce TCA's. To address this, several initiatives have been taken by the European Commission and the European Trade Union Confederation (ETUC) to establish an 'optional legal framework for TCA's'. The idea of the proposal is that the negotiating parties can 'opt in' to a legal framework established at European level. This framework therefore stipulates that the negotiating parties must have a clear mandate from those they claim to represent, that a TCA can't reduce the level of protection afforded to workers (non-regression) and that, in the event of conflict between provisions of the TCA and other agreements, the standard most favourable to the worker will apply (non-interference clause).

6.11. Summary

- Compared to the rest of the world, social dialogue in Europe has some distinctive features. At the same time, the diversity within Europe is considerable.
- Different 'models' of social dialogue can be identified on the basis of some common characteristics.
- The central-western model, represented by Germany, is characterised by it's dual system of representation and forms of co-determination.
- The southern model, represented by France, is characterised by a more confrontational approach with strong state intervention.
- The Western model, represented by the UK, is characterised by voluntarism, (relatively) little state intervention and almost no national or sectoral collective bargaining. It has shown serious signs of decline in recent decades.
- The Central-Eastern model, represented by Poland, is characterised by fragmentation, weak institutions dominated by the state and almost exclusively company-level social dialogue.
- The Nordic model, represented by Sweden, is characterised by voluntarism, little state intervention in the system, but state support for the actors, strong actors and cooperative relations.
- It is difficult to place Belgium in this framework, as it has characteristics of different models.
- European Works Councils (EWCs) can be set up in multinational companies operating in Europe to provide information and consultation on transnational issues.
- Although EWCs hold a lot of promise, they are relatively weak institutions with many critics.
- Transnational company agreements are sometimes used in multinational companies. These lack a clear legal framework and there is a lively debate about the role of EWCs in negotiating them.

6.12. Exercises

- Compare how trade unions are organised in different European countries. What models can you distinguish?
- Look at the different models and try to apply the Power Resources Approach to them. Where is there more or less power?
- Look at the different trade unions in different countries and try to fit them into Hyman's triangle.
- Think about Freeman and Medoff's model and see how dual and single channel systems approach the different functions of unions in different ways.
- What could Belgium learn from the other European countries and what could they learn from Belgium?

6. Conflict & strikes

7. Conflict and strikes

"Collective bargaining without the right to strike is collective begging".

In 2014, more than 750,000 days of strike action were registered in Belgium. The actions against the Michel I government (including various demonstrations, provincial strike days and a general strike) clearly had an impact. Nevertheless, 2014 was not a record year. In 1993, almost a million days were lost in a strike against the Dehaene government's Global Plan.

Even if these exceptional years are disregarded, the number of strikes and working days 'lost' to strike action in Belgium is high. According to research by Kurt Vandaele, Belgium is among the top 5 European countries in terms of days lost to strikes per 1,000 employees (Vandaele, 2007b).

Reason enough to take a closer look at industrial action and strikes in Belgium.

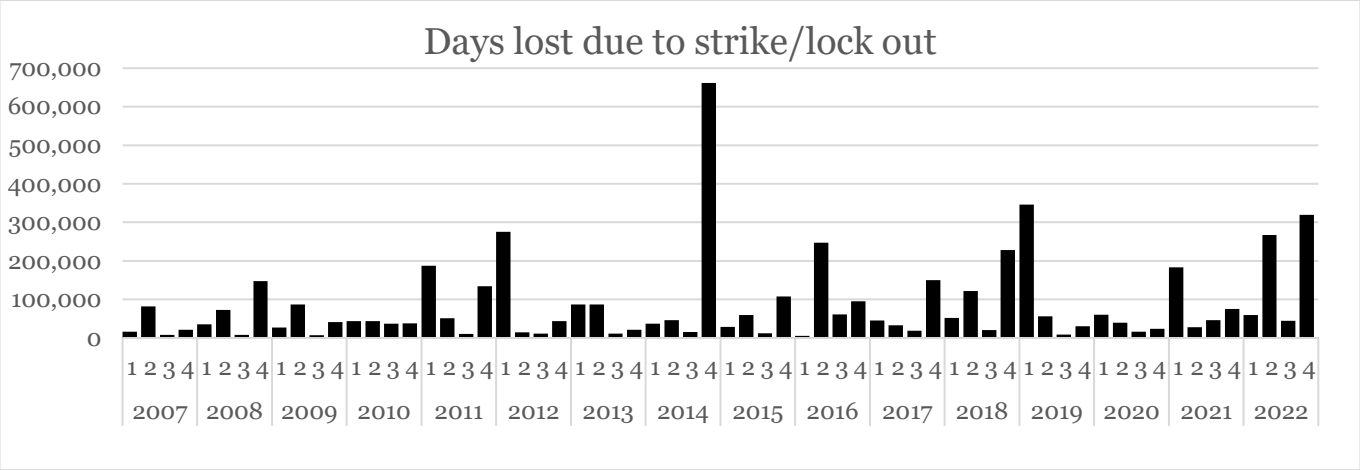


Figure 7.1 Strike days in Belgium (2007-2022). Source: RSZ

Strikes: the first, the furthest and the animated

The **first** recorded strike in human history took place in ancient Egypt under the reign of Rameses III. The striking workers were artisans working on tombs in the Valley of Death. At a certain point, the workers' wages were delayed and they decided to lay down their tools (withdraw their labour), staged demonstrations and eventually organised a sit-in near their workplace. The local authorities were quite surprised and as a first step they sent pastries to the striking workers in the hope that they would go back to work. However, this was not enough and the striking workers continued to occupy more graves and monuments. Eventually, the strikers were provided with supplies and food, and the payment of their wages was accelerated (Joshua, 2017).

The most **distant strike** in human history is undoubtedly the (alleged) strike staged by several astronauts on the Skylab in 1973. Obviously, this strike was not about pay, but rather about working hours, working conditions, and control and autonomy in the performance of work. As it is very expensive to send astronauts into space, they have to work very hard to carry out all kinds of experiments and tests.

Not only was the normal working day of an astronaut about 16 hours a day, but what they had to do was timed to the minute. When the astronauts had been in space for over 6 weeks, for some reason communication broke down and the astronauts took a day off. NASA assumed that the astronauts were on strike, and when communication was restored, negotiations resulted in NASA providing meal breaks and replacing the minute-by-minute schedules with more generic to-do lists (Hiltzik, 2015).

An **animated** strike can be seen in the Disney film Dumbo. During the making of this animated film in 1941, over 200 workers went on strike for higher wages and better working conditions. The strike is reflected in the film in a part where the clowns go to the 'big boss' to ask for a 'raise'. The company was forced to sign a collective agreement, but retaliated by sacking most of the unionised workers in the following years.

The **equal pay strikes**. Equal pay for equal work is a key demand of the feminist movement, enshrined in several national and European laws. But to achieve equal pay for equal work required a struggle, including a strike in Belgium (FN Herstal, 1966) and a strike in the UK (Ford Dagenham). Both were met with some contempt from the (male) union and employer sides. There's a 1996 documentary on the Belgian strike (Femmes Machines) and a film on the British strike (Made in Dagenham).

7.1. Definition and typology

First of all, it is important to **define** what a strike is and look at some different **types of strike**.

Strictly speaking, a strike is a **'temporary withdrawal of labour'** or a 'collective refusal by workers to carry out their work' in protest at something. It has the following characteristics: (1) it is voluntary, as workers decide to organise and join a strike; (2) it is a collective action; (3) it is temporary; (4) it is deliberate, as the striker has a clear intention not to carry out work duties; and (5) it is confrontational, as the strike action is directed against something or in order to obtain some concessions from another party.

The most traditional strike action is when workers in a particular company refuse to work in protest against an employer's policy or to demand better working conditions.

However, in addition to this traditional strike, there are many other forms of strike action. They can differ in terms of (1) what they are protesting, (2) the method of withdrawing work, and (3) the context in which the action takes place (Doutrepont, 2018; Geluykens & Van Sinay, 2016). Here, we'll only cover strikes related to labour, which means that we won't cover so-called strikes in other contexts, such as hunger, student or climate strikes.

