

# **Strike rules in the EU27 and beyond**

## **A comparative overview**

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## **Introduction**

In the context of globalisation capital is moving increasingly across borders. As industry in the European Union takes advantage of the possibilities created by the internal market, so trans-national transactions become everyday occurrences.

If the European trade union movement too wishes to take up the challenge represented by mobility and movement of services and production in the internal market, the obvious answer, in the case of labour disputes, is to take collective action across the border.

Collective action is, still today, very much linked to the highly specific national industrial relations systems. As such, it is regulated almost exclusively by national rules (legislation, collective agreements and case law), which means that the first step taken by trade unions in Europe is to act within the national “legislative” boundaries, while seeking to coordinate national actions on a trans-national scale in such a way that they acquire a European impact.

Under these circumstances, it is hardly surprising that increasing requests have been received for information about the kinds of action possible under specific national regulations. Existing comparative material on the topic dates back at least ten years, so that it does not include the new Member States. The idea underlying this publication was, accordingly, to assemble up-to-date information on the rules governing collective action in the different EU Member States.

In no way can this report be regarded as exhaustive. It is, rather, a first short overview of the national situations: what types of action exist in the different countries? Are they lawful? What kinds of restriction or procedural requirement have to be taken into consideration when taking collective action? What are the effects on the workers in the different countries?

The report provides a first brief comparative analysis, including a glossary, followed by information on the national systems in the EU27 and beyond.

Information for this report was collected from wide-ranging written sources and checked and amended by the national legal experts of the NETLEX. We are very grateful to our colleagues for their quick and valuable input.

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March 2007



## Comparative analysis

The right or freedom to take collective action is, in most countries, *guaranteed in the Constitution*, exceptions being Austria, Belgium, Luxembourg, Malta, the Netherlands, Ireland and the UK. In Germany and Finland the right derives from the freedom of association.

It is an area of law which, in many countries, insofar as no detailed legislation existed on the topic, has been mainly *developed through the courts*. This is the case in Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg and the Netherlands.

Extensive case law on collective action does not yet exist in the EU12 countries. In these countries collective action is regulated exclusively by law. The same is true of Finland, Iceland, Portugal, Spain and the UK. Greece and Ireland are two countries where regulation is by both legislation and case law. This is true also of France to some extent, at least in relation to the public sector.

Legal basis for the right to take collective action				
Country	Constitution	Law	Case law	Collective agreement
Austria	-	-	-	-
Belgium	-	-	+	-
Bulgaria	+	+	-	-
Croatia	+	+	-	-
Cyprus	+			
Czech Rep.		+	-	-
Denmark	+	-	+	+
Estonia	+	+	-	-
Finland	Not explicit	+		
France	+	+(in public service)	+	-
Germany	Not explicit	-	+	-
Greece	+	+	+	-
Hungary	+	+	-	-
Iceland	+	+	-	-
Ireland	-	+	+	+
Italy	+	-	+	-
Latvia	+	+	-	-
Lithuania	+	+	-	-
Luxembourg	-	-	+	-
Malta		+/-		
Netherlands	-	-	+	-
Norway	+	-		
Poland	+	+	-	-
Portugal	+	+		
Romania	+	+	-	-
Spain	+	+		
Slovakia	+	+		
Slovenia	+	+	-	-
Sweden	+	+	-	+
UK	-	+		-

The regulation of this field of labour law by the *social partners* themselves, by means of collective agreements, is a feature highly specific to Denmark, Finland, Sweden and Ireland.

In some countries – including Belgium, Italy and France – the right to collective action is an *individual right*, while in others – Germany, Greece, Poland, Czech Republic, Slovakia and Sweden – it has to be exercised by *trade unions*.

The EU27 offers a very diverse picture with regard to the *different types of collective action* used. Nor is the same term always used to describe the same sort of collective action. What is more, some types of collective action are legal under some legal systems but prohibited under others.

*Purely political strikes* are, in most countries, at least in theory, prohibited, exceptions being Denmark (if short and for “reasonable cause”), Finland, Ireland, Italy and Norway.

*Solidarity action* – supporting other workers in their primary action – is by now, in many countries, considered legal under certain conditions, exceptions being Latvia, Luxembourg, the Netherlands and the UK. In Germany and Italy the situation with regard to the rules governing solidarity action is quite complex. In Spain its legality has to be established on a case-by-case basis.

*Picketing*, in this overview, takes into account verbal persuasion only; in such cases it is legal in all countries which mentioned this form of action, with the exception of France. Physical violence, by contrast, is invariably prohibited.

*Boycotts* are allowed in Denmark, the Netherlands, Norway, Portugal and Sweden, and *blockades* in Denmark, Finland, Norway and Sweden.

*Go-slow*, as a legal form of collective action, is found in Finland, Germany, Greece, Ireland, Luxembourg, Malta, the Netherlands, Norway, Portugal, Sweden and the UK, while in Belgium, Denmark and France it is prohibited.

*Work-to-rule* is illegal in Denmark, France and Norway but may be used in Cyprus, Finland, Germany, Greece, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Spain, Sweden and the UK.

The *warning strike* is allowed in Bulgaria, Cyprus, Estonia, Germany, Hungary, Lithuania, Poland and Romania. In most of these countries this form of action is restricted in terms of duration.

The situation in Ireland and the UK is very specific in the sense that all collective action is in principle illegal but, since there is provision for immunity in certain defined circumstances, the respective forms of actions have been marked as legal.

*International secondary action*<sup>1</sup> is considered legal in Belgium, Greece (under certain conditions), Ireland, Italy, Luxembourg, Norway and Sweden. In most countries this is subject to the condition that the primary action abroad must be lawful.

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<sup>1</sup> See more in detail Clauwaert 2002 and Aaltonen 1999.



Types of collective action								
Country	Blockade	Boycott	Go slow	Work to rule	Picketing	Political	Sympathy	Warning
Austria								
Belgium			-		+	+/-	+	
Bulgaria					+	-	+	+
Croatia							+	
Cyprus				+			+	+
Czech Rep.					+		+	
Denmark	+	+	-	-	+	+/-	+	
Estonia							+(3 days)	+(1h)
Finland	+		+	+		+	+	
France	-		-	-	-	-	+	
Germany	-		+	+	+	-	+/-	+
Greece			+	+		-	+	
Hungary				+	+	-	+	+(2 hrs)
Ireland			+	+	+	+	+	
Italy					+	+	+/-	
Latvia						-	-	
Lithuania								+(2 hrs)
Luxembourg			+	+	+		-	
Malta			+	+	+		+	
Netherlands	+	+	+	+		-	-	
Norway	+	+	+	-	+	+	+	
Poland							+(1/2 day)	+
Portugal		+	+		+		+	
Romania						-	+	+(2 hrs)
Spain							+/-	
Slovakia					+		+	
Slovenia						-		
Sweden	+	+	+	+			+	
UK			+	+	+	-	-	

**Restrictions** on the right to take collective action are to be found in all countries examined. These may relate to the peace obligation, the need to strive for peaceful settlement of disputes before embarking on collective action, or the need to provide minimum services during a strike in certain sectors. Equally, some groups of workers – e.g. public servants or members of the armed forces – may be excluded from the right to take collective action, collective action may need to be proportional or ultima ratio, a notice period may need to be respected or a strike ballot held before the action.

Restrictions to the right to take collective action						
Country	Peace obligation	Procedural requirements		Strike breaker	Dispute settlement	Ultima ratio
		Notice	Ballot			
<b>Austria</b>	+					+
<b>Belgium</b>	+ not legally enforceable					
<b>Bulgaria</b>		+	+	+	+	+
<b>Croatia</b>		+		+	+	+
<b>Cyprus</b>		+ (renewal ca)				
<b>Czech Rep.</b>	+	+	+		+	+
<b>Denmark</b>	+	+ (by ca)	+ (by ca)		+	
<b>Estonia</b>		+	+	+		+
<b>Finland</b>	+	+				
<b>France</b>	-	+ (public sector)		+		+
<b>Germany</b>	+	-	+ (by tu)	+		+
<b>Greece</b>	+	+	+			
<b>Hungary</b>						+
<b>Iceland</b>	+	+	+		+	
<b>Ireland</b>		+	+			
<b>Italy</b>	+				+	
<b>Latvia</b>	+	+	+	+	+	+
<b>Lithuania</b>	+	+	+		+	
<b>Luxembourg</b>	+			+	+	+
<b>Malta</b>					+	
<b>Netherlands</b>	+	+/-	+ (by tu)	+		+
<b>Norway</b>	+	+	-		+	
<b>Poland</b>		+	+		+	
<b>Portugal</b>	+	+	+(if non union)			
<b>Romania</b>	+		+		+	
<b>Spain</b>	+	+				
<b>Slovakia</b>	+	+	+	+		+
<b>Slovenia</b>		+	+		+	
<b>Sweden</b>	+	+				
<b>UK</b>		+	+			

ca: collective agreement

tu: trade union

One feature existing in nearly all industrial relations systems – with the exception of France – is the *peace obligation* deriving from the collective agreements and prohibiting collective action during the lifetime of the collective agreement.

*Procedural requirements* can be found either in law or in collective agreements and relate most often to notice periods, ballots to be held before a strike is taken and conciliation procedures.

The *notice periods* to be respected have very different timeframes in the different countries, ranging from an obligation to announce collective action between 24 hours and 7 or even 14 days in advance.

The obligation to hold a *ballot* is to be found either in legislation or, as in Denmark, in the collective agreement. Alternatively, as in Germany and the Netherlands, it may be laid down in the trade union statutes.

Some kind of *dispute settlement procedure*<sup>2</sup> has to be respected or has to be used before collective action can be taken. This is the case in Bulgaria, Croatia, the Czech Republic, Denmark, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Romania and Slovenia.

In none of the countries where information was provided on *strike-breakers* can they be used, in any way whatsoever, to replace workers on strike.

In a very few countries *collective action can be postponed* for a certain period of time. This is possible in Estonia, Finland, Norway, Spain and Sweden. This can be done by Government, the Ministry of Labour or Parliament depending on the national rules. The postponement ranges from 14 days in Sweden and Finland to as much as a month in Estonia.

