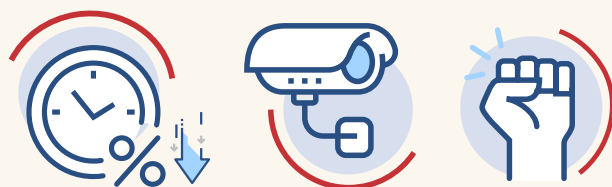


# New Frontiers for Collective Bargaining: A short guidance on emerging topics



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# Introduction

The ETUC places collective bargaining at the core of the post COVID-19 recovery. Changing economic realities, the return to work and the shifting of work practices means that collective agreements will have to formulate adaptable solutions. In March 2021, the ETUC launched the “New Frontiers for Collective Bargaining” project to develop practical tools for trade unions to strengthen collective bargaining at all levels, to extend its scope and to develop strategies to incorporate emerging issues into negotiations. The project explores emerging issues, and this report focuses on: working time reduction, privacy and surveillance of workers, and fight against the far right.

This short guidance is an outcome of this project. It provides a checklist of objectives, pitfalls and best practices to take into account when negotiating on these three topics.

This document is largely based on surveys filled by trade unions across the ETUC membership. Where relevant, these surveys have been completed with desktop research.

For each topic, this guidance first reviews trade union goals. In the light of these goals, and building on feedback from ETUC affiliates, a second section lists the main pitfalls and corresponding elements to keep in mind before and during negotiations to avoid such pitfalls. Finally, a third section provides examples of good practices, mostly drawn from the repository.





# Working Time Reduction

With the onset of the COVID-19 lockdowns, social dialogue played a key role in preventing massive waves of job cuts. Short-time work schemes have been complemented with company level agreements reducing working time – and therefore wage claims - with a view to avoid as many dismissals as possible.

Looking ahead, negotiating working time reduction may remain a lasting trend. As we are now entering recovery phase, several sectors face severe staff shortages. Working time reduction without loss of wages can become a significant element of industry attractiveness. Overall, the potential effect of working time reduction on overall employment levels are well documented, keeping in mind that not all jobs can be easily redistributed.

## 1. Objectives and broad types of working time reductions

Negotiations on working time reduction usually pursue one or several of the following objectives:

- **Safeguarding of jobs.** Working time reductions can be negotiated in companies in financial difficulty, where workers would work a little less in exchange for maintaining the overall level of employment. Such agreements involve trade-offs on wage levels. By nature, these are temporary agreements and therefore subject to strict review clauses.
- Working time reduction in **lieu of wage increase.** This is also a scheme that can be negotiated in companies in financial difficulties where workers temporarily agree to wage restraints, or renounce financial entitlements such as financial participation or bonuses.
- Contributing to a **better balance between work and private life.** This is usually achieved through reduction of working time and flexible working time arrangements. Unlike negotiations that take place to prevent restructuring, the absence of trade-off on financial entitlement is an important aspect of negotiating a better balance between private and work life especially for lower wages.
- **Promoting higher recruitment of women.** For as long as women remain primary care-takers, working time reduction will favour their participation in the labour market. A reduction in men's working time might also lead to a more balanced share of household tasks, which in turn will feed into higher recruitment of women. The absence of trade-off on financial entitlement is an essential consideration to address the gender pay gap.
- **Health & Safety.** Reduced working time can be negotiated on account of dangerous or heavy work, night shifts and older workers.
- **Upskilling** of workers. Social partners can agree on a reduction of working time for the purpose of vocational training.

According to the ETUC survey, negotiations on working time reduction take place almost equally at sectoral and at company level. A combination of both levels is possible with sectoral level agreements laying down a frame, and company level social partners negotiating derogations or additional provisions.

There are significant variations in the shape and extent of working time reductions.

The most frequent type of reduction is the **reduction of working days and of working weeks.** Examples of both radical and incremental reductions can be found. According to a 2017 report<sup>1</sup>, radical reductions are mostly to be found in company level agreements whilst incremental ones are generally found in sectoral or national level agreements.

The **lengthening of annual leave** appears to be the next most popular type of working time reduction. Increasing annual leave does not usually entail significant changes in the organisation of work. This avenue is therefore likely to be pursued more to improve work-life balance and less for reduction of unemployment or safeguarding of jobs.

<sup>1</sup> De Spiegelaere, Piasna (November 2017), *The why and how of working reduction*, [www.etui.org](http://www.etui.org).

The ETUC survey shows that company level social partners also negotiate other forms of working time reduction, including:

- **Shorter working career** through part-time retirement and early retirement;
- **Thematic leaves** such as increased maternity and paternity leave, special leave for child care, special leave for domestic violence victims;
- **Sabbatical** leave and **educational leave**;
- Flexitime allowing workers to adjust their working hours, subject to achieving an agreed total amount of hours;
- **Time bank accounts** where workers earn time credit for each working day/week. That credit is then put in a personal time bank account to be used at a later stage.