Different types of strike, depending on the **objective**

- A **general** strike in which workers in an entire country or region decide to go on strike at the same time. This is usually to press for political reforms, but can also be used to force all employers to offer better working conditions or higher pay.

- A **solidarity** strike (also called a secondary strike) is a strike where some workers decide to stop working in solidarity with the demands of workers in another company. This usually happens when workers in one company are fighting over a highly symbolic or important issue that indirectly affects other workers, or as part of sectoral strategies.
- A **political** strike is a strike that focuses mainly on political demands, such as a change of policy or even a change of government. Often these are general strikes, but some sectoral or company strikes can also focus on political demands (e.g. the FN Herstal strike for equal pay).
- A **green** ban is a strike action focused on environmental demands.

Different types of strike

- A **sit-down** strike is a strike where workers come to work but refuse to do any work. They literally sit down and refuse to leave. In a way, it is a nicer word for occupying a company.
- A **slow-down** strike (*langzaamaanactie - grève perlée*) is an action where workers continue to work but deliberately slow down the pace of work.
- A **work to rule** strike (*stiptheidsactie - grève du* zèle) is an action in which employees follow all rules, regulations and procedures to the letter. This often means that production is significantly reduced or even stopped.
- A **sick-out** is a type of action where workers collectively call in sick on the same day. This often happens in places where there is no union to cover a strike, or where strike action is highly regulated or even prohibited.
- An **intermittent** strike is an action where workers stop work for a period of time (a few hours or even a few minutes). It is often combined with a 'rolling strike'.
- A **rolling strike** is an industrial action where workers coordinate their strike action and make it consecutive. This can mean that workers in different departments of a company strike every day for a short period of time, but all departments strike at different times, seriously disrupting production. It can also mean coordination across companies in a particular sector.

Different types of strike depending on the context

- A **wildcat** strike is a strike action that does not follow the pre-defined rules and procedures for strikes. It is often a spontaneous strike following a dramatic event.
- A **warning** strike occurs in some countries where strikes are highly regulated (e.g. Germany), where a strike can be called as a 'warning' in the context of ongoing collective bargaining.

Obviously, there's quite a variety of different types of strike that can take place. Depending on the legal framework, some types of industrial action may be legal in one country and illegal in another. The solidarity strike is a good example of an action that is legal in Belgium and Sweden, for example, but illegal in a number of other countries, such as the UK.

Some examples of strikes:

Solidarity strikes: In 2008, Bekaert announced the closure of two sites in Belgium and the relocation of production to Slovakia. As a result, strikes were organised at all Bekaert sites in Belgium in solidarity with their colleagues facing closure. In 2013, a social conflict at Logisport (a subsidiary of KatoenNatie in Belgium) led to a strike and solidarity actions in other parts of KatoenNatie (Humblet, 2015, p. 280).

Work-to-rule at Brussels Airport: In 2021, the airport police at Brussels Airport Zaventem complained for a long time about staff shortages and a lack of working materials. After a failed consultation, the airport police started a work-to-rule action, in which they checked all passports, identity cards and travel documents according to the rules. This led to long delays.

7.2. Right to strike

Interestingly, there is no explicit right to strike in Belgium. There is no law that defines and regulates the right to strike. This is the case in many other countries. At the same time, several international legal sources applicable in Belgium define the right to strike, including (i) the Universal Declaration of Human Rights (Article 20), (ii) several ILO Conventions (87, 98), (iii) the European Convention on Human Rights (Article 11), (iv) the European Social Charter (Article 6.4) and (v) the EU Charter of Fundamental Rights (Article 28).

There is no clear definition of the right to strike in national law, but the post-war 'prestation law' (*prestatiewet - loi prestations -1948*) gives an indication of what should be considered a strike. The purpose of this law is to ensure, among other things, some essential work activities during a 'collective and voluntary withdrawal of labour'.

This suggests that

- Strikes are about **withdrawal of labou**r: a strike is a clear withdrawal of labour under this national law. While the international regulation refers to the more general concept of 'industrial action', the Belgian prestation law focuses on stopping work.
- There is **no reference to the objective** of the strike or to who it is directed against. This means that a strike can be directed against the employer, but also against a third party such as another employer, the government or anything else.
- The right to strike is an **individual right** but a **collective reality**: the right to strike is an individual right for every worker. However, a strike action by an individual worker can hardly be seen as a strike, but rather as insubordination. Strikes are collective. It's only through the collective withdrawal of labour that pressure can be brought to bear.

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Participating in a strike, end of contract?

One of the main points of reference for the right to strike in Belgium is a judgment of the Court of Cassation in 1967. In this case, several workers joined a general strike against government plans (against the unitary law of 1960-1961). The employer argued that the employment contract had been breached because the workers didn't carry out their duties. The courts didn't accept this reasoning, as did the court of cassation, which clearly stated that participation in a strike does not automatically lead to the rupture of a labour contract, but rather to the suspension of the labour contract (Geluykens & Van Sinay, 2016).

Another important Court of Cassation ruling came in 1981. In this case, an employee (a trade union delegate) was dismissed by his employer for participating in a wildcat strike. However, the Court ruled that individual participation in a strike is not grounds for dismissal, even if the strike is not covered or organised by a trade union. The right to strike can therefore be considered an individual right in Belgium.

7.3. General strikes

One of the reasons why Belgium has a high number of strike days compared to other countries is that there are regular general strikes to push for political demands. The table below gives an overview of general strikes in Belgium. The table shows several things: (i) general strikes are used quite regularly in Belgium, mostly for political purposes, but also to pressure employers to enter into negotiations, (ii) some important political (universal suffrage) and social (paid holidays, minimum wages) advances have been direct consequences of general strikes, (iii) in the recent period the effectiveness of general strikes seems to have decreased.

Table 7.1: General strikes in Belgium

Year	Strike	Comments
1886	General strike and riots	Massive riots and strike actions which led to the first social legislation to be enacted
1893	General strike for the universal right to vote	Large strike wave of roughly a week, including some casualties. In the aftermath the universal (multiple) right to vote was enacted
1902	General strike for the universal right to vote	Roughly one week of strike actions with some casualties
1913	General strike for the universal right to vote	Roughly 10 days of strike, some compromises but no universal right to strike. The (simple) universal right to vote was enacted after WWI, in 1919.
1936	General strike for better labour legislation	Strike wave starting in the harbour of Antwerp. In the aftermath the first national labour conference was organized, the minimum wage was introduced and 6 days of paid leave
1941	Strike of the 100.000	Famous strike during the German occupation to protest living and working conditions, mostly in the industrial area of Liege.

1950	Strike in context of the 'king's question'	General strike, mostly in Wallonia and Brussels protesting the return of Leopold III. Four causalities. In the end, Leopold III abdicated from the throne.
1955	Strike wave for the 5 day-week	Strike wave over the summer starting as a 'Saturday strikes' for a 5-day week. After one month of strikes, an agreement was reached but it would take another 10 years until the 5-day week was generalized to all sectors
1960-1961	Strike against the Unitary Law	One of the most famous strike waves in Belgium in the winter of 1960-1961 against the 'unitary law' of the Eyskens Government. Mostly organized by the FGTB with over 1 million participants. In the end, the unitary law was passed.
1982	Strike against the Martens Government	Strike wave (mostly ABVV-FGTB) against the measures of the Martens government which included three consecutive index jumps. Not successful.
1982	General strikes for better working conditions	General strikes against the employer which refused to negotiate a agreement on wages and working time.
1983	September strike	One of the largest strike actions against government plans to cut spending in the public services
1986	General strike against the St-Annaplan	Several strike actions against the plans of the government to cut spending in the public services
1993	Strike against the Global plan	Strike against the Dehaene 'Global Plan' which included an adaptation of the indexation system and a wage freeze. The following negotiations led to minor changes
2005	Strike against the Generation pact	National strike against the Generation Pact of the Verhofstadt government. At first only by the ABVV-FGTB, afterwards joined by the other unions. Subsequent negotiations led to minor changes
2011-2012	Strikes against pension reforms	Two general strikes, one in December and one in January against the Di-Rupo government plans to change the pension plans
2014	General strike wave against the Michel I government	Strike wave including national demonstration, provincial strikes and a national strikes against the Michel I government. Record number of strikers, but didn't lead to a significant change in policy.
2016	General strike against the Michel I government	General strike against of the ABVV-FGTB against the Michel I government.
2019	General strike against the wage norm	General strike against the wage norm of 0.8%, a technical adaptation followed putting the wage norm on 1.1%.
2021	General strike against the wage norm	General strike against the wage norm of 0.4%