In most EU countries the fact of stopping work in order to take part in collective action no longer signifies a *breach of the employment contract*. In fact the contract and hence the two main obligations resulting from it – to work and to be paid – are suspended. To participate in collective action is still considered a breach in Austria, Denmark and in Ireland and the UK.

An *illegal strike* can lead to the dismissal of the workers who took part in this action or to the obligation to pay damage compensation (either the union, or the individual or both).

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<sup>2</sup> See in more detail: Düvel *et al.* 2004.



## Glossary

To be understood only as an indication, seeing that there is no single definition covering all situations in the EU27 and beyond and bearing in mind that not everywhere are the same terms used to define the same action

**Blacking** – refusal to be engaged by a certain employer

**Blockade** – refrain from working in the company involved in the dispute

**Go-slow** – slowing down the speed of work

**Occupation** – workers take over the whole or part of the premises; this can mean partial or total continuation of production

**Partial strike** – only some groups of workers in the enterprise stop working

**Peace obligation** – if a collective agreement is in force, the signatory parties undertake not to wage collective action for the lifetime of this agreement

**Picketing** – strikers outside the premises of a business try to stop other workers from working and persuade them to join the action

**Political strike** – directed against the Government in relation, generally speaking, to non-employment matters

**Rotating Strike** - a strike organized in such a way that only part of the employees stop work at any given time, each group taking its turn

**Selective strike** - focus on certain parts of a particular industry or firm

**Staggered strike** – short sequences of strike action over a certain time period

**Strike** - A concerted and sustained refusal by workers to perform their work

**Strike ballot** - A vote conducted among workers on the question of whether they should go on strike

**Strike benefits** - Sums paid by a trade union to its striking members, and sometimes to non-members, to help finance them during a strike

**Strike-breaker** - Workers hired during a strike primarily for the purpose of defeating the strike

**Strike notice** - Formal announcement by a group of workers to their employer or to an appropriate government agency that on a certain date they will go on strike

**Solidarity action** - Concerted work stoppage by employees of Employer A to support striking employees of Employer B and to exert indirect pressure on B

**Warning strike** – a short strike before actual collective action is taken

**Wildcat strike** - A strike not called by a trade union in countries where taking collective action is a trade union right

**Work to rule** – workers stick exactly to the work description as given in their employment contract

# 1. Austria

## ***Legal basis:***

The right to strike is not codified in Austria. Neither the Constitution nor national legislation regulates whether, and under what conditions, Austrian workers may strike or what legal consequences might ensue from participation in a strike. Furthermore, no Supreme Court case law exists on the topic. However since 1870 collective action has been tolerated.

## ***Definition:***

A work stoppage carried out according to a plan by a fairly large number of employees of one trade or profession, or of a business, in the pursuit of a particular aim and with the intention of resuming work after achieving the aim, and/or after the end of the labour dispute.

## ***Types of collective action:***

- all-out stoppage
- partial strike
- selective strike focus on certain parts of a particular industry or firm
- warning strikes
- boycotts
- strikes not directed against the employer, but which are in pursuit of other goals, such as political and solidarity strikes (unlawful)

## ***Restrictions:***

In Austria there are few legal provisions that expressly prohibit labour disputes.

Collective agreements imply the contractual peace obligation with regard to all matters covered by the collective agreement. This means that the parties to the agreement should not use any form of industrial action while a collective agreement is in force; this in order to secure changes in the provisions to which they agreed earlier when concluding the collective agreement.

Furthermore, industrial action is unlawful when not based on reasonable cause.

Forms of solidarity action, carried out in solidarity with other employees, are widely considered unlawful even if they support economic industrial action.

Strike is considered an act of last resort and the principle of proportionality needs to be respected.

It is not possible, during a strike, to replace the strikers by workers from temporary agencies; nor can employment offices place job-seekers in companies affected by a strike. Furthermore, workers cannot be “loaned” by other enterprises. Nor will a work permit be delivered to foreigners, should they work in place of the strikers.

***Effects:***

Regardless of whether the action was lawful or unlawful, participation may entail legal consequences for the striker under the general provisions of the Civil and Criminal Code, e.g. criminal prosecution (illegal strike); dismissal, as participation still represents a breach of contract. But the union can, if it initiated or supported the strike, impose in the settlement a solution prohibiting any negative treatment and stipulate the reinstatement of the dismissed strikers.

In the civil service legal restrictions on collective action no longer exist, but in practice restrictions might arise from the duty of loyalty towards the employer.

***International disputes:***

No direct legal reference is to be found. The general principles apply also to action taken to influence a foreign employer or in support of other employees abroad.

## 2. Belgium

### *Legal basis*

The right to strike in Belgium is not covered by law, but has been developed through case law. In 1981 the Belgian Supreme Court ruled that the employee has the right in case of a strike not to perform the work as stipulated in the contract. Therefore participation in a strike is not in itself an unlawful act. The right to strike is recognised as an individual right, which means that employees may take part in a strike that is not approved by a trade union. The worker going on strike exercises his/her freedom of association and this action is therefore considered to be a justified suspension of the labour contract.

The right to strike is accepted as a fundamental right as the consequences are regulated in legislation.

### *Definition:*

There is no precise definition of strike in Belgian law. A strike means a temporary, concerted and usually collective work stoppage.

The definition of strike implies obligatory elements:

- stoppage of work (work which the strikers were obliged to perform by civil law or due to their employment contract)
- the aim must be to put pressure on the employer or on a third party. A strike does not necessarily have to be directed solely at the employer. The grievance giving rise to the action can extend to an entire industry or even to national economic and industrial planning.

### *Types of collective action:*

In Belgium both primary and secondary strikes may be permissible. Purely political strikes are not.

- strike: about wages and working conditions in the enterprise, the sector or the private sector as a whole
- solidarity strike
- political strike: directed against the Government of Belgium or of another country and unconnected with any employment-related matters (illegal); if connected (legal)
- picketing: legal as long as peaceful and there is no physical prevention from e.g. entering the workplace
- spontaneous strike: if the peace obligation was not observed (not necessarily illegal)
- work-in/occupation: employees take over the premises or part of it; can mean partial or total continuation of production (illegal)
- whole workforce
- a part of the workforce
- continuous strike
- interrupted strike



- work-to-rule (illegal)
- go-slow (illegal)

The last two forms are illegal, as only complete refusal to work is permitted.

***Restrictions:***

If a collective agreement contains a peace obligation this has to be respected; even so it is legally enforceable only to some extent, in the sense that trade unions will not be held liable for damages. This is due to the fact that trade unions do not have legal personality and can therefore not be sentenced in court for non-respect. The peace clause relies on trust.

The law stipulates that when exercising the right to strike capital or equipment must be safeguarded. Necessary public services must be maintained and any necessary emergency tasks must be carried out.

The joint committee (representatives of employers and trade unions) has to decide what supplies and services have to be maintained in the event of a strike or lock-out and how these needs should be met. In 1999 courts ruled explicitly that the right to strike must be balanced against other legitimate rights and interests in society at large.

Several judicial practices restrict the exercise of the right to strike, as they rule on the strike itself and its unlawful consequences and may prohibit a strike. It is the general courts and not the labour court who judge in that respect.

***Effects:***

Court decisions have held that a strike only suspends the employment contract. Therefore participation in a strike is not a breach of the contract.

The strikers have no right to remuneration, but strike benefits might be paid by the trade union.

Seeing that trade unions do not have a legal personality, there is in principle no remedy against them in case of an unlawful strike. But the individual employee who participates in an unlawful strike is guilty of an offence, which may justify dismissal, and he/she might be liable for damages due to action.

***International disputes:***

Belgian workers have extremely wide possibilities to carry out international secondary strikes, seeing that secondary actions are generally lawful in Belgium. Therefore there are few constraints on trade unions supporting workers outside Belgium.

The unlawfulness of the primary action does not affect the lawfulness of the secondary action.

### 3. Bulgaria

#### ***Legal basis:***

The right to strike is guaranteed in Art. 50 of the Bulgarian Constitution “*Workers and employees shall have the right to strike in defence of their collective economic and social interests. This right shall be exercised in accordance with conditions and procedures established by law.*” and governed by the Act on Settlement of Collective Labour Disputes.

#### ***Definition:***

Strike is defined as a dispute between workers and employers relating to labour relations, social security and living standards. The definition also covers disputes related to the conclusion or fulfilment of a collective agreement.

The right to strike is not restricted to a trade union. Groups of employees can go on strike.

#### ***Types of collective action:***

- symbolic strikes
- warning strikes
- solidarity strike
- picketing (if peaceful persuasion)
- political strike (illegal)

#### ***Restrictions:***

According to the Act on Settlement of Collective Labour Disputes (ASCLD) the right to strike is guaranteed to all sectors of the economy, but the negotiating parties are obliged to conclude a written agreement at least 3 days in advance.

The agreement must provide that, during the strike itself, workers and employers will ensure conditions for the performance of activities, failure to perform which might imperil or cause irreparable damage to:

- the life and health of people needing urgent medical help or those who have entered a hospital for treatment;
- the production, distribution and supply of gas, electricity and heating, good public and transport utilities, radio and television broadcasting or phone services;
- public or personal property or natural environment;
- public order.

In the event of failure to reach such agreement, either party may submit a request to the National Institute for Reconciliation and Arbitration for the issue to be solved by a single arbiter or by an arbitration commission.

Before going on strike all means of negotiation must be exhausted, strike being only the final resort. Numerous conditions must be met in order for a strike to be legal. A ballot on the action must take place, a simple majority of the employees in the enterprise being required. Written notice must be given to the employer at least seven days in advance, although this does not apply in the case of a warning strike. Strikers must remain in the

workplace during the strike. At least three days before a strike starts, the parties must agree in writing on the minimum services to be maintained.

Civil servants in Bulgaria are entitled to wage only symbolic strikes.

***Effects:***

The strikers receive no payment but are covered by social security. They are protected against dismissal.

## 4. Croatia

### ***Legal basis:***

The right to strike is guaranteed in the Croatian Constitution and regulated in the Labour Act and other special laws.

### ***Definition:***

Trade unions or their confederations are entitled to call a strike in order to protect and enforce the economic and social interests of their members or in the case of non-payment of wages (if wages have not been paid within thirty days from the date due).

A strike may also be called in the context of signing or implementing a collective agreement.