## 2. Avoiding Pitfalls

PITFALLS	INDICATIVE CHECKLIST
Loss of wages	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> List all present and future financial entitlements that cannot be affected by the agreement (wage increases, bonuses, supplementary pension schemes, allowances, vouchers etc.).</li> <li><input type="checkbox"/> In case of trade off (e.g.: to avoid dismissals): <ul style="list-style-type: none"> <li><input type="checkbox"/> appropriate expiry date and, if relevant, conditions for renewal of the trade-off;</li> <li><input type="checkbox"/> assess risk of disproportionate impact on low wages, women and part-time workers.</li> </ul> </li> </ul>
<p>The working time reduction is not accompanied with a corresponding reduction of workload</p> <p>The employer expects increased productivity</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Ascertain plans for extra hirings.</li> <li><input type="checkbox"/> Negotiate workload reduction together with adjustment of work organisation.</li> <li><input type="checkbox"/> In case of incremental reduction, ensure that the changes are significant enough to justify extra hiring and adjusted work organisation.</li> </ul>
The arrangements have an adverse impact on women	<ul style="list-style-type: none"> <li><input type="checkbox"/> Assess risk of disproportionate impact on part-time and flexitime workers.</li> <li><input type="checkbox"/> Anticipate increased reliance on non-standard forms of work and zero hours contract.</li> </ul>
<p>Lack of enforcement</p> <p>The employer enjoys a wide margin of discretion to implement the working time reduction</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Address risk of unilateral change/ retraction by employer.</li> <li><input type="checkbox"/> Introduce joint monitoring of overtime.</li> <li><input type="checkbox"/> Right to return to full time work.</li> </ul>

### 3. Examples of good practices



#### Sharing the cost of reduced working time in times of crisis

In July 2020, a German car parts company committed to keep open all its factories in the country and to renounce job restructuring for over two years in exchange for a reduction of working time to up to a 30 hour work week. It was agreed that the employer would compensate 20% of the difference in monthly wages. The employer would also complement the income of workers on short time work to 90% of the initial wage. Financial participation in the company's results were cancelled for that year.



#### Time bank account

A Swedish collective agreement foresees that for each completed working week, time must be entered in a time bank as follows: Daytime work: 82 minutes, back-to-back shifts: 202 minutes, other shift work (e.g. continuous night): 82 minutes.

The time the employee has in the time bank can subsequently be used as paid leave, cash payment corresponding to the current hourly wage, or compensation in the form of a pension premium.



#### Smart working / Flexible work

An Italian collective agreement signed in the energy sector defines "Smart Working" as the possibility of performing the work with greater flexibility of place and working hours. The work can be carried out at a place freely chosen by the employee, provided that it meets safety and confidentiality criteria.

During Smart Working days, employees can autonomously organise their working schedule, without prejudice to availability for contact, required disconnection time and meetings at normal office hours. Employees can also take paid hourly leave during Smart Working days. The agreement contains recommendations such as using delayed delivery option in case of sending emails outside office hours.



#### Preventing increased reliance on atypical contracts

Swiss collective agreements in the construction sector put in place early retirement schemes partly subsidised by the employer. The provisions of this agreement apply to own employees, as well as to subcontractors, self-employed and self-employed workers who themselves employ workers.



# Privacy and surveillance of workers

In a changing world of work, invasions of workers' privacy are dramatically increasing. Monitoring devices such as cameras are not new but are becoming common practice. During the pandemic, which saw workers performing their tasks remotely, trade unions witnessed increased reliance on other technical devices, such as geolocalisation and spyware, often installed without the worker even being aware. Furthermore, the digitalisation of business models has led to artificial intelligence ('AI') taking over human tasks. When AI is relied upon for management purposes, for instance for rating or disciplinary purposes, the risks of misuse of workers' data are particularly acute.

Privacy and data protection are regulated in legal frameworks. The General Data Protection Regulation<sup>2</sup> ('GDPR') is a fundamental reference point, seeking to enhance the individual's consent and control over personal data. However, the GDPR does not have for vocation the regulation of employment relations. The Regulation acknowledges this and opens the possibility for collective agreements to ensure more specific protection in the employment context<sup>3</sup>. Furthermore, the use and the nature of technical devices can vary significantly from one company to another. For these reasons, there is ample room for negotiations on privacy and surveillance of workers at the workplace.

## 1. Objectives

Overall, the handling of workers' data is still a new topic for many workers' representatives. According to the ETUC survey, several trade unions are still in a "learning-by-doing" phase.

Negotiations on privacy and surveillance of workers are nearly always triggered by the employer's decision to rely on various technical devices for monitoring and/ or management purposes. Employers are concerned about theft, breaches of data security, unlawful or inappropriate behaviour in the workplace. Employers are also concerned about their workers' productivity levels and efficient work processes.