Sources: De Standaard (2014) and author's compilation

7.4. Sectoral & company strikes

Most strikes are not general strikes, but strikes in a particular sector or company. Sectoral strikes usually follow the pattern of collective bargaining and are called to put pressure during the biannual negotiations. Some examples of sectoral strikes are

- De witte woede (white anger), which is a recurring mobilisation of the non-profit sector to put pressure on the negotiations.
- The domestic cleaners strike in 2019
- The security sector strike in 2020

Strikes for different reasons:

Work pressure: Too much work with too few people is a very common reason for strikes at company level in Belgium. In April 2020, employees of the metalworking company Everzinc organised an intermittent strike to demand talks with management to reduce work pressure.

HR managers: In 2015, IVAGO (the waste collection company in Ghent) faced several strikes. One of the main demands was the dismissal of a certain HR manager. As the hits piled up on the streets of Ghent, the pressure on the company to compromise increased and eventually the HR manager in question resigned.

Although there is no clear right to strike in Belgium, the social partners can (and often do) regulate the right to strike in their specific **sector**. This often includes: (i) conciliation procedures, (ii) notice periods, (iii) social peace (Geluykens & Van Sinay, 2016).

- **Conciliation procedures**: Some joint committees stipulate that the parties are obliged to enter into a conciliation procedure before calling a strike. Failure to comply with this obligation can lead to financial sanctions, such as a reduced union bonus. Such compulsory and prior conciliation is included in collective agreements in the transport sector (PC 140) and in the care sector (PC 330). Sanctions for non-compliance are provided for in the insurance sector (PC 306) and in the port sector (PC 301).
- **Periods of notice**: A number of joint committees lay down periods of notice for calling a strike. Two examples are the woodworking sector (PC 125) and the glass sector (PC 115), which stipulate that a strike must be notified 6 and 15 working days in advance, respectively (Geluykens & Van Sinay, 2016). Some examples: In Joint Committee 200 (the auxiliary committee for white-collar workers), this period is 14 days (CLA of 9/06/2016). In Joint Committee 302 (hotels), the period is 8 days (CLA of 31/01/2014). In Joint Committee 111 (CLA of 20/10/2010) there is a whole CBA focusing on "social stability", with detailed procedures and a commitment by the unions not to recognise wildcat strikes. In Joint Committee 140 (Transport and Logistics) the notice period is 15 days. Within three days of such a notice period, the conciliation committee must be reconvened (CLA of 13/02/2014).

- **Social peace clauses**: Collective agreements usually include a 'social peace clause'. A distinction can be made between absolute and relative social peace clauses. While the former must be explicitly mentioned and included in a collective agreement, the latter is deemed to be included even if it is not mentioned. An absolute social peace clause states that there will be no additional demands, industrial action or strikes as long as the specific collective agreement is in force and respected, regardless of the reason for the action. A relative social peace clause means that there will be no strikes (or additional demands) as long as the agreement is in force and respected on the issues covered by the collective agreement. In practice, a relative social peace clause means that a union cannot demand extra pay if, for example, it signed a two-year pay agreement a year ago. An absolute social peace clause would mean that unions could not call a strike over, for example, health and safety at work if they were covered by a collective agreement covering pay and working time.

One of the hot topics in the debate on strikes and their legality is the issue of **strikers' pickets**. This is a situation where strikers are present at the entrances to the employer's premises. The aim of such a picket is to persuade colleagues to join the strike and therefore not to enter the premises. But sometimes this 'persuasion' takes the form of effectively blocking the premises and making it impossible for workers to do their jobs.

It is very clear that picketing that does not involve violence or blockades is allowed. It is also clear that violence is not. So the debate is about whether or not a (non-violent, peaceful) physical blockade of the company premises is allowed. And, as a consequence, what can be considered 'peaceful' and 'non-violent' and whether or not such a picket violates the 'right to work'.

Related to this debate is the question of whether or not the courts can use 'unilateral applications' and **fines** to break up pickets.

7.5. Dispute resolution mechanisms in Belgium

Of course, not all conflicts end in strikes. The vast majority of workplace conflicts are resolved internally and never lead to any kind of action. In fact, all the institutions discussed above (works councils, union delegations, collective agreements) have the ambition to resolve issues before they become conflicts and before there is a need for industrial action.

But even if an internal solution cannot be found, there are a number of alternative dispute resolution mechanisms in Belgium.

The most important of these is **mediation by the Joint Committe**e. This is called the **conciliation committee** (*verzoeningsbureau - bureau de conciliation*). The conciliation committee is made up of members from both sides of industry and is chaired by the 'social conciliator', who is also the chairman of the relevant joint committee. Its aim is to prevent or resolve conflicts in the sector. Once a complaint has been lodged, the committee hears the parties and publishes a recommendation which the parties can accept or reject. Around 500 such meetings are organised each year (Vandaele, 2007a).

Secondly, a civil servant from the Ministry of Labour can be appointed as a **social conciliator** (*sociaal bemiddelaar - conciliateur sociale*) and try to improve relations between employers and employee representatives. The social conciliator will publish an advice that can (or cannot) be followed by the parties involved in the dispute.

Thirdly, in the event of a dispute, the **social inspection** can be called upon. The inspection services can give a legal opinion on the procedures required in the social dialogue.

Sends in a conciliator!

Quite often, when social conflicts are on the verge of a strike, or after a strike, the Minister of Labour decides to send in a social mediator. Some recent examples are

Decathlon 2020: the workers at Decathlon's distribution centre continued to work during the blockade. They were also working harder than ever because of the increase in e-commerce. When management announced the cancellation of a bonus, several industrial actions followed. Management retaliated by seeking a court order to break the strike. Faced with the social unrest, the Minister of Labour, Nathalie Muylle (CD&V), called the parties to a conciliation meeting. While management refused to enter into official talks, it did reintroduce the bonus system.

Proximus 2019: When the telecommunications company Proximus announced a restructuring and the collective dismissal of around 1900 employees, the company was hit by several wildcat strikes. Meanwhile, the CEO, Dominique Leroy, was about to leave the company to work for the Dutch KPN. The unions demanded that a social mediator be appointed and that negotiations not be conducted with Dominique Leroy.

Security sector, 2019: In the context of the sectoral negotiations in the security sector in 2019, a social mediator was needed to facilitate the negotiations. The workers were demanding better working conditions and higher wages. The employers asked for the intervention of a social mediator, but several mediation meetings failed. Only after a third meeting and several industrial actions was an agreement reached.

Lidl, 2018: Lidl workers staged several strikes to protest against increasing work pressure. The Minister of Labour, Kris Peeters, appointed a social mediator who organised the negotiations that led to an agreement. Although the situation was very tense, the social mediator held several separate talks and came up with a compromise proposal.

7.6. Employer actions: lock-out

The debate and literature on strikes tends to focus on the actions of workers. This makes sense because a strike is a withdrawal of labour from the workers' side. This doesn't mean that the employer side is a passive actor in such a conflict. What follows is a discussion of the employer's equivalent of a strike (the lockout) and some of the actions that employers take to dissuade workers from joining a strike or even breaking it.