### ***Types of collective action:***

Solidarity strike: can be organized, subject to notification of employer of where it is being organised. It may then start without mediation.

### ***Restrictions:***

The strike must be announced in writing, stating the reason, place, day and starting time. Observance of the dispute settlement procedures is required before a strike is possible.

On a proposal from the employer, together with the trade union, rules are prepared and adopted to regulate the maintenance of production and the essential activities which may not be stopped during a strike or lockout.

In the armed forces, police, health sector, Croatian railways, post and telecommunications, the right to strike is restricted by special laws based on the Constitution

### ***Effects:***

Participation in a strike does not constitute a violation of the employment contract. Employees are protected from discrimination on grounds of organising or taking part in a strike, provided it is in accordance with the law, collective agreements and trade union rules.

Employees can be dismissed due to a strike, if the strike was illegal or if the employee committed a severe violation of the employment contract during the strike. An employee may not in any way be forced to participate in collective action. Salaries may be decreased during the strike.

## 5. Cyprus

### ***Legal basis:***

Art. 27 of the Constitution guarantees the right to strike in Cyprus:

*1.) The right to strike is recognised and its exercise may be regulated by law for the purposes only of safeguarding the security of the Republic or the constitutional order or the public order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person.*

*2.) The member of the armed forces, of the police and of the gendarmerie shall not have the right to strike. A law may extend such prohibition to the members of the public service.*

Laws regulating the right to strike are possible only within the small margins allowed by the Constitution.

### ***Types of collective action:***

- indefinite
- warning
- twenty-four-hour
- work stoppages for a few hours
- work-to-rule
- solidarity

### ***Restrictions:***

If the dispute concerns the renewal of a collective agreement a notice period of 10 days has to be respected. If it concerns the violation of an existing agreement no notice period applies.

### ***Effects:***

A worker cannot be punished for participation in a strike.

## 6. Czech Republic

### ***Legal basis:***

Strike is regulated by Article 27 IV of the Charter of Fundamental Rights and Freedoms and the Collective Bargaining Act No. 2 of 1991.

### ***Definition:***

A strike is the partial or complete interruption of work on the part of employees. Solidarity strike is defined as an action in support of demands of employees striking in a dispute over the conclusion of another collective agreement.

### ***Types of collective action:***

- solidarity strikes (if primary action is about the conclusion of a collective agreement; might be illegal, if the employer affected is powerless to influence the course or outcome of the principal dispute)
- picketing (if no physical violence)

### ***Restrictions:***

A collective dispute must relate to the conclusion of a collective agreement. Strike is not a lawful means of exerting pressure for the fulfilment of collective agreements currently in force. Strikes pertaining to matters other than collective bargaining are lawful but not covered by legislation.

Strike is only the final resort in the event of disputes over the conclusion of a collective agreement; it is possible only after mediation and arbitration procedures have been conducted. A strike can be called only by a trade union.

The strike must be announced three days in advance, with details of the start date, the goals, the number of employees who will take part in the strike and a list of the workplaces that will not operate during the strike. Legislation requires a 50% quorum for a strike ballot, and a two-thirds majority vote to call a strike. This means that at least one third of the employees covered by the collective agreement have to give their consent to the strike.

A strike is illegal, if:

- it is not preceded by a formal claim for a collective agreement and an attempt at mediation (not necessary in the case of solidarity strikes)
- the peace obligation is not respected
- the arbitration process has started
- it does not have the support of one third of the employees to whom the respective collective agreement applies (see above)
- the notification requirements are not respected

The Collective Bargaining Act prohibits certain professions or workplaces from striking. These include:

- medical and welfare facilities where the strike or lockout might endanger life or health;
- workers operating nuclear power stations;
- workers dealing with fissionable material, oil or gas pipelines;
- fire-brigade members and members of rescue squads set up at specific workplaces based on specific regulations,
- workers ensuring the operation of telecommunications, if a strike could result in life or health hazard or a damage to property,
- those working in areas affected by natural disasters where emergency measures have been declared by the relevant state authorities, etc.
- judges, public prosecutors, and members of the armed and security forces.

***Effects:***

An employee cannot be dismissed due to his/her participation in a strike.

Participation in an illegal strike is regarded as unauthorised absence.

Participants in a strike are not entitled to wages. Nor are they entitled to sickness benefit (unless it be stated in the sickness insurance provisions that benefit is applicable to workers taking part in a strike). During a lockout, an employee shall be entitled to receive wage reimbursement equivalent to half of his/her average earnings. For the purpose of retirement pension plans, participation in a strike and the period of a lockout are regarded as periods of regular job execution and job retention.

## 7. Denmark

The Danish labour market is regulated by means of agreements between the social partners. As such the right to take industrial action is of fundamental importance as an instrument for obtaining a collective agreement.

### ***Legal basis:***

Freedom of association and peaceful assembly are guaranteed by Articles 78 and 79 of the Constitution. Rules on industrial disputes are set up by binding collective agreements and are not regulated by national legislation. This is in keeping with the voluntarist traditions of industrial relations in Denmark. In other words, the state generally abstains from regulating this area, leaving this task to the social partners.

The main national employer and trade union organisations agreed on the principles governing the lawfulness of collective agreements. These were first laid down in 1908 and have not much changed since (main contract is between LO and DA).

Rules have nevertheless been established out of a long tradition of case law stemming from the Danish industrial courts.

The two laws that regulate, in a broad sense, the right to take collective action are those dealing with the regulation of labour disputes (Act on the labour court and Act for mediation in labour conflicts).

### ***Definition:***

Strike exists when a group of workers stop work or refuse to begin work. A further condition is that the group of workers have a common purpose (type not important) in the stoppage of work. The purpose is generally related to economic issues but can also be political.

A situation quite specific to Denmark is that if employees have a common goal when giving notice of termination to their employer this is considered collective action.

### ***Types of collective action:***

- all-out strike
- blockade
- boycotts
- work-to-rule (illegal)
- slowdown (illegal)
- staggered strike (illegal)
- intermittent stoppages
- blacking
- picketing (if moral pressure)
- political strike (unlawful if during lifetime of a collective agreement but short ones for “reasonable cause” have been ruled legal by the courts)
- Solidarity strike or – as it is called in Denmark – secondary picketing:
  - a union or other unions within the same central organisation support the principal conflict by telling its/their members to strike or abstain from performing any work related to the company in question. The conditions are the following:
    - a legally launched primary conflict



- shared interest between the unions
- appropriate in terms of influencing the primary conflict
- must be in proportion.

***Restrictions:***

The peace obligation of a collective agreement has to be respected; this is stated in the General Agreement and non-respect is sanctioned by a penalty. Therefore strike should be restricted to situations where a new collective agreement is sought. It is, however, legal to take industrial action in order to obtain a collective agreement in an area which is already covered by another collective agreement.

It may be said that certain criteria must be respected for industrial action to be legal, such as:

- all possibilities of mediation must have proved ineffectual
- the party taking the collective action must have a legal and reasonable interest in demanding a collective agreement
- the action must have a legal purpose
- when action is taken certain procedures are to be observed.

The main collective agreement stipulates that strikes must be approved by 75% of those voting at a competent assembly of the organisation calling the action. It stipulates, furthermore, that a first notice be given 14 days before the start of the collective action and a second one 7 days before.

***Effects:***

Denmark is one of the rare countries in which participation in a legal strike terminates the employment relationship. To protect workers from this effect, agreements between trade unions and employer's associations signed to terminate a strike most often include a clause stating that strikers are to restart their work.

If a strike has trade union backing, strikers receive remuneration from the trade union strike funds.

***International disputes:***

Secondary strikes and other forms of industrial action are considered prima facie unlawful if taking place in support of a dispute outside Denmark. For such action to be regarded as lawful it needs to be recognized that the Danish action was not in breach of the peace clause in Denmark's main agreement, and that the primary action abroad was legal under the relevant national law.

International secondary action is – despite the peace obligation – permitted, albeit only to an extremely limited extent:

- primary action shall be legal
- shall actually take place
- existence of a sufficient community of interests

The lawful status, or otherwise, of the primary action is to be judged either according to the legislation of the country in which it takes place or, in cases where the rules of foreign law are contrary to the fundamental principles of Danish labour law or where the clarification of the contents of foreign labour law is impossible or extremely difficult, according to the principles of Danish collective labour law.

## 8. Estonia

### ***Legal basis:***

The Constitution Art. 29:

*Employers and employees may freely join unions and associations. In order to protect their rights and legal interests, unions and associations of employees and employers may use any means that are not prohibited by law. The conditions and procedures for exercising the right to strike shall be established by law.*

and the Collective Labour Dispute Resolution Act (5 May 1993 amended).

### ***Definition***

Article § 2 (2) of the above-mentioned act defines a strike as an interruption of work on the initiative of employees or a union or federation of employees in order to achieve concessions from an employer or an association or federation of employers in relation to lawful demands in labour matters.

### ***Types of collective action:***

- (primary) strike
- solidarity strike (limited to 3 days)
- warning strikes (limited to 1 hour)

Solidarity strikes are permitted in support of employees engaging in a strike (Art. 18(2)). Whether or not it is possible to organize a solidarity strike in support of foreign strikers is a matter of interpretation.

### ***Restrictions:***

Strikes are agreed upon by a general meeting of employees or a union or federation of employees.

The strike must be notified to the other party, a conciliator and the local government in writing at least two weeks in advance. The notification must specify the reason for the strike, the starting time and the possible scope. The advance notice is reduced to three days in case of solidarity strikes.

Strikes which are not preceded by negotiations and conciliation proceedings are unlawful (Art. 22), as are strikes for the purpose of affecting the activities of courts (Art. 22 (1)). Strikes which are called or organised in violation of the procedure established by the Act, or in support of claims in areas not regulated by labour legislation or collective agreements, are also unlawful (Art. 22 (3)). No prior consultation with the mediator is required before a warning strike. Notice has to be given three days in advance and the action is limited to one hour.

Strikes are prohibited in governmental agencies and other state bodies, in local government, in the defence forces, courts, fire fighting and rescue services (Art. 21). Civil servants do not have the right to strike. In these places collective disputes should be resolved by mediation, conciliation or the courts.