Collective bargaining comes as a response to employers' increased reliance on technical devices. In negotiations, trade unions usually pursue the following objectives:

- **Workers' empowerment.** The vast majority of collective agreements address transparency and information and consultation rights on the use of technical devices that have an impact on work organisation. Whilst social partners do not seem to always be able to agree on workers' consent, individual right of access and of rectification are considered as important elements of workers' control over their data. Review clauses and joint evaluations though constituting a strong element of worker's control do not seem to be widely negotiated.
- **Limiting the use of monitoring devices.** Collective agreements often seek to limit surveillance and data collection to what is justified and strictly necessary. This can be done through a list of pre-defined purposes and/ or prohibitions such as the permanent use of cameras.
- **Overseeing algorithmic management.** Trade union materials recommend that the ultimate responsible for workers' management must remain human. This means that while AI may be used as a support in management decisions, employers commit not to replace human managers and to always grant the right to appeal to a human to override an algorithm.
- **Principles for remote work.** Remote work, which often responds to workers' desire for more flexibility, can be coupled with increased surveillance. Among other negotiated principles for remote work, trade unions seek to restrict the use of these surveillance tools.

<sup>2</sup> Regulation 2016/679 of 27.04.2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

<sup>3</sup> Art 88.

## 2. Avoiding Pitfalls

PITFALLS	INDICATIVE CHECKLIST
<p>The monitoring systems do more than what is claimed by the employer</p> <p>The collective agreement is one step behind fast-evolving technology</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Transparency: workers to be made aware of any current and upcoming use of technological device that has an impact on privacy and work organisation.</li> <li><input type="checkbox"/> Information, consultation and negotiation about the whole lifecycle of data, including:               <ul style="list-style-type: none"> <li><input type="checkbox"/> The data collection tools used or intended to be used by the company, the position and recording time of monitoring devices;</li> <li><input type="checkbox"/> The way in which the company uses or intends to use the collected , and for which purpose;</li> <li><input type="checkbox"/> The methods of data storage and competent jurisdiction;</li> <li><input type="checkbox"/> The duration of data storage (“right to be forgotten”) and any third party access.</li> </ul> </li> <li><input type="checkbox"/> Whenever possible, “technology independent” clauses.</li> <li><input type="checkbox"/> Regular joint audits and joint evaluations.</li> </ul>
<p>Different views on what is privacy intrusive:</p> <p>→ consent is given too fast.</p> <p>Unnecessary information is conceded to employers</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Transparency: workers to have access to clear and exhaustive list of purposes of monitoring devices and data collection.</li> <li><input type="checkbox"/> Data collection strictly linked to employment. Can the same purpose be achieved without data collection?</li> <li><input type="checkbox"/> Negotiating line conform with GDPR, including:               <ul style="list-style-type: none"> <li><input type="checkbox"/> Individual consent prior to the collection of personal data (i.e. for purposes that cannot be directly linked to the employment);</li> <li><input type="checkbox"/> Individual access to data;</li> <li><input type="checkbox"/> Individual right to rectification, erasure and right to be forgotten.</li> </ul> </li> </ul>
<p>Machine in command</p> <p>Use of artificial intelligence for recruitment and disciplinary proceedings</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Transparency: exhaustively and clearly specify reliance or intended reliance on devices that have an impact on privacy and work organisation.</li> <li><input type="checkbox"/> Human in command: no decision without a final human validation.</li> <li><input type="checkbox"/> Regular joint audits and joint evaluations.</li> </ul>
<p>Management invokes privacy to hinder trade union access to workers</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Trade union rights as part of negotiated remote work principles.</li> </ul>

### 3. Examples of good practices



#### Information and consultation

In Belgium, collective agreements in the private sector foresee that when a new technology has significant consequences with regard to employment, the organisation of work or working conditions, the employer is required, at the latest three months before the start of the implementation of the new technology, on the one hand to provide written information on the nature of the new technology, on the factors which justify its introduction as well as on the nature of the social consequences which it entails and on the other hand, to consult with the workers' representatives on the social consequences of the introduction of the new technology.

The written information relates to the nature of the new technology, to the economic, financial or technical factors which justify its introduction, to the nature of the social consequences which it entails as well as to the deadlines implementation of new technology.



#### Exhaustive list of purposes

In Belgium, collective agreements in the private sector foresee that the use of cameras is only permitted for safety and health, the protection of the assets of the company, control of the production process, and supervision of the worker's work. Supervision of work requires prior information of workers.

Employer's decisions and assessments cannot be based exclusively on data collected through camera surveillance.