While workers can walk out in protest over some issues, employers can also take similar collective action. This is called a **lock-out**, where the employer refuses to provide work for the workers and effectively 'locks out' the company premises. In Belgium (and the rest of the world), lock-outs are rarely used in practice, and when they are, it's usually in response to a strike, when the employer feels it's not safe to work because of the strike.

Some recent lock-outs in Belgium

At 5.30 a.m., the management of Inbev's **Jupille** and Leuven sites stood in front of closed factory doors, alongside security guards. No one from the day shift was able to enter the company, as the management staged a lockdown in response to several blockades (Vanachter, 2010)

Similarly, workers at **Crown Cork** (Deurne) faced closed doors in 2012. Management staged a lockout as part of negotiations on a social plan, claiming they couldn't guarantee safety.

In 2010, a social dispute at the Belgian chocolate factory **Godiva** took an unexpected turn when management closed the factory and refused to allow workers to enter. According to management, they had to resort to a lockout because of the imminent risk of violence (De Standaard, 2010).

Retaliation against a strike with a lockout in the USA:

According to McAlevey (2020, p. 24), lockouts are regularly used in the US health care sector to retaliate against strikes. Strikes are often followed by lock-outs that last for the rest of the week. This puts pressure on workers who are without proper pay for a week, but also allows employers to hire scabs who only come in for five days.

A second way in which management tries to counter strike action is by trying to **'break the strike'**. This usually refers to the practice of employers hiring workers to replace striking workers. This is illegal.

A softer way of trying to reduce strike activity is to **offer benefits** to non-striking workers. Around the 2014 strike wave, many employers gave gifts, breakfasts, vouchers and other benefits to non-striking workers. Whether this is allowed is a matter of debate. Some say it is a violation of freedom of association, which states that union activity and membership cannot lead to positive or negative discrimination. Others say that as long as it doesn't lead to undue pressure not to participate, it's not a problem.

No agency work during strikes

If there's a strike in a company, the agency workers who work there are not allowed to work. This is part of Collective Agreement 108 and means that a temporary worker will not be paid for that day. If he/she is a member of a trade union and decides to take part in the strike, he/she may receive a striker's allowance. If not, the agency workers don't have any income.

The reason for this rule is to make it impossible to break a strike by using agency work. As agency work is banned, an employer (in Belgium) cannot temporarily replace strikers with other workers.

7.7. Strike effectiveness

The effectiveness of strikes is regularly debated. There is no doubt that strikes have been effective and necessary in the past. As we have seen, some important social and political developments have been achieved through massive strike action. However, some argue that the strike is no longer effective for both political and socio-economic reasons.

To answer this question, it is necessary to distinguish between company level and general strikes and, in both cases, to consider what is meant by 'effective'.

In the case of general political strikes, effectiveness can be considered in a number of ways. The most obvious effects are (i) direct effects, in that the demands of the strikers are met, and (ii) direct effects, in that some compromise or partial satisfaction of the demands is reached. However, general strikes can also have more indirect (and invisible) effects in terms of (iii) putting some future plans on hold or (iv) having an impact on voting behaviour and future government composition.

In terms of direct effects, it is clear that the effectiveness of strikes has declined. Whereas in the pre-war period general strikes led to major democratic and social advances (universal suffrage, minimum wage, annual paid leave), more recent general strikes have at best led to some compromises.

As for the more indirect effects, it is very difficult or impossible to assess their effectiveness. One study looked at voting behaviour in elections and the effect of a general strike on the vote share of the largest party in office. According to this study (Hamann et al., 2013), these parties would, on average, receive 1.5 percentage points fewer votes if a national strike was organised during their term of office, compared to parties that didn't face a general strike. Admittedly, this study is very limited in its time period and, more importantly, in the number of observations.

For strikes at company level, some data (albeit with major shortcomings) are available in the European Company Survey (2013). In this survey, employee representatives were asked whether a strike had taken place in their company and what the outcome of this action was. The figures show that in 36% of cases the employer meets most of the workers' demands, and in 39% both parties reach a compromise. In one in ten cases the employees drop their demands and in the remaining 16% no solutions were found (De Spiegelaere, 2017). These figures suggest that, at company level, strike action is often 'effective' because it results in the employer meeting the demands or reaching a compromise.

7.8. Mobilization theory

Living in Belgium might sometimes give you a different impression, but strikes are actually quite rare. The Belgian perception is strongly influenced by the big national strikes and the intensive but very visible strikes in public transport.

One theory that has addressed the question of why and when people engage in disruptive collective action, such as a strike, is the mobilisation theory developed by Charles Tilly (1978) and John Kelly (1998):

> *"At its heart is the fundamental question of how individuals are transformed into collective actors who are willing and able to create and maintain a collective organisation and to engage in collective action against their employers".*

In answering this question, mobilisation theory refers to issues such as injustice, attribution, interest and the importance of leaders.

The figure below shows an adaptation of the 'stages of mobilisation' proposed by Kelly (1998). The process begins with the **perception of injustice**, first individually and then collectively. Injustice is not the same as mere dissatisfaction. Dissatisfaction can be the source of a sense of injustice if the situation causing the dissatisfaction is perceived as unfair and avoidable. Note that moving from an individual sense of injustice to a collective sense of injustice can be a high hurdle. Quite often problems related to, for example, work pressure or even harassment are presented by the employer as individual (if not personal) problems that can be solved as such and do not require a collective solution.

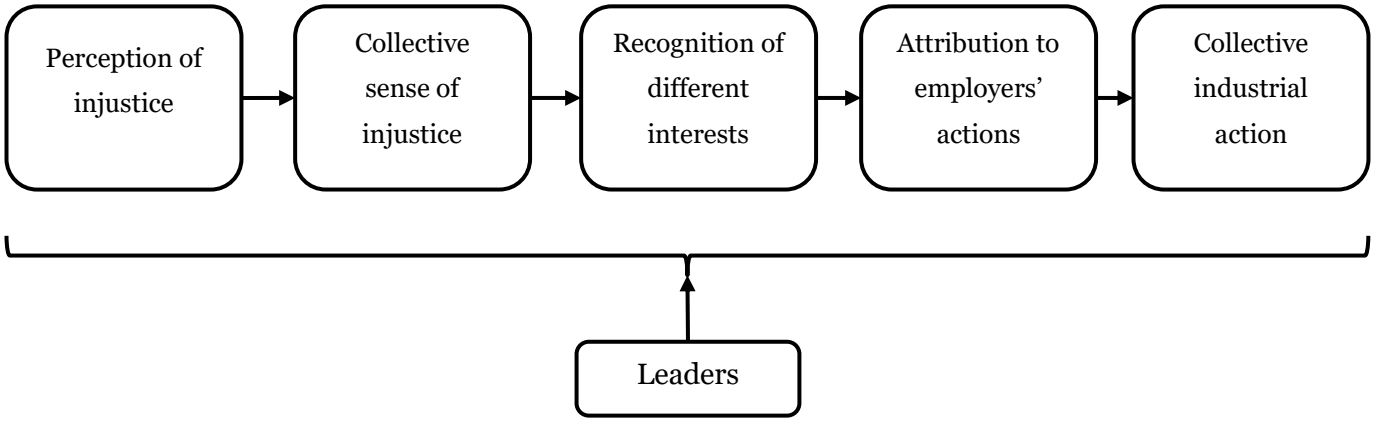

Figure 7.2 - Mobilization theory (authors adaptation of Kelly (1998))

In a second step, the workers recognise that the state of injustice is being installed or maintained by a person or group (quite often the employer in the case of a strike) who is doing so because of a **difference of interests**. Again, this can be a difficult step to take. Low wages may be perceived as unjust (unfair and avoidable), but they may also be presented as being in the best interests of both employers and workers: higher wages would mean fewer or even no jobs. Similarly, issues related to

harassment are clearly unjust, but it may be difficult to see how exactly the situation is maintained because of the specific interests of some party or group.