The Government draws up a list of enterprises and agencies which satisfy the primary needs of the population. In these places essential services or production must be maintained during a strike. The parties have to agree on this topic. Failing such agreement, it is up to the public conciliator to take a binding decision.

The strike may be postponed once by the government, on the proposal of the public conciliator, for one month, or by the city or county government, on the proposal of the local conciliator, for two weeks.

The Government has the right to suspend a strike in the case of a natural disaster or catastrophe, in order to prevent the spread of an infectious disease or in a state of emergency (Art. 19 (2)).

***Effects:***

Participation in a lawful strike is not considered breach of contract. Strikers do not receive their wages.

## 9. Finland

### *Legal basis*

The right to take collective action is not expressly recognised in Finnish law. However, freedom of association is enshrined in the Constitution and this freedom includes the right to take part in the activities of an association. This right in turn entails, according to established practice and the prevailing position in legal doctrine, the right to conduct collective bargaining and to embark on collective action.

Strikes and lockouts are regulated by the Collective Agreements Act and by the Act on Mediation in Labour Disputes which covers the aspects of notice and deferment of labour stoppages.

### *Definition:*

Strike is defined as an action involving a total cessation of work by all or some employees.

### *Types of collective action:*

Primary and secondary action by workers is permitted for a wide range of reasons and in a wide variety of forms, e.g.:

- sit-down strike
- overtime bans
- work-to-rule
- go-slows
- blockades
- work-ins
- political strike
- solidarity strike

When taking supportive action it is immaterial whether or not the party is bound by a valid collective agreement and the peace obligation does not have to be respected. This is due to the fact that secondary action by workers does not constitute action directed against their own collective agreement or the 1946 Collective Agreements Act.

However, secondary action is legal only if the primary action was legal.

### *Restrictions:*

All collective agreements are covered by the peace obligation but this does not apply to collective action taken on subjects unrelated to the collective agreement. Furthermore, the peace clause does not apply to employers who are covered by the collective agreement as a result of extension without having been signatory parties.

Solidarity strikes in support of other groups of workers do not constitute a breach of industrial peace because the action is not aimed at affecting the supporters' own collective agreement. The same is true of stoppages in support of political goals.

Anyone intending to commence a strike has to give written notice – stating the reasons for the strike, its starting time and the extent of the stoppage – to the opposite party and to the office of the National Conciliation Officers at least 14 days beforehand. The intended labour stoppage may be deferred by the Ministry of labour by 14 days, if the essential general interest is threatened and extra time for mediation is deemed necessary. This is the only legal protection of minimum services in the event of industrial action. Solidarity action and strikes initiated as part of a political demonstration are not subject to these requirements. However, according to the 1993 Central Agreement (between EK-SAK-STTK-AKAVA), the 1997 Central Agreement (between SAK-EK) and the 2002 Central Agreement (between STTK-EK), both solidarity and political strikes are to be preceded by a four-day notice period.

***Effects:***

A legal industrial action is an action that is not in breach of any of the stated rules. In Finland the organisations carry the primary responsibility for labour peace.

Strike is never a valid ground for dismissal, provided that the rules of the two Acts mentioned above have been respected or that the strike has been called by a trade union.

Theoretically, employees taking part in unlawful “wildcat” industrial action may be dismissed and sued for damages. Trade unions may be fined and made to pay compensation if they support illegal action, or fail to prevent it.

## 10. France

### ***Legal basis:***

The basic right to strike is guaranteed by the French Constitution. Only the right to strike in the public service is regulated by law (Act 31 July 1963). For the rest, in the private sector, this right has been mainly shaped by case law.

### ***Definition:***

No definition is to be found in law. Authors generally give the following definition: a concerted work stoppage with occupational or professional aims.

In July 1986 the Supreme Court ruled that a strike in support of “unreasonable” or “excessive” demands that an employer could not reasonably be expected to meet may constitute an unlawful strike.

Insofar as the right to strike is an individual and not a trade union right, the notion of “wildcat” strike does not exist within the French system.

### ***Types of collective action:***

- go slow or work-to-rule (unlawful)
- repeated or staggered work stoppage, lasting for a short time
- sit-in or occupation (unlawful)
- rotating strike
- solidarity strike (most probably unlawful, except when taking place within the same enterprise or group)
- political (unlawful)
- picketing (unlawful)
- lock-out (unlawful)

### ***Restrictions:***

The object to which the strike is applied must be lawful. The problem of abuse has been raised in two main instances, namely, strikes conducted for political reasons and solidarity strikes. As the purpose of political strikes is not to improve wages or working conditions, courts have ruled that they no longer possess the character of an act in support of professional or occupational demands but are intended as criticism of government policy. This is considered an abuse of the right to strike and a major offence by strikers. However strikes are justified against the state in its capacity as employer.

Whereas strikes held in the private sector to protest against, for instance, a given social and economic policy were long judged to constitute an abuse, they are now regarded as justified.

Solidarity strikes for political reasons automatically constitute a case of abuse.

A peace obligation does not exist in France. As the right to strike is guaranteed by the Constitution, no collective agreement can legally restrain this right.

The hiring of strike breakers is subject to criminal sanctions in France. Furthermore, the law forbids the hiring, on short-term and temporary contracts, of workers to replace the strikers. It is, nonetheless, possible to assign other employees to the position of a striker, to require them to work overtime or to sub-contract.

The right to strike is restricted in the public services by special regulations:

- only representative unions can initiate a strike
- advance notice of 5 days must be given
- rotating strikes are prohibited.

The Government can, when justified, demand that a “minimum degree of service” be provided in certain public services.

“Sensitive” civil servants do not have the right to strike. These include prefects, judges, military, prison guards, the police, etc.

***Effects:***

Employment contracts are suspended during a strike. A strike can be considered a breach of the contract only if the employee is guilty of serious misconduct.

***International:***

The legal provisions on secondary strikes do not stipulate any geographical limits. A solidarity stoppage by French workers in support of others abroad would be lawful – just like solidarity action inside France – if the workers are employed by the same company or group. The primary action abroad must be lawful and the action must relate to professional or occupational matters. Secondary action in support of an unconnected group of workers abroad is more likely to be unlawful.

## 11. Germany

### *Legal basis*

The freedom to strike is not explicitly mentioned in the German constitution but is derived from the constitutional freedom of association (Art. 9 III). German labour dispute regulations are almost entirely based on case law, the main issue being whether or not a particular labour dispute is legal.

### *Definition:*

A strike is defined as the jointly planned and executed stoppage of work by a substantial number of employees in an industry or plant, with the aim of achieving settlement of a collective labour dispute. Furthermore, the strike must be linked to a collective agreement and must be initiated by a trade union.

### *Types of collective action:*

- all-out
- only some groups in plant or a sector participate, the strike is partial or concentrated
- slow-down or work-to-rule
- warning strikes
- picketing (if no physical violence)
- political (illegal)
- wildcat strike (illegal)
- secondary action

It may be stated that secondary action is, generally speaking, unlawful, as are political strikes. For secondary action to be lawful it must fulfil the following conditions:

- it shall not aim at promoting participants' own interests
- it shall affect a party in the primary dispute
- it shall be necessary, fair and reasonable in proportion to the objective
- the primary action must not be unlawful.

Further conditions that may make secondary action lawful are that:

- the employer of the secondary dispute has not remained neutral in relation to the primary dispute or
- the employers of the primary and secondary disputes constitute an economic entity (e.g. in company groups, or highly close cooperation with subcontractors).

The argument behind this is that the employer of the secondary dispute shall have the possibility to influence the employer of the primary dispute.

### *Restrictions:*

The Federal Labour Court has established under what conditions a strike is "generally acceptable":



- industrial action may be taken only between parties having the capacity to conclude collective agreements – i.e. trade unions
- the purpose of the industrial action must be to guarantee or improve working conditions through a negotiated collective agreement
- the peace obligation must be respected
- industrial action must not violate basic rules of labour law
- industrial action must satisfy the ultima ratio principle
- industrial action must observe the rules of fair play.

The right to strike or to lock out is restricted by the contractual duty to maintain labour peace. Industrial action is prohibited over issues which are subject of an agreement in force. Issues not dealt with in the agreement, or concerning which the collectively agreed provisions have expired, may be the subject of action.

In keeping with the principle of last resort, all possibilities of a peaceful negotiation for settlement must have been exhausted, if this was agreed upon in the collective agreement. Labour disputes that fail to respect this principle are usually unlawful, except in the case of brief and selective warning strikes intended to influence the outcome of negotiations.

Employers may use employees in the strikers' positions only if they volunteer to perform the work done by strikers (strike-breaker).

German civil servants do not have the right to strike.

***Effects:***

The labour contract is suspended during the strike. No wage is paid to the workers, but trade unions have established strike funds and pay compensation to the strikers. Workers not taking part in a strike and who continue to work receive their remuneration. However, they are no longer paid if it becomes impossible for them to work due to the strike.

Trade unions are liable in cases of illegal strike and may be subject to damages.

***International disputes:***

Insofar as secondary action is legal in Germany only under very restricted conditions, secondary action by German workers in support of workers outside Germany would appear to be illegal on the same grounds.

## 12. Greece

### **Legal basis:**

Both primary and secondary industrial action in Greece is regulated by the Constitution, the Civil Code, Law 1264 of 1982 and case law.

Art. 23 Constitution:

*2. Strike action constitutes a right to be exercised by lawfully established trade unions in order to protect and promote the economic and the general labour interests of the working people.*

*Strikes under any form whatsoever are prohibited in the case of judicial functionaries and those serving in the security corps. The right to strike shall be subject to the specific limitations of the law regulating this right in the case of public servants and employees of local government agencies and of public law corporate bodies as well as in the case of the employees of all types of enterprises of public nature or of public utility, the operation of which is of vital importance in serving the basic needs of the social entity. These limitations cannot be carried to the point of abolishing the right to strike or hindering the legal exercise of this right.*

### **Definition:**

Collective action means the collective refusal of work, with the aim of exerting pressure on the employer for “the protection and promotion of the economic and general labour interests of employees”.

### **Types of collective action:**

No real distinction is made in law between primary and secondary action.

- general
- partial stoppages
- go-slow
- work-to-rule
- solidarity strike
- wildcat strike (illegal)
- purely political strike (illegal)

### **Restrictions:**

A lawful strike must be called by a recognised trade union. Therefore strikes by individuals, or by non-organised groups of employees, are unlawful.