#### Workers' representation and trade union rights

A collective agreement in a Spanish bank foresees that each teleworker can communicate with workers' representatives effectively and with guarantees of privacy. The employer commits to ensure that teleworkers receive trade union information and to guarantee the participation of teleworking staff in social elections. The employer is also required to disclose to the trade union the names, positions and corporate emails of teleworkers as well as the percentage of distribution between face-to-face work and telework.



#### Employee access to data

Bulgarian collective agreements in the energy and healthcare sectors stipulate that employers should create and maintain a personal dossier of each worker, which must be accessible upon request.



#### Positioning and recording time of monitoring devices

A Swiss collective agreement in gas station stores limits the use of monitoring and control systems to the security of employees, in particular to prevent robberies. Surveillance cameras must be positioned so that employees are only recorded if this is absolutely necessary to fulfill this purpose. Recordings may only be evaluated and used to secure evidence for law enforcement. The employees must be informed in writing about the installation of surveillance cameras, the purpose of the surveillance and evaluation of the recordings and the handling of the personal data collected in this way. Upon request, employees are given access to the personal data processed about them.





# Fight against the far right

Right-wing populism has been steadily increasing in the past decades. Far-right political parties are now winning significant shares of the votes in Europe and globally. They become part of coalition governments and in some cases are even able to constitute political majorities.

The ETUC adopted a [Roadmap “Building the Trade Union response to the rise of far-right”](#) outlining that trade unions and the far-right are opposites. Not only because of trade unions’ history and proud tradition of opposing the far-right in the past, but because of what trade unions stand for today. Trade unions, above all else, believe in solidarity, fight for better lives, social justice and opportunity, for all working people. They stand for unity over division. This Roadmap sets out a plan based on 15 key actions to be undertaken by the ETUC and its affiliates and it includes the support of the ETUI Education Department.

In another Resolution on the [European Trade Union Democracy Action Plan](#), the ETUC recalls that trade unionism and democracy are inextricably linked. This Resolution underlines among other the important contribution that social dialogue, collective bargaining, and democracy at the workplace make to the stability of democracy.

## 1. Objectives

Several trade union organisations are developing a narrative to counter the far right. On this basis, they hold strategic discussions for instance with regard to members whose anger or fear may lead to support far right parties. However, as far as collective bargaining is concerned the fight against the far right is a territory that remains largely unexplored. The majority of respondents to our survey indicated that there is no or very limited negotiations on this topic.

Trade unions that reported negotiations have pursued the following concrete objectives:

- **Promotion of equal opportunities at the workplace.** This is by far the objective that is the most frequently addressed by social partners. This entails the employer’s commitment to refrain from any discrimination on the basis of gender, racial and ethnic origin, religion and belief, disability, sexual orientation, age etc.
- **Actions against racism and any form of discrimination.** Such actions usually involve Charters and Codes of conduct, but also training activities, awareness raising initiatives and, more rarely, complaint mechanisms internal to the company.

Aside from collective bargaining, the fight against the far right is tackled through broader trade union action, which can be distinguished from collective bargaining. Such actions include public communications in the context of political and social elections and warning systems about far right activities among workers. The later point may lead to internal discussions by the trade union organisations on organising and disciplinary strategies.

## 2. Avoiding Pitfalls

Whilst solidarity and inclusiveness are shared trade union values, the concepts of far right and right-wing populism have characteristics which vary according to historic, cultural and political contexts. Furthermore, some unions feel there is a balance to maintain between on the one hand fighting the far right and on the other hand avoiding discriminating between workers according to their political views. Finally, bringing agreements into action is also seen as a challenge.

This probably explains why collective bargaining is usually a focused exercise, mostly on the promotion of equal opportunities and fight against discrimination.

### 3. Examples of good practices



#### Equal treatment

In Belgium, a national level collective agreement commits the employer to ensure equal treatment throughout the employment relationship. Equal treatment is defined as the absence of any discrimination based on age, sex or sexual orientation, marital status, medical history, race, colour, ancestry or national or ethnic origin, political or philosophical beliefs, disability, affiliation to a trade union organisation or to another organisation.

In a collective agreement negotiated in an Italian luxury brand company, the parties confirmed their commitment to shared values, with particular reference to gender equality, same sex unions and transgender identity. With regard to the latter, the parties agree to identify measures for the integration of workers undergoing gender transition. Overall, the company commits to recognition and equal rights.



#### Code of ethics and training

A collective agreement in an Italian car manufacturer recalls the parties adherence to a code of ethics, in particular with regard to equal opportunities and equal treatment. On this basis, the collective agreement foresees a series of initiatives dedicated to raising awareness on diversity. These initiatives are designed with an active trade union contribution and focus on:

1. trainings dedicated to the enhancement of generational diversity;
2. integration and development plans to increase the share of female personnel;
3. Ensuring the inclusion of people with disabilities for instance through interpretation support for employees with hearing loss.



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