A third step is to **attribute the cause** of the unfair situation to the employer's actions. Workers need to see (rightly or wrongly) that the current unfair situation is largely due to the employer's actions and not (for example) to union inaction, government regulation or the state of the world economy.

A fourth step is to prepare the ground for **collective action**. As we saw earlier, the 'collective action problem' (or 'free rider problem') needs to be overcome. This can be done through coercion or by using selective incentives, which can be material (e.g. more pay if we do this and that) or immaterial. Immaterial selective incentives are mostly related to the feeling of belonging to a group, the sense of solidarity in the group and (also) the negative social consequences that one might feel if he/she does not participate in the collective action. In other words, what needs to be created is a kind of group identity in which employees **identify** with the group, its mission and its actions.

According to mobilisation theory, all these conditions must be met before there is a good chance of collective action such as a strike. As you can see, the process from individual dissatisfaction to collective action is long and quite difficult. At many of the stages, the employer will have ample opportunities to prevent or inhibit, for example, the attribution of the unfair situation to the employer or the creation of a group identity.

Accordingly, Kelly (1998) states that there's an essential and important role for **leaders** in this whole process. It is through the agency of some people and groups of people that dissatisfaction is transformed into a sense of injustice, that the difference of interest is demonstrated, that the situation is largely attributed to the employer's action, and that a collective identity is created. The leaders will also install the belief that through collective action the current (unjust) situation can actually be changed and transformed (Lorraine et al., 2020).

One way in which leaders (and also the employer) do this is by **deliberately framin**g issues and problems in a particular way in order to go through the mobilisation process. Framing refers to the practice of providing a 'scheme of interpretation' for certain social events. In the case of workplace issues, leaders seek to reinterpret events in terms of injustice/fairness, inequality, (ab)use of power, and violation of rights (Tambay, 2019, p. 62). Some examples are:

- **Injustice framing**: a pay stagnation for employees that is framed as 'unfair' by reference to pay increases for other (better paid) employees in the same company/sector/organisation.
- **Rights framing**: a proposed change in working time that is framed as a violation of legal rights to rest and recovery.
- **(Ab)use of power**: a change in work organisation that is framed as an unacceptable unilateral use of management power.

According to mobilisation theory, framing certain events in a certain way will contribute to a sense of injustice, the recognition of different interests and ultimately the willingness to mobilise.

Mobilizing for an occupation in Ireland

An application of mobilisation theory took place in Ireland during the 2008 financial crisis and the small wave of workplace occupations that followed. Research by Niall Cullinane and Tony Dundon (2011) looked at three workplace occupations in response to planned closures. In all cases, there was a clear sense of injustice that was easily attributed to the employer's actions, as the closure announcement came very abruptly. Prior unionisation also ensured that a common identity had already been formed which could be more easily mobilised for collective action.

Mobilization theory: why some campaigns are more effective then others

Vidu Badigannavar and John Kelly (2005) compared two union campaigns in the higher education sector to recruit contract research workers. In one campaign, the union tried to win permanent contracts for researchers by mobilising them and trying to convince management of the benefits of permanent contracts. In a second, they focused on convincing all staff (not just contract workers) of the university's ability to offer permanent contracts. While the first presented a 'business case', the second tried to create a sense of injustice around the issue. In the second, workers were more likely to join the union, believe in the possibility of collective action and identify with the union than in the first. The researchers conclude that mobilisation theory is effective in explaining the varying success of union campaigns.

Mobilisation theory explains why people go on strike

Buttigieg, Deery & Iverson (2008) used mobilisation theory to try to explain why union members were willing to take part in a strike. Using results from a large-scale survey of union members during a collective bargaining round, the researchers showed that members who experienced a greater sense of injustice, who held collectivist views of work, who believed in their union as an instrument of power and who felt that their local union representatives were responsive to their needs were more likely to take part in a strike than others.

7. Restructuring

8. Social dialogue in restructuring & collective redundancies

A collective redundancy is a situation in which a large number of employees in a company lose their jobs over a short period of time. Collective redundancies are sometimes referred to as mass redundancies. More euphemistically, the press and employers often refer to 'restructuring'.

In such cases, social dialogue has an important role to play. Without proper information, consultation and negotiation, collective redundancies can lead to serious disruption in the company, with lasting effects on employee morale and motivation. In addition, in Europe, companies involved in collective redundancies must comply with certain specific rules on social dialogue.

The purpose of this section is to introduce the concept of collective redundancy in Belgium and the social dialogue requirements that go with it.

8.1. Different legal thresholds

In Belgium, restructuring is subject to a specific legal framework concerning the need for information and consultation, the payment of additional compensation and the establishment of an employment cell. These rules apply when a certain number of employees in a company are affected over a certain period of time.

To complicate matters, these thresholds differ in terms of the obligation to (1) pay additional financial compensation to some employees and (2) follow a specific information and consultation procedure. The table below gives an overview of the different thresholds.

Table 8.1 - Threshold values in restructuring

		Number of employees made redundant for economic or technical reasons during an uninterrupted period of **60 days**	
		Additional collective dismissal compensation	Obligation to follow a special information and consultation procedure (Renault procedure)
Company size*	> 300	10%	30 employees
	100 - 299	10%	10%
	60 - 99	10%	10 employees
	21-59	6 employees	10 employees
	20	6 employees	/
	12-19	/	/
	< 12	/	/

** Average number of employees in the preceding calendar year*

To put the Renault procedure in concrete terms: a company with between 21 and 99 employees is obliged to follow the procedure (explained below) if 10 employees are dismissed

in a 60-day period for technical or economic reasons (i.e. not for performance). For companies with between 100 and 299 employees, the threshold is 10% of the workforce, and for larger companies the threshold is 30 employees.

Note that the threshold must be met within a 60-day period. This means that a company that makes 10 individual redundancies at different times may still meet the threshold for a 'collective' redundancy.

8.2. Renault procedure

If the thresholds for the information and consultation procedure are met, the employer must follow a predefined procedure (the Renault procedure) consisting of a number of steps.

1. **Step 1: Announcement** of the intention to make collective redundancies. It all starts with the employer saying that he may have to proceed with collective redundancies. Mind the words, the announcement is not about the decision, but about an intention. The idea is that during the social dialogue process the employer can still change his mind thanks to the social dialogue. If the final decision has already been taken before the employees and their representatives have been informed and consulted, there is no way that this consultation can have any relevant effect.
   The Ministry of Labour (FOD WASO and the Regional Employment Agency) must also be informed.
2. **Step 2: Information and consultation** of the workers' representatives. In the second step, the employer provides all the necessary information in writing to the employee representatives (works council, if there is one, trade union delegation, if not, health and safety committee, if not directly to all employees). This includes the reasons for the redundancies, the number of employees affected, the period over which the redundancies will take place, and the criteria by which the employees will be selected. During a meeting the employer will give further explanations.
   The purpose of this stage is for the employees and the employer to seek solutions (1) to avoid the redundancies and/or (2) to mitigate the consequences of the redundancies.
   There is **no time limit** on the information and consultation period. If there is no agreement, the employees' representatives can ask for more time, but the employer can also decide to stop the procedure (if it considers that enough time has been given and can prove this). The employer will have to show that it has provided adequate information and consultation.
   In practice, parallel negotiations on a social plan (see below) take place during this phase, which can mitigate the financial losses of the affected employees.

3. **Step 3: Notification** of collective redundancies. In the third step, the employer notifies the workers, the workers' representatives, the workers affected by the redundancies and various government bodies (Ministry of Labour, employment services) of the collective redundancies.
4. **Step 4: Objection** period. During the 30 days following the notification, the workers' representatives can publish their objections to the employer's compliance with the collective redundancy procedures. During this period, the employer cannot dismiss any workers.
5. **Step 5: Dismissals**. The last step in the process is the actual dismissal. During the first 30 days after the dismissal, individual employees can submit their objections.

The Renault procedure

The special information and consultation procedure to be followed in the case of collective redundancies is generally referred to as the "Renault procedure", in reference to the scandalous collective redundancy procedure that led to the creation of the law.