The peace obligation has to be respected as long as a collective agreement is in force, but only in relation to the matters settled in the agreement.

Decisions to strike must be taken by the general assembly of the trade union. A decision by the union’s executive council is sufficient, however, for brief stoppages of a few hours, which may not be repeated more often than once a week.

Notice must be given to the employer 24 hours before the action starts; this period must give an immediate possibility to negotiate.

When calling a strike, a trade union must provide the minimum staff necessary for the safety of installations and the prevention of damage or accidents.

The right to strike is subject to limitation for public servants and employees of local government agencies, public corporations, and in certain “public benefit” enterprises vital to society as a whole. Strikes are forbidden for employees of the judiciary, security services and police.

In the first two weeks of January of each year company lists must be published, establishing which employees will remain on duty in the event of a strike in the year to come (Supreme Court decision of 1987). If this list is not published, or if employees listed on it nevertheless go on strike, the strike is unlawful.

An employer cannot hire new employees in order to replace personnel taking part in a legal strike.

***Effects:***

No protection is accorded to trade union officers who voted in favour of an unlawful strike, which contravened the rules.

The employment contract of a participant in a strike that was not called by a lawfully established trade union is automatically dissolved, at no cost to the employer.

If a strike is declared by a court to be “an abusive exercise of trade union rights” and therefore illegal, any workers who nevertheless continue the action can be dismissed.

Striking public sector employees risk dismissal.

***International disputes:***

Law 1264 of 1982 permits solidarity or solidarity action by unionised Greek workers in support of others abroad, under the following conditions:

- that the two groups of workers are both employed by enterprises controlled by the same multinational organisation
- that the outcome of the dispute abroad will have direct consequences for the interests of the Greek workers involved
- that the solidarity action in Greece is approved in advance by the national labour confederation to which the Greek workers are affiliated through their union.

## 13. Hungary

### **Legal basis:**

Art. 70/C Constitution:

*2. The right to strike may be exercised within the limits determined by the act regulating that right.*

The act in question, which regulates the right to strike, is Act no. VII, adopted in April 1989.

### **Definition:**

Employees can rightfully strike to secure their economic and social interests.

### **Types of collective action:**

The Hungarian strike law sets no limit on the types of strikes; this means that any kind of strike is lawful.

- work stoppage
- work-to-rule
- sit down
- rotary strike
- warning (not more than two hours)
- solidarity strike
- political (illegal)

Warning strike and solidarity strike are merely mentioned in the law, as there exist special regulations governing this type of action.

A warning strike may not be longer than two hours. Only one such strike may be held during the first seven days of the conciliation procedure and it is the only type of strike which can take place during the conciliation period.

A solidarity strike can be organised only by a trade union. Prior conciliation is not a condition for the legality of this type of strike.

### **Restrictions:**

Workers and trade unions, as representatives of the workers, can legally call a strike.

Under the Labour Code, works councils are not authorised to call a strike. The mandate of a works councillor participating in a strike is suspended for the duration of the action.

A strike is unlawful if :

- its aim is an anti-constitutional demand
- the demand is subject to legal dispute
- the demand is regulated by the collective agreement in force
- it is not preceded by a conciliation procedure (seven days)

- it would directly and seriously endanger human life or health, physical integrity and the environment or would hinder prevention of the effects of natural disasters.

In companies providing essential services (e.g. transport, telecommunications, electricity, gas and water supply, etc.) a sufficient level of service must be agreed upon in the conciliation.

In the public service the right to strike is subject to a series of restrictions. Strikes cannot be called in the judiciary, the armed forces or the agencies of law enforcement.

In the state administration the right to strike is subject to special regulations fixed in an agreement between the Government and the trade union concerned.

***Effects:***

Calling a strike or participating in a lawful strike cannot be considered a breach of the employment contract. On the one hand, the employee participating in a strike is not entitled to his/her salary and other related benefits during the strike. On the other hand, time spent on strike counts as employment for social insurance purposes and is to be included in calculation of period of service.

## 14. Iceland

### ***Legal basis:***

The fundamental right is enshrined in the Icelandic Constitution. The right of trade unions to call a strike derives from Act No. 80/1938 which also stipulates the procedural rules that must be applied for a strike call to be lawful.

### ***Definition:***

The Act on Trade Unions and Industrial Disputes No. 80/1938 stipulates that trade unions are authorized to take collective action to advance their demands in industrial disputes and for the protection of their rights, subject only to the conditions and limitations laid down in law.

The law uses the general term “stoppage of work” which applies to both strikes by trade unions and lock-outs by employers.

### ***Types of collective action:***

A trade union can call a strike in support of another trade union (solidarity strike) only if the initial strike is lawful.

The same general conditions apply to international disputes as to purely national ones.

### ***Restrictions:***

Under Art. 17 of Act No. 80/1938, it is not permissible to strike once a collective agreement has been signed. The negotiating trade union waives its right to strike inasmuch as the conditions established in the collective agreement are fully respected. Under normal conditions strikes are therefore used as a bargaining tool by the trade union only when renewing a collective agreement or negotiating a new one.

Attempts at conciliation between the parties by the State Mediator must have proved unsuccessful.

The decision to call a strike has to be taken in a secret ballot with the participation of at least 20% of those on the voting and/or membership list, and the proposal must receive the support from a majority of votes cast. The strike proposal must state clearly the aim it is intended to achieve and when it is proposed to begin. A secret postal ballot may also be used to call a strike, in which case the result is considered valid irrespective of the participation rate. If a strike is intended to involve only a particular group of union members or employees at a specified workplace, the decision to strike may be taken by those whom it is intended to involve.

Formal announcement of each industrial action must be sent to the State Mediator and the counterpart with 7 days' notice.

The unions have to define limited exemptions from their strikes when called in essential services such as the police, fire-fighters, emergency operation of hospitals, etc.

A negotiating committee or the competent representatives of the contracting parties may cancel a strike at any time. The same parties may postpone, once or more often, a strike that has been called, for up to 28 days in total, without approval from the opposite contracting party, providing that he is informed of the postponement with at least three days' notice. It is however possible to postpone a strike that has been called, and a strike that is in progress, with the approval of both parties.

Where the strike is deemed to be illegal, the employer may obtain an injunction against the union.

***Effects:***

During a strike, the principle obligations under the employment contract (the obligation to perform the work and the obligation to remunerate) are suspended. Participation in a strike is therefore not regarded as a breach of the contract. Workers on strike are not entitled to unemployment benefits but may be assisted by their union. A strike that is legally called by a union is binding on those members of the union as well as non-members that it is intended to affect.

## 15. Ireland

There is no explicit right to take industrial action. To understand the Irish situation one has to realise that trade unions and their officials involved in industrial action are in fact acting unlawfully but that, in certain defined circumstances, they are granted immunity for their actions.

### ***Legal basis:***

The legal framework is a combination of law (Industrial Relations Act 1990), collective agreements and case law.

### ***Definition:***

Industrial action (defined by the Industrial Relations Act, 1990, Section 8) is “any action which affects, or is likely to affect, the terms or conditions, whether express or implied, of a contract and which is taken by any number or body of workers in compelling their employer to accept or not to accept terms or conditions of or affecting employment.”

Strike is “a cessation of work by any number or body of workers in combination or a concerted refusal or a refusal under a common understanding of any number of workers to continue to work for their employer intended as a means of compelling their employer to accept or not to accept terms or conditions of or affecting employment.”

### ***Types of collective action:***

- go-slow
- work-to-rule
- overtime ban
- occupation
- blacking of machinery
- sit-in
- political
- picketing (if peaceful)

All these types of strike are potentially unlawful. The law provides immunities for authorised trade unions and workers from criminal prosecution and/or civil liabilities where industrial action is in “contemplation or furtherance of a trade dispute” and where the procedures have been respected.

In 1994 the High Court judged secondary industrial action to be lawful. In the case of *Nolan Transport (Oaklands) Ltd v Hallgan*, the court confirmed that the 1990 Act permits industrial action to be taken by workers against their employers in support of other workers involved in a labour dispute. This was due, according to the court, to the definitions of “strike” and “industrial action” in the Act.

Secondary picketing – picketing the premises of an employer not directly involved in the dispute – is lawful only if those picketing have reasonable grounds to believe that the employer whose place of work is being picketed has or is directly assisted or assisting their own employer with a view to frustrating the strike or industrial action.



***Restrictions:***

Immunities as described above will apply only in relation to “trade unions which for the time being are holders of negotiation licences under the Trade Union Act, 1941, and the members and officials of such trade unions.”

All unions are required to hold a secret strike ballot before organising, participating in, sanctioning or supporting a strike. Unions failing to comply with the ballot rule will lose their negotiation licences.

One week before taking action notice must be given to the employer.

If the support of other unions in a strike is wished for, the trade union must consult with these unions and have a meeting with them and with the Industrial Relations Committee of ICTU (Irish Congress of Trade Unions). If the Committee considers that an All-Out Strike is justified and not contrary to Congress policy, permission is granted for the use of Congress All-Out Pickets.

***Effects:***

Any industrial action is at first sight a breach of the employment contract, potentially leading to the dismissal of the employee under common law.

Dismissal of a person for taking part in a strike is deemed to be unfair if one or more other employees who also took part in the action were not dismissed or, if dismissed, were reinstated.

Whereas participation in a strike does not break continuity of service, times when the employee is on strike do not count as a period of service.

It is a crime for those working in municipal authority, gas, water and electricity to break their contract of employment if this would endanger human life or cause serious bodily injury.

The employer may obtain an injunction against the union where the strike is considered to be illegal.

***International disputes:***

The same general constraints apply to international disputes as to purely Irish ones.

## 16. Italy

### ***Legal basis:***

Art. 40 of the Italian Constitution guarantees “the right to strike is exercised, within the limits of the laws regulating it”. It recognises the right of the workers alone (there being no right of lock-out) to withdraw their labour in order to promote their own interests. Since no law has so far been passed on the subject and therefore in the absence of detailed legislation, the right to strike is interpreted by case law.