In 1997, the CEO of the Renault group, Louis Schweitzer, called a press conference at the Brussels Hilton Hotel to announce the closure of the Renault plant in Vilvoorde and the dismissal of the more than 3,000 workers employed there. This announcement was made in the press while the workers at the plant were kept in the dark.

Given the scale of the closure, the news spread quickly on the radio and family members of the workers went to the plant to inform the workers.

A long struggle ensued, but one thing became clear: it is unacceptable for workers in a factory to be informed so late about collective redundancies and not be given the opportunity to express their views and opinions on the matter. That is why the Renault procedure provides for a detailed procedure to be followed to prevent a 'Renault' from happening again.

8.3. Number and length of restructuring processes

As companies are obliged to inform the Ministry of Employment of their intention to implement collective redundancies and of the conclusion of the procedure, there are some interesting statistics available on social dialogue and collective redundancies in Belgium.

The figure below shows the number of employees involved in collective redundancy notifications over the years. It shows a considerable variation from year to year, with an average of around 8,000 employees facing collective redundancy each year.

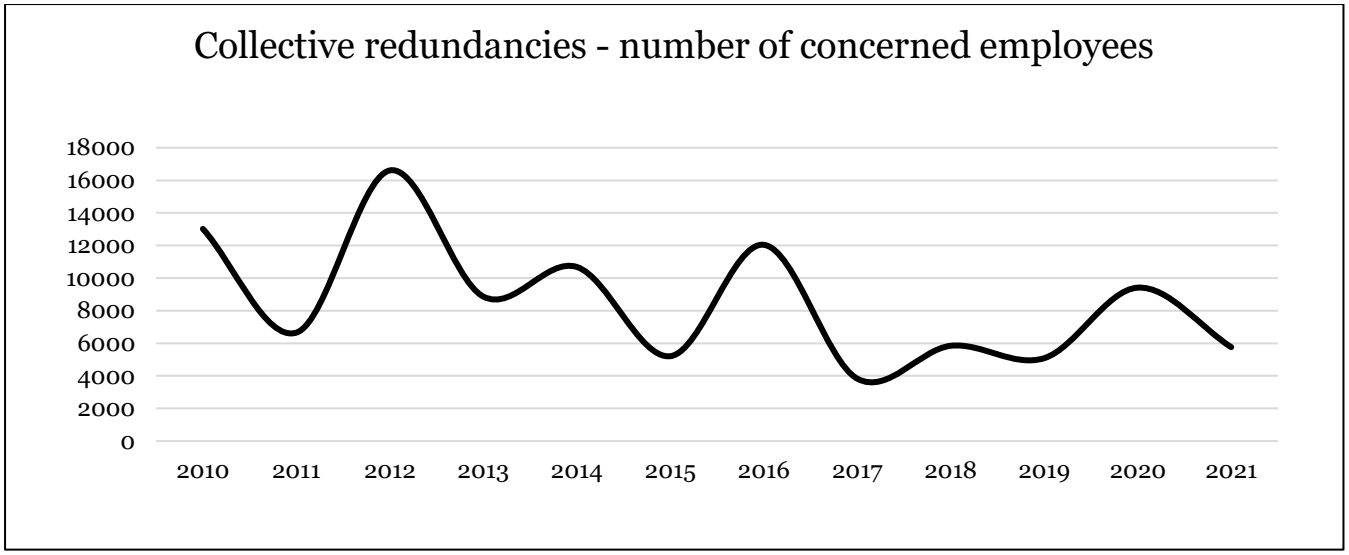

Figure 8.1: Collective redundancies in Belgium, concerned employees. (Source: FOD WASO)

During the information and consultation process, unions generally try to minimise the number of redundancies planned. There is therefore usually a difference between the number of redundancies originally planned and the number actually made. The data show that, on average, the actual number of redundancies is about 9% lower than the number announced.

The Renault procedure has a number of predefined steps which do not have clear time limits. The information and consultation phase should, in principle, last until the workers feel that they have been sufficiently informed and consulted. There is therefore a risk that these procedures will take a long time. The figure below gives some information on the length of the completed procedures at Renault. It shows that, in most years, about half of the procedures were completed in less than 60 days and three quarters in less than 120 days. Only a small minority of cases tend to take much longer.

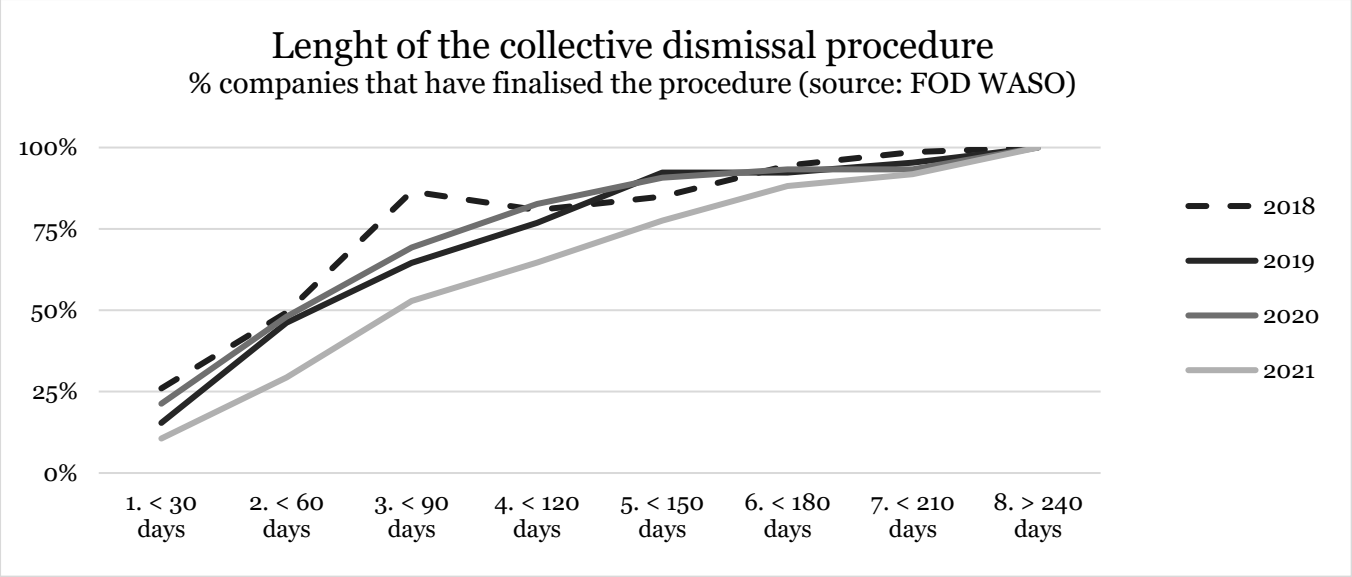

Figure 8.2: Length of the collective dismissal procedure

Ryanair: many procedures at the same time

In 2020, the airline Ryanair was involved in three parallel "Renault procedures" to dismiss pilots and cabin crew. The unions said that the company had done this deliberately to undermine genuine social dialogue on the redundancies.

8.4. Additional compensation for collective dismissal

In addition to the Renault procedure, **Collective Agreement 10** stipulates that in the event of collective redundancies, the employer is obliged to pay additional **compensation** to mitigate the consequences of the redundancies.

The compensation is to be paid to workers who remain unemployed after the redundancy, with or without entitlement to unemployment benefit, and to redundant workers who have found a job with a lower salary.

The compensation amounts to half of the difference between the net wage and the unemployment benefit (or the wage in the new job). It is paid for a period of 4 months if the employee has a severance period of 3 months. If the severance period is longer than 3 months, the compensation is reduced by one month for each additional month. A dismissed employee with 7 months' severance pay is therefore not entitled to any additional compensation.

8.5. Social plan

In not a few restructuring cases, unions and employers negotiate a **social plan**. This plan usually provides for a number of additional benefits or compensations for redundant workers and/or a promise of job security for the remaining workers.

The advantage for employers of agreeing to a social plan is that they can then implement the restructuring more smoothly and without the risk of industrial or legal action.

The information and consultation procedure, with its various stages, gives unions and employers the opportunity and time to negotiate such a plan. However, there is **no obligation** to agree on a social plan.

Social plan in practice: Carrefour

In 2018, Carrefour announced the collective redundancy of more than 1200 employees. After several months of information, consultation and negotiation, the unions reached an agreement with management on a social plan. The plan was as follows

- Dismissal of 950 workers (instead of > 1200)
- No plant closures
- Job security for permanent employees for 4.5 years
- 220 million in additional investment over the next three years
- Collective bargaining on flexibility and Sunday work
- Early access to pensions under certain conditions

8.6. European dimension restructuring

Watch out for Europe: if a restructuring in an MNC has a 'transnational character' (i.e. it affects employees in more than one EU country or is of such a size that it's relevant to the whole company), additional rules and procedures need to be followed. In short, not only must the national works council be informed and consulted, but the European works council (if there is one) must also be informed and consulted about the transnational restructuring before the final decision is taken.

In some cases this raises the question of who should come first and what should be done first. Should the company first inform the EWC and then the national works council, or vice versa, should consultation with the national works council be completed before consultation at European level can be completed? While legal scholars can have fun comparing and weighing up the different legal frameworks, in most companies this is resolved by

management informing all the institutions at roughly the same time and agreeing on a way and method of organising the consultation.

8.7. Restructuring in practice

8.7.1. Food processing I: full information and negotiation

At a large food processing plant in Belgium, employees were faced with the prospect of automating the packaging department. This would result in the loss of around 50 jobs.

In a first step, the company announced its intention to make the workers redundant, stressing that the number was not yet fixed and was open to negotiation.

In the second step, the employer provided the employee representatives with detailed information about the reason for the automation, the number of employees affected, the planned timing and the criteria that would be used for the redundancies. This information was first given in writing, and then a meeting was called for further explanation. This information phase convinced the unions of the necessity and inevitability of the automation. While the workers urged the union to protest the decision and call a strike, the union delegates preferred to negotiate (1) to limit the number of redundancies and (2) to agree on a social plan for the workers facing redundancy. An agreement was reached on both issues.

In the third step, after signing the compromise, the employer notified the (reduced) collective redundancies to the parties concerned. This step is followed by the 30-day objection period. In the last and fifth step, the employees were informed of their redundancy.

This example shows how the information and consultation period has in effect been extended to negotiate the number of redundancies and the content of a social plan. It also shows how representatives may have to strike a balance between their own perception of the situation and the demands of the employees.

8.7.2. Food processing II: hastily negotiation, strike, renegotiation

In a food processing company a plant closure was announced with the redundancy of more than 150 employees. The announcement (Step 1) was made through an extraordinary works council, which was immediately followed by the information and consultation phase (Step 2). This was completed fairly quickly and the plan was then communicated to the workforce (Step 3). In this case, however, a spontaneous (or wildcat) strike broke out during the presentation of management's plans. The unions recognised the strike so that the strikers could receive compensation. The strike lasted a few days and resulted in a renegotiation of the plan, including a better social plan for the dismissed workers. This plan was put to a vote

and, after a majority of workers voted in favour, the strike was called off and the closure process continued.

This example shows that a hasty closure of the information and consultation process can lead to a longer and more difficult process if workers do not agree with management's plans.

8.7.3. GSK

GSK (GlaxoSmithKline) is a large pharmaceutical company that produces mainly vaccines. It has a significant presence in Wallonia with three production sites (Rixensart, Wavre & Gembloux) and several other facilities, employing more than 9,000 people in total. On 5 February 2020, the company announced its intention to make 720 employees redundant, most of them managers (*kaderleden*), and not to renew around 200 contracts. The collective redundancies coincided with a major investment of more than €500 million in vaccine production.

Given the strategic importance of the sector to the region, the regional government became involved and invited GSK's CEO for a consultation.

Due to the COVID pandemic, the information and consultation process was temporarily suspended and resumed in May 2022. The unions pushed for a limit on redundancies and management responded by limiting the number of redundancies, directly hiring a number of previously outsourced consultancy roles and implementing a voluntary redundancy plan.

On 17 June, an agreement was reached that included voluntary departures with a significant exit bonus (1.8 times the normal severance pay). This meant that there would be no collective redundancies, but the workers would not be entitled to unemployment benefits as they were leaving voluntarily.

Interestingly, after the negotiations, the company reopened a large number of vacancies (over 400) for comparable profiles. In some cases, former workers are even rehired under worse working conditions (Gracos, 2021).

This example shows that during the information process, alternatives to collective redundancies can be found and management's intentions can indeed be changed.

8. Glossary

9. Glossary

ENGLISH	DUTCH	FRENCH	EXPLANATION
Smoothed health index	Afgevlakte gezondheidsindex	Indice lissé	Average health index over the last 4 months
Blue-collar worker	Arbeider	Ouvrier	A term used to describe a worker whose job involves mainly manual labour.
Work regulation (be)	Arbeidsreglement	Règlement du travail	Mandatory document in which organisations define the mutual rights and obligations of employers and employees.
White-collar worker	Bediende	Employée	An office, clerical, sales, semi-skilled or professional worker, and a worker with minor supervisory duties, as opposed to a manual worker.
Company auditor	Bedrijfsrevisor	Commissaire aux comptes	The auditor of the annual accounts. In Belgium, the auditor also has an educational role vis-à-vis the works council with regard to economic and financial information.
Vocational training	Beroepsopleiding	Formation professionnelle	Training or education specifically designed to develop skills for a particular job
Special advisory committee	Bijzonder raadgevend comité	Commission consultative spéciale	Sectoral advisory committee providing advice and opinions on economic matters of interest to the sector.
Bipartite	Bipartiet	Bipartite	Bipartism is when two parties - one or more employers and/or one or more employers' organisations and one or more workers' organisations - exchange information, consult or negotiate together without government intervention.
Collective bargaining	Collectief onderhandelen	Négociation collective	The process by which pay and other terms and conditions of employment are regulated jointly by an employer or employers' association and one or more trade unions.
Collective redundancy	Collectief ontslag	Licenciement	A situation in which a large number of employees in a company lose their jobs within a short period of time.
Collective agreement (cba)	Collectieve arbeidsovereenkomst (CAO)	Convention collective du travail (CCT)	Agreements between individual employers or their organisations, on the one hand, and employee organisations such as trade unions, on the other. These agreements determine the content of individual employment contracts and govern relations between the parties.
Health & safety committee (be)	Comité voor preventie en bescherming op het werk	Le Comité pour la prévention et la protection au travail	A consultative body at company level for the health and safety of employees
Consultation	Consultatie	Consultation	A process whereby management seeks the views of employees, directly or through their representatives, on particular matters, but retains the power to make decisions on those matters.