To be legitimate, a strike must:

- protect the direct and legitimate common interests of the participants
- aim at the conclusion of a collective agreement
- not violate the rights and interests of others, such as private property rights or the right to work
- be decided upon freely and voluntarily by the employees as a group, acting on their own behalf or through a trade union
- not aim at the overthrow of the Italian Constitution or the abolition of a democratic form of government

### ***Definition:***

The right to strike is one of the means granted to workers to remove obstacles which hinder their effective equality and their full participation in the economic, social and political life of the country (Art. 3, second paragraph of the Constitution).

### ***Types of collective action:***

- articulated (strategic combination of collective abstentions from work interspersed with periods of working)
- picketing (non violent)
- political
- solidarity

Insofar as under Italian law the right to strike is considered an individual right of the worker (to be exercised collectively), both primary and secondary strikes can be called by any group of workers, as well as by trade union or company works councils.

In 1986 the Supreme Court made a landmark ruling stating that the only completely lawful form of stoppage in Italy is the all-out strike in which all employees abstain from working for a fixed or indefinite period of time. This means that workers must work fully or not at all.

The two main types of illegal work stoppages, in theory, are political and solidarity strikes.

The Constitutional Court has, however, recognised the principle of political strikes. Yet it also recognised that these can be prohibited if their aim is to subvert the democratic system established by the Constitution.

Article 505 of the Penal Code makes solidarity strikes a crime. In relation to this form of strike the Constitutional Court (Decision No. 123 of 1962) recognized the provision as legitimate, while nevertheless acknowledging that such strikes should not be subject to penal sanction when a genuine community of interest exists.

A solidarity strike may be considered fair if called to protest against the dismissal of one or more employees of a company or in a particular industry.

***Restrictions:***

Peace obligations resulting from collective agreements, as well as conciliation procedures, have to be respected.

The right to strike is generally denied to the police and to military personnel, in order not to imperil national safety, or the physical welfare and property of citizens (Art. 52 Constitution).

All other employees in the public sector, as well as civil servants, have the right to strike.

Decree No. 185 of 1964 strictly limits the strike of employees working in nuclear plants. Act No. 242 of 1980 and Act No. 121 of 1981 similarly limit the right to strike of air controllers and bans strikes by policemen.

Advance notice of 10 days has to be respected for each strike in essential services (Act. No. 146 of 1990). According to the same Act, minimum services to be performed by workers in a series of sectors, regarded as of general interest, have to be established through collective agreements.

***Effects:***

If the strike remains within the limits laid down by law or by the Courts, participation does not, in principle, constitute a breach of contract but it does suspend the individual employment contract. Therefore, the employer cannot dismiss strikers during the period of a strike.

Strikers cannot be replaced by other workers recruited from outside. Employers may not offer financial inducements to employees not taking part in the strike. Even the temporary recruiting of strike-breakers from outside might be considered an illegal anti-union activity under Art. 28 of the Workers Statute.

***International disputes:***

Solidarity strikes in support of workers abroad are legitimate provided there is some community of interest between the Italian workers and the others involved, and that the Italian action is in other respects lawful (Supreme Court 03/10/1979).

## 17. Latvia

### ***Legal basis:***

Art. 108 Constitution:

*Employed persons have the right to a collective labour agreement, and the right to strike. The State shall protect the freedom of trade unions.*

The main legislative acts dealing with strike issues are the Strike Law, as amended, determining rights and duties of all parties involved, restrictions to striking rights, procedure of strike monitoring, responsibility for violation of the right to strike, etc. as well as the Labour Disputes Law. There are several other legislative acts setting restrictions on the right to strike as regards certain categories of employees.

### ***Definition:***

Strike is the partial or complete voluntary interruption of work by employees with a view to achieving their demands.

### ***Types of collective action:***

- solidarity strike (illegal, if it does not concern the conclusion or implementation of a general agreement)
- political strike (illegal)

### ***Restrictions:***

A strike is illegal if:

- the peace obligation is not respected
- prompted by issues on which the parties previously agreed during strike negotiations.

A strike can be called, if:

- no settlement is reached in a conciliation commission
- there is no recourse to arbitration
- within 10 days, the procedural requirements of alternative dispute resolution are not observed
- the employer violates an agreement

As strike is the means of last resort, conciliation procedures must be followed before a strike can be called. The employees have to present their written demands to the employer, who must respond in writing within three days.

A strike decision must be taken by a three-quarters majority at a meeting attended by at least  $\frac{3}{4}$  of the employees or members are present.

The intention to strike must be notified in writing, at least ten days in advance, to the employer, the Labour Inspection and the Secretary of the Latvian Tripartite Collaboration Council. The following information has to be supplied: starting time, venue, reasons, demands, names of the leaders of the strike committee and the resolution of the meeting on the strike announcement.

The right to strike is not accorded to judges, public prosecutors, police officers, firemen, border-guards, employees of state security institutions, warden of imprisonment and persons serving in the armed forces. The employees in “essential services” have a limited right to strike, which has to be balanced with public interests.

***Effects:***

A worker participating in a strike does not violate his/her employment contract.

## 18. Lithuania

The Lithuanian labour law is known for its relatively restricted possibility to take industrial action.

### ***Legal basis:***

Art. 51 Constitution:

*1. Employees shall have the right to strike in order to protect their economic and social interests.*

*2. The restrictions of this right, and the conditions and procedures for the implementation thereof, shall be established by law.*

The respective law is the labour code and the regulations contained therein are rather detailed, long and complicated.

### ***Definition:***

A collective labour dispute signifies disagreement, between the trade union of an enterprise and the employer or the subjects entitled to conclude collective agreements, arising about the establishment or changing of work, social and economic conditions during conduct of the negotiations or when concluding and implementing the collective agreement (conflict of interests), in the event of failure to meet the demands made and submitted by the parties according to the procedure established by this Code.

### ***Types of collective action:***

- warning strike (2 hours)

### ***Restrictions:***

Strike is permitted only if a collective dispute or a decision taken over a dispute is not settled.

The following procedural rules have to be respected: the entity entitled to conclude a collective agreement shall submit its demands to an employer or employers' organisation. The employer or employers' organisation shall, within 7 days of receipt, communicate its decision in writing to the trade union or works council. If the employer or employers' organisation refuses to fulfil the demands of trade unions, the parties to collective bargaining have to start either conciliation procedures or mediation procedures.

A strike may be called only in relation to demands not met during the conciliation procedure.

The right to adopt a decision to declare a strike (including a warning strike) shall be vested in the trade union according to the procedure laid down in its regulations. If an enterprise does not have a functioning trade union, and if an assembly of employees has not delegated the functions of employee representation and advocacy to a trade union of a relevant branch of economic activity, the right to adopt the decision to declare a strike in the enterprise or its structural unit shall be vested in the works council.

A strike shall be declared if a corresponding decision is approved by secret ballot by:

- 2/3 of the employees of an enterprise voting in favour
- 2/3 of the employees of the structural subdivision of an enterprise and at least 1/2 of the employees of the whole.

This is quite difficult to achieve in practice.

Written notice has to be given at least 7 days before the start of the action; this applies also in the case of warning strikes. A 14-day notice period has to be observed in certain sectors including railways, city public transport, civil aviation, communications, power engineering, enterprises with continuous production cycle, etc.

According to Art. 81(2) of the labour code, the court shall declare a strike unlawful if its objectives contravene the Constitution, other laws or if the strike was declared in breach of the procedure and requirements laid down in the labour code.

The labour code implements a peace obligation.

Strikes are prohibited in the systems of internal affairs, national defence and state security, as well as in first-aid medical services. The demands of the above mentioned groups of employees shall instead be settled by the Government, taking into account the opinion of the Tripartite Council.

The employer cannot employ alternative workers to replace strikers except when the minimum services are not guaranteed.

***Effects:***

Employment contracts are suspended during the strike.

In case of an unlawful strike, the losses incurred by the employer must be compensated by the trade union from its own funds or its assets. If the funds of the trade union are insufficient to compensate for the losses, the employer may, upon his own decision, use for this purpose funds previously set aside under the collective agreement for salary bonuses, other additional benefits and compensatory payments not provided for by law. This applies also to unlawful strikes and those organised and led by a works council.

## 19. Luxembourg

### ***Legal basis:***

The right of workers to strike is not explicitly laid down by either the Constitution or the law. The *Cour de Cassation* ruled on 24 July 1952 that the right to “participate in a professional, legitimate and licit strike is an employee’s right implicitly enshrined in Art.11, paragraph 5 of the Constitution” (freedom of association).

### ***Definition:***

Strikes and lockouts are not defined in law. In a decree of 15 December 1959, however, the *Cour de Cassation* defined a strike as a “concerted discontinuance of work in support of social claims”. The motive for a strike must be occupational and the dispute must relate to matters between the parties concerned.

### ***Types of collective action:***

There is virtually no legal distinction between the various types of action:

- partial or sporadic stoppage
- go-slow
- work-to-rule
- picketing (peaceful)
- political (illegal)
- secondary action (illegal)

### ***Restrictions:***

The law stipulates a peace obligation in the following terms: “The contracting parties are obliged to maintain a collective labour agreement during its lifetime; they must ensure its fair performance and abstain from threat or execution of a strike or lockout” (Law of 12 June 1965).

All collective disputes over working conditions must first, before any work stoppage, be referred to the National Conciliation Office in order to make the action taken legal (Art. L.163-2). When all possibilities of conciliation have been exhausted (Art. L.164-5 and L.164-9), the joint conciliation committee (*commission paritaire*, Art. L.163-3) formed within the service draws up a memorandum stating the points still in dispute. During the two weeks following the non-conciliation act (Art. L.164-9) one of the parties may refer the dispute to an arbitrator nominated by the Government and proposed to both organizations. Insofar as the organisations accept the arbitrator, they undertake to accept also the result of the arbitration process. That is why the arbitration outcome is equivalent to the conclusion of a collective agreement. If the attempts at conciliation and arbitration have proved unsuccessful, strike action may then be lawfully embarked upon.

In the public sector rolling and staggered strikes are explicitly forbidden. Numerous categories of civil servant are prohibited from taking industrial action. These include members of diplomatic services, the judiciary, senior administrators, directors of educational establishments, members of the police, etc.



***Effects:***

“Abstention by an employee from performance of duty because of a lawful strike and for legitimate reasons neither signifies a break of the employment contract nor constitutes serious misconduct such as to justify an employer in dismissing a worker” (Laws of 20 April 1962, and 24 June 1970).