Collective bargaining coverage rate	Dekkingsgraad collectieve onderhandelingen	Taux de couverture de la négociation collective	Collective bargaining coverage is the number of employees covered by one or more collective agreements as a percentage of the total number of employees in a given company, sector or country.
Unitary statute	Eenheidsstatuut	Statut unique	The situation in which all legal differences between workers and employees will be eliminated and there will be only one work status.
Erga omnes	Erga omnes	Erga omnes	Literally, in Latin, 'to all'. In labour law, the term refers to the extension of agreements to all workers, not just members of signatory unions. For cases where agreements are extended to workers in non-signatory companies, see "extension".
Yellow union	Gele vakbond	Syndicat jaune	A union set up by and/or under the influence and control of an employer/government.
Health index	Gezondheidsindex	Indice santé	A measure of price movements for commonly consumed goods and services, excluding a number of unhealthy and volatile items (cigarettes, alcohol, petrol).
Favourability principle	Gunstigheidsbeginsel	Principe de favorabilité	Points out that in the case of different standards in different agreements covering the same worker, the most favourable conditions should apply
Restructuring	Herstructurering	Restructuration	A term used to describe a wide range of different activities leading to the reorganisation of an enterprise, often with consequences for the workforce in terms of employment levels or working conditions.
Industrial action	Industriële actie	Action industrielle	Any form of action threatened or taken by a party to protect or promote its interests which may lead to disruption of production. Industrial action can be either overt (e.g. strike, lock-out) or covert (e.g. sabotage), organised or unorganised, individual or collective.
Interprofessional agreement (be)	Interprofessioneel akkoord	Accord interprofessionnel	A cross-industry agreement between Belgian workers' and employers' organisations
Middle management	Kaderlid	Cadre	An employee whose position is between top management and front-line supervisors. His or her job is to implement the policies and programs of the organisation as determined by top management, while coordinating these functions through the company's operating units.
Framework agreement	Kaderovereenkomst	Accord-cadre	An agreement that sets the broad parameters, at sectoral or national level, within which employers' organisations and unions agree to work when negotiating more specific agreements at company level.
Lock-out	Lock-out	Lock-out	The temporary closure of a factory or business by an employer in order to force workers to agree to conditions dictated by the employer or to meet some of the employer's demands. Often regarded as the managerial equivalent of a strike.
Wage norm (be)	Loonnorm	Marge salariale	The maximum margin for the development of wage costs, which is set every two years and determines the maximum increase in wage costs.
Co-determination	Medebeheer	Codétermination	Co-determination is a structure of decision-making within an enterprise in which employees and their representatives influence decisions, often at a high level and at a relatively early stage. It can operate alongside and complement other industrial

			relations mechanisms of employee representation and influence. It is not a substitute for other instruments which enable employees to influence management decisions, such as collective bargaining.
Negotiation	Onderhandeling	Négociation	A process in which two or more parties with common and conflicting interests come together and talk with a view to reaching an agreement.
Multi-employer bargaining	Onderhandelingen met meerdere werkgevers	Négociation multi-employeurs	Arrangements whereby collective bargaining takes place between an employers' association and one or more trade unions.
Works council (be)	Ondernemingsraad	Conseil d'entreprise	Information and consultation body at company level, responsible for financial, economic and work organisation matters
Severance period	Onstlagperiode	Délai de préavis	Period after termination of an employee's contract during which the employee is still entitled to his or her salary (and may still be required to perform work duties).
Dismissal	Ontslag	Licenciement	Termination of an employee's contract by management
Severance pay	Ontslagvergoeding	Indemnité de licenciement	An amount paid to an employee on early termination of a contract.
Opt-out clause	Opt-out clausule	Clause de non-participation	Temporary clause allowing (partial) suspension or renegotiation of (part of) a collective agreement in cases of economic hardship.
Joint committee (be)	Paritair comité	Comité paritaire	A Belgian consultation and negotiation body set up at sectoral level, mainly to negotiate collective agreements.
Paternalism	Paternalisme	Paternalisme	The policy or practice of those in authority to restrict the freedom and responsibility of those under them or otherwise dependent on them, in their perceived interests.
Pattern bargaining	*Pattern bargaining*	*Pattern bargaining*	A method of collective bargaining whereby a trade union seeks to obtain equal or identical terms and conditions from a group of employers in a particular company or sector, based on an agreement already reached in other companies, industries or sectors. The first agreement thus serves as a model for imitation by other employers or unions.
Price index	Prijsindex	Indice des prix	A measure of the price development of commonly consumed goods and services.
Productivity pact (be)	Productiviteitspact	Pacte de productivité	Pact between workers' and employers' organisations in 1954 on how to increase the productivity of Belgian companies.
Sectoral agreement	Sectorakkoord	Accord sectoriel	Collective agreement signed by trade unions and employers' organisations representing workers and employers in a particular sector (e.g. metal industry, chemical industry, etc.).

Social consultation	Sociaal overleg	Concertation sociale	Institutional framework for negotiations between the social partners
Social pact (be)	Sociaal pact	Pacte Social	Pact between Belgian workers' and employers' organisations in 1944 on the post-war structure of the economy and social security.
Social dialogue	Sociale dialoog	Dialogue sociale	All forms of negotiation, consultation and exchange of information between representatives of governments, social partners or between social partners on matters of common interest relating to economic and social policy.
Social partners	Sociale partners	Partenaires sociales	Employer and employee representatives, usually employers' organisations and trade unions
Social elections (be)	Sociale verkiezingen	Élections sociales	4-yearly elections in Belgian companies where employees can elect their representatives to the works council and/or health and safety committee.
Pivot index	Spilindex	Indice pivot	A 2% benchmark in the smoothed health index, after which wages are automatically adjusted (for those sectors that apply this system).
Strike	Staking	Grève	The temporary withdrawal of work by a group of workers to express a grievance or to press a demand.
Picket	Stakingspiket	Piquet de grève	A form of industrial action where workers (often on strike) stand or walk in the surroundings of the workplace in order to persuade other workers not to enter the facility, to prevent the employer from hiring new workers, to publicize the grievances or to gain support of suppliers', and prevent them from continuing to make supplies.
Tripartite	Tripartiet	Tripartite	Tripartite social dialogue means consultation and cooperation between public authorities and social partners to discuss public policies, legislation and other decision-making processes in the economic and social field. Depending on each country's traditions, national tripartite social dialogue takes different forms, such as economic and social councils, labour advisory councils and similar institutions for cooperation at policy level.
Extension of collective agreements	uitbreiding van de toepassing van een collectief akkoord	extension des conventions collectives	The act of extending the terms of a collective agreement at industry level to workers in companies that have not signed the agreement or are not affiliated to an employer organisation that has signed the agreement. This includes automatic extensions, which therefore do not require a formal legal act, but are based on standard administrative practice or case law (for example, in relation to the setting of minimum wages, working hours or social security contributions and entitlements).
Labour union	Vakbond	Syndicat	See: Trade union
Trade union	Vakbond	Syndicat	An association of workers organised to protect and promote their common interests.

Union delegate (be)	Vakbondsdelegee	Délégué syndicale	see: union representative
Unionization rate	Vakbondsorganisatiegraad	Taux de syndicalisation	The union density rate measures the number of employees who are union members as a percentage of the total number of employees.
Union premium (be)	Vakbondspremie	Prime syndicale	Partial reimbursement of employee contributions by the employer
Union officer (be)	Vakbondssecretaris	Permanent syndicale	Union employee (not a company employee) responsible for appointing, supporting and assisting union representatives.
Shop steward	Vakbondsvertegenwoordiger	Délégué syndical	see: union representative
Union representative	Vakbondsvertegenwoordiger	Représentant syndical	An employee in a company who is appointed by the union officer to represent the union in that company.
Union delegation (be)	Vakbondsvertegenwoordiging	Délégation syndicale	Group of trade union delegates in a particular company
Freedom of association	Vrijheid van vereniging	Liberté d'association	The right of people to assemble in public or private for the purpose of association for a common cause and to associate with one another in pursuit of a particular aim. In industrial relations, it refers to the right of workers and employers to organise and join trade unions and employers' organisations of their choice to represent their interests.
Employer's association	Werkgeversorganisatie	Association patronale	An organisation whose membership consists of individual employers, other associations of employers, or both; formed primarily to protect and promote the collective interests of its members.
Board-level employee representation	Werknemersvertegenwoordigers in de raad van toezicht, raad van bestuur of raad van Commissarissen	représentation du personnel dans les conseils d'administration ou de surveillance.	The right of employees or their representatives to elect or appoint some of the members of a company's supervisory or administrative organ, or to recommend and/or oppose the appointment of some or all of the members of such organs.
International labour standards	Internationale arbeidsnormen	Normes internationales du travail	Principles and standards relating to labour and related matters, which take the form of conventions or recommendations adopted by the annual International Labour Conference of the International Labour Organisation.

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