“Time spent participating in a lawful strike does not constitute an unjustified absence in terms of the law on vacation entitlement” (Law of 26 July 1975).

***International disputes:***

There is no legal regulation of international disputes. However, given the unlawful nature of secondary action inside Luxembourg, most international action is likely to be regarded as prima facie unlawful.

## 20. Malta

### ***Legal basis:***

Indirect reference to industrial action is contained in the Employment and Industrial Relations Act insofar as this act establishes the immunity of trade unions and employers' associations to actions in tort as a consequence of such industrial action.

Maltese labour law follows, by and large, the labour law applied in Britain prior to 1982, albeit subject to certain overriding principles deriving from continental contract law.

### ***Definition:***

Immunity is granted when the action is taken in furtherance of a trade dispute. This is defined as a dispute between employers and workers, or between workers and workers, which is connected with any one or more of the following matters:

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of the employment or employment duties, of one or more workers;
- (c) allocation of work or employment duties as between workers or groups of workers;
- (d) matters of discipline;
- (e) facilities for trade union officials;
- (f) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;
- (g) the membership or non-membership of a worker in a particular trade union;

### ***Types of collective action:***

- all-out strike
- partial strike
- slow-down or work-to-rule
- disregarding a specific instruction issued by the employer
- picketing
- solidarity action

### ***Restrictions:***

Only a registered trade union can call a strike. The existence of a trade dispute is to be registered, following which conciliation procedures will take place. Industrial action is legitimate unless it violates the procedural terms of a collective agreement.

The following groups of workers – working in essential services or in discipline corps – may not take part in collective action:

- air traffic controllers and airport fire fighting section
- members of the assistance and rescue force
- members of the Armed Forces and of the Police force.

There is no obligation to suspend industrial action if the matter in dispute is referred to arbitration or to other forms of judicial scrutiny.

***Effects:***

The labour contract is suspended during the strike. No wage is paid to the striking workers. Workers who do not take part in the strike but continue to work receive their remuneration and are still entitled to pay even if, due to the strike, it becomes impossible for them to work.

Trade unions enjoy immunity from actions in tort where industrial action is executed in accordance with the law. However, they may be subject to damages where the action is deemed not to be in furtherance of a trade dispute or where the action is in breach of dispute procedures previously laid down in a collective agreement.

## 21. Netherlands

### ***Law:***

As there exists no statutory right to strike in the Netherlands, the rules governing industrial action have been developed by case law.

In 1986 the Supreme Court ruled that Article 6(4) of the 1961 Council of Europe Social Charter (the right to engage in collective bargaining and to take collective action) is directly applicable, thereby recognizing a right to strike for workers (excluding public servants). The Charter makes no distinction here between official and unofficial strikes, while also recognizing the right of employers to take collective action in the event of an industrial dispute.

### ***Definition:***

A strike is a collective cessation of work activities by employees, for the purpose of forcing their employer or third parties to take certain actions, or to abstain from taking certain actions, with the intention of resuming work as soon as the desired results are achieved. Strikes may take place for a wide variety of reasons, but the most common reason concerns changes in working conditions.

### ***Types of collective action:***

- organised strike (support of a trade union)
- wildcat strike (without support of a trade union)
- slow down and work-to-rule (might be “out of proportion)
- boycott
- blacking of products
- political (illegal)
- solidarity (illegal)

### ***Restrictions:***

Industrial action is considered legal unless ruled otherwise by a court.

Courts may prohibit industrial action if, having evaluated all specific conditions and circumstances of the action, as well as the interrelationships between these conditions and circumstances, they are led to conclude that the unions should not reasonably have taken such extreme action (Dutch Supreme Court, 1986 decision, mentioned above).

This applies, in particular, to cases where the damages caused by the strike are excessive in relation to the interests at stake. In later judgements the Supreme Court affirmed that a strike can be justified only if it does not disproportionately encroach on the rights of others.

Industrial action may be embarked upon only as a last resort (*ultima ratio*). In terms of duration and extent the action must be in reasonable proportion to the demands presented. It may not aim at changing a collective agreement currently in force, which means that the peace obligation – relative or absolute – applies in the Netherlands.

Trade unions' rules normally require a strike ballot with a significant majority voting in favour of industrial action.

There exist no exact deadlines for notice or rules on its content, but some general procedures are nonetheless to be observed. It is assumed that employers will receive a detailed list of the demands and a time limit for giving their consent before action is embarked upon.

Nor do public servants have any positive statutory right to take industrial action, legal grounds being again mainly found in the European Social Charter. The exclusion of public servants from the right to take industrial action is of relatively little consequence as long as it is not explicitly stated in the legislation. The right of public servants to take collective action has, in actual fact, been recognized by the courts since the explicit prohibition of strikes by public servants as a punishable offence (which dated back to 1903) was abolished in 1980. The law as it applies at present is derived from case law.

***Effects:***

During a strike the workers' duty to perform the tasks entailed by their employee status is suspended. This period ends if the court rules that trade unions have acted in violation of the law or collective agreements. Any workers who continue their action after such a ruling are violating a valid court order and will be regarded as wildcat strikers.

Strikers do not receive pay or unemployment benefits but may in some cases receive payments from trade union strike funds.

## 22. Norway

### ***Legal basis:***

The right to collective action is not guaranteed in the Constitution.

A few international conventions guaranteeing the right to organise and strike (two UN conventions of 1966 and the EHR Convention) have been transposed into national law. Regulations are to be found in the main agreement between the social partners. The right to collective action has been accepted for the last 100 years.

### ***Definition:***

Strike is a collective work stoppage undertaken by workers in agreement with each other (trade unions) for the purpose of forcing the employer or employer's organisation to accept an agreement concerning salary and working conditions.

### ***Types of collective action:***

- strike (the entire workforce or part of it)
- blockade
- boycott
- political (brief stoppages have been tolerated)
- solidarity (provided that the primary dispute is lawful, they must be carried out, as regulated in the main agreement, after negotiations and due notice, with the consent of the instigator's central organisation)
- work-to-rule (illegal)
- go-slow (legal according to some agreements)
- picketing (if peaceful)
- lock-out

### ***Restrictions:***

The peace obligation for the duration of the collective agreement has to be respected. No strike ballot is required before announcing the strike. Normally the decision to strike is taken by the central union (LO). There exists no regulation of minimum services in the public sector.

Written notice to the other party shall be given at least 14 days before the strike starts and reporting to the National Mediator is required. The National Mediator may order a temporary suspension of the right to start collective action and institute mediation which lasts at least 16 days. Conciliation efforts must be exhausted.

If a strike will harm essential services or seriously damage vital interests (also economic ones), the Parliament (or the Cabinet, if Parliament is not gathered) will usually prohibit the strike.

***Effects:***

As the participants in a strike have the right to continue their work after a legal strike, it is appropriate to speak of suspension of the employment contract during the strike.

Strike benefits are paid to the strikers by the trade union.

Workers and trade unions who take part in or organise an illegal strike are responsible for payment of compensation for economic losses.

Workers' participation in an illegal strike might constitute grounds for notice.

***International disputes:***

Solidarity strikes to support workers outside Norway are permitted. Normally the primary action has to be lawful and notice has to be given. It may take some time – as much as 14 to 21 days after the decision was taken – before a solidarity strike can start.

## 23. Poland

### **Legal basis:**

- Art. 59 III Constitution:

*Trade unions shall have the right to organize workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields.*

- Act on the settlement of collective labour disputes (23 May 1991).

### **Definition:**

Strike is defined as organised stoppage of work undertaken in order to solve a labour dispute concerning economic, professional, social and trade union interests.

### **Types of collective action:**

- regular strike
- warning strike
- solidarity strike at other establishments (legal in support of workers who do not have the right to strike, but only half of the working day)

### **Restrictions:**

Where a labour dispute arises, employers are obliged to launch immediate negotiation with their employees. A strike may be called if these negotiations are ineffective or have not been launched 14 days after the outbreak of the dispute. It is possible to call a strike if the mediation phase does not end in agreement.

A strike can also be called without observing these rules if the illegal acts of an employer have prevented negotiation or mediation, or if the employer has terminated the employment contract with a trade union representative responsible for leading the dispute (Art. 17.2).

Strike has to be seen as *ultima ratio*.

A warning strike may be called if the course of the mediation justifies the belief that it will not lead to a settlement of the dispute before the expiry of the time periods provided in Art. 7 item 2 and Art. 13 item 3 (14 days from the beginning of the mediation phase or a term requested by a mediator). The organisation that initiated the dispute may conduct a warning strike but only once and for not more than two hours (Art. 12).

The right to call a strike lies exclusively with the trade unions.

The following voting procedures must be respected by the trade unions before going on strike:

- company strike: 50% of all relevant employees need to vote and the majority needs to vote in favour of the action
- industry branch strike: 50% of employees in enterprises covered by the proposed strike need to vote and again the majority needs to vote in favour of the action.



Furthermore, in this case the strike must be called by a trade union recognised as eligible.

The strike must be announced five days in advance.

Strike is prohibited in the Internal Security Agency (ABW), Internal Intelligence Agency (AW), Military Intelligence (SKW and SWW), Central Anticorruption Bureau (CBA), the national police and military services, the prison services, the national border guard headquarters and the national fire service headquarters. Similarly, officials employed in the organs of state authority or state and governmental administrations, as well as the employees of courts and public prosecutors' offices, are not entitled to call a strike. In order to protect the rights of and to support those workers who are not entitled to strike, a trade union within another organisation may hold a secondary strike. It should be stressed that this is the only situation in which a secondary strike is permitted.

***Effects:***

Taking part in a strike – organised in accordance with the legislation – shall not constitute a breach of the employee's duties (Art. 23).

Employees retain their right to social benefits, as well as other rights arising from the employment relationship, with the exception of the right to remuneration. The length of the work stoppage is not deducted from the length of employment in the establishment.

This means that the employment relationship lasts throughout the period of strike, but the employee does not have right to remuneration, since s/he does not perform work. (Art. 23)

With regard to fines and penal regulations Article 26 stipulates the following:

1. Any person who, in his/her professional or official capacity:
  - a) impedes the initiation or conducting of a collective dispute that is in compliance with the law,
  - b) fails to fulfil the obligations determined in this Act shall be liable to a fine or a restriction of liberty.
2. The same penalty shall apply to the person who directs a strike or other protest action contrary to the provisions of this Act.
3. The organizer of a strike is liable, in accordance with rules determined in the Civil Code, for all damages resulting from a strike or other protest action organized contrary to the provisions of this Act.

## 24. Portugal

### ***Legal basis:***

The basic right to strike is guaranteed by the 1976 Constitution Art. 57:

1. *The right to strike shall be safeguarded.*
2. *Workers shall be entitled to decide what interests are to be protected by means of strikes. The sphere of such interests shall not be restricted by law.*
3. *Lock-outs shall be prohibited.*

and is regulated by detailed legislation.

The strike must not be legally restrained. Nevertheless the action must remain within the limits set by law.

### ***Definition:***

Strike is a concerted abstention from work by employees for the purpose of exerting pressure in order to obtain decisions favourable to the collective interests of the striking employees.

### ***Types of collective action:***

- picketing (non violent)
- boycotts
- go-slow

Solidarity strike is considered legal by both legal scholars and the courts. This is due to the extremely broad terms in which the right to strike is enshrined in the Portuguese Constitution. Therefore it is not possible to prevent employees from imposing this right against their employer. The only condition is that the primary action should itself be lawful and legitimate.

### ***Restrictions:***

The peace obligation resulting from collective action applies in Portugal.

Provisions in individual employment contracts to limit the right to strike are, on the contrary, unlawful.

If the action is taken without a trade union strikers may be represented by an elected strike committee. In that case, the decision to strike must be taken by secret ballot at a meeting called by at least 20% of the workers involved, or at least 200 workers. The decision is held to be valid only if the meeting was attended by a quorum of 51% and the action approved by a majority vote of the assembly.

Strike notice must be given 5 days in advance, except in public utility services where it is 10 days.

The employer is prohibited from employing new workers during a strike or from replacing workers on strike.

The rules of the “*Lei da Greve*” are applicable to all Portuguese workers except military or para-military personnel, civilians working in military establishments and in the civil service.

When a strike is declared in any of the following public service sectors the organisers are obliged by law to provide minimum service:

- postal service and telecommunications
- medical services
- public health, including funerals
- power, supply, mines and fuel
- water supply
- fire fighting
- public transport of cattle, public perishable foods and essential goods.

The definition of the minimum service required can be stipulated or changed by collective agreements.

Where a situation is considered to be sufficiently grave, the government is empowered to guarantee the provision of public services during a strike by means of a procedure called civil requisition. The government can issue a ministerial order to bring any of a wide range of activities into temporary, obligatory public service, such as: food production and distribution; public transport; pharmaceutical production; ship construction and repair; banking, and national defence production.

***Effects:***

A strike suspends the rights and duties of the contract of employment.

## 25. Romania

### ***Legal basis:***

- Art. 40 Constitution:
  1. *Employees have the right to strike in defence of their professional, economic and social interests.*
  2. *The law shall regulate the conditions and limits governing the exercise of this right, as well as the guarantees necessary to ensure the provision of essential services.*
- Act No. 168/1999 on the Settlement of Labour Disputes.

### ***Definition:***

Strike is a collective and voluntary interruption of work by employees in a period of dispute.

### ***Types of collective action:***

A collective dispute must concern the economic and social interests of the employees at work.

- warning strike (not longer than 2 hours and must take place 5 days before “regular” strike)
- solidarity strike (can be waged by trade unionists affiliated to the same federation or confederation; not longer than 24 hours; employer has to be informed 48 hours before the action)
- political strike (illegal)

### ***Restrictions:***

Collective agreements in Romania imply a peace obligation.

Strike notice must be given at least two days in advance.

A strike can be called only after other possibilities of dispute settlement have been exhausted.

Mediation and arbitration are two procedures which can be attempted only if both parties agree.

The decision to strike has to be taken by half of the trade union members. If no trade union exists in the enterprise a quarter of the employees have to agree with the strike.

In certain sectors (health, energy distribution, water supply, nuclear energy production, and public transport) the workers must provide minimum services of one third of the workforce during a strike.

Judges, soldiers and officers of the army and prosecutors are prohibited from taking part in a strike.

If any of the above-mentioned conditions is not met, the court may suspend the strike for maximum 30 days, at the demand of the employer. The same employer may ask the court to declare the strike unlawful and to oblige the workforce to resume work immediately. Any disobedience may be sanctioned and the employer may claim damages.

If the strike lasts longer than 20 days without a solution and the employer considers that humanitarian interests are affected, he/she may submit the conflict to an arbitration commission, which will pronounce a definitive and mandatory solution. (This is open to interpretation and broad scope for abuse).

## 26. Spain

### ***Legal basis:***

The right to strike is guaranteed in the 1978 Constitution, in Art. 28(2).

*The right of workers to strike in defence of their interests is recognized. The law regulating the exercise of this right shall establish precise guarantees to ensure maintenance of essential services.*

Detailed rules are to be found in the Decree on labour relations of 1977.

### ***Definition:***

Strike is a collective work stoppage directly related to workers' occupational interests.

### ***Types of collective action:***

Strike is taken to mean the complete stoppage of work. As such, the following forms of strike are considered to be illegal:

- work-to-rule
- sit-in
- workplace occupation
- staggered
- strikes affecting strategic parts of the enterprise
- selective strikes
- rotating strikes

Solidarity strikes are illegal under the law but the Constitutional court has interpreted solidarity action as legal in cases where there exists a minimum convergence of interests among the groups of employees involved. Such legality has to be established on a case-by-case basis.

### ***Restrictions:***

Though a peace obligation may be stipulated by collective agreement, any restriction of the right to strike in an employment contract is unlawful.

A strike may be called by trade union, workforce, trade union representatives or groups of workers. The workers must establish a strike committee of no more than 12 representatives from among themselves.

Written notice must be given, to the other side and to the employment ministry, at least five days in advance (or 10 days in the public service). From that day both parties are legally bound to negotiate. To end a strike an agreement – having the same legal value as a collective agreement – must be concluded.

The employment ministry may, in appropriate circumstances, order the strikers to resume work. This is possible for a maximum of two months.

Strike-breakers may, in general, not be used by the employers, the only exception being where the strike committee fails in its obligation to maintain plant and machinery.

During all strikes, there is an obligation to maintain the safety and maintenance services necessary for human safety and protection of the company's property.

When a strike is held in essential public services, a minimum level of service must be ensured. Exceptionally, in the event of possible harm to the national economy, the Government may end a strike by imposing compulsory arbitration.

The right to strike is not accorded to judges, magistrates, public prosecutors, police and military forces.

## 27. Slovakia

### **Legal basis:**

- Art. 37 IV Constitution:  
*The right to strike shall be guaranteed. The terms thereof shall be provided by law. Judges, prosecutors, members of the armed forces, and members of fire squads shall be disqualified from the exercise of this right.*
- Collective Bargaining Act, No. 2 of 1991

### **Definition:**

Strike is defined as a partial or complete interruption of work by employees.

### **Types of collective action:**

Solidarity strikes are in general allowed, insofar as they take place to support employees involved in a dispute over the conclusion of a collective agreement. The solidarity strike is illegal, however, if the employer affected is not in a position to influence the course or outcome of the primary dispute.

Picketing is legitimate insofar as it takes the form of moral persuasion alone.

### **Restrictions:**

A collective dispute must relate to the conclusion of a collective agreement or fulfilment of the terms of an existing agreement. The peace obligation of the collective agreement has to be respected. Strike is accepted only as *ultima ratio*, and an attempt at mediation must have taken place before a strike can be called.

The right to call a strike lies exclusively in the hands of trade unions.

The law stipulates that a strike decision must be taken by secret ballot. The ballot is valid if at least half of the employees concerned are present and a majority vote in favour of strike action is required for it to go ahead.

The strike has to be announced in writing at least three days before the start of the action. The notification must specify the starting date, the goals and the names of the leaders.

The employer is not allowed to replace employees on strike by recruiting other employees.

Strike is prohibited in occupations such as nuclear facilities, crude oil facilities or pipelines and activities where life or health might be under threat. The right to strike is restricted for civil servants in a managerial position.

### **Effects:**

Participation in an illegal strike is treated as unauthorised absence from work.

Strikers are not entitled to pay, unemployment benefit or sick pay.





## 28. Slovenia

### ***Legal basis:***

The right to strike is guaranteed in Art. 77 of the Slovenian Constitution:

*Workers shall enjoy the right to strike. Where required by the public interest, the right to strike may be restricted by law, with due consideration given to the type and nature of activity involved.*

This right is regulated by the Law on Strike.

### ***Definition:***

Strike is defined as an organised stoppage of work in defence of economic and social rights and interests related to work.

Workers are free to decide whether or not to take part in a strike.

### ***Types of collective action:***

A purely political strike is unlawful.

### ***Restrictions:***

The decision to strike must be taken either by the appropriate trade union body or by the majority of workers concerned.

A strike must be announced at least five days in advance by submission of a written strike decision, stating the demands, the starting date, the place of strike and information on the formation of the strike committee.

The parties to the dispute must first have attempted to settle the dispute by agreement.

The strike has to be organized in a manner which does not threaten security and health of people and property and enables continuation of the working process after the end of strike.

The strike ends with an agreement between the parties to the dispute or by a decision of the party which has taken the strike decision.

In organisations which perform activities of special public importance and those that are highly significant for military defence, the right to strike is restricted by conditions regulated by law or decree:

- a minimum level of operation to ensure the security of people and property, or that is a prerequisite for the life and work of citizens or the functioning of other organisations, must be respected
- Performance of Slovenia's international duties must be ensured.

The work and duties which have to be ensured are determined by general legal instrument or by collective agreement.

Strikes in activities of special public importance must be announced at least 10 days in advance. The strike decision and a statement on how the minimum level of work is to be ensured must be submitted to:

- the management body of the employing organisation or the employer;
- the appropriate trade union if the union is not the organiser of the strike;
- the competent body of the socio-political community.

The parties to the dispute must offer - during the period between announcement of the strike and the day it is scheduled to start - proposals to resolve the dispute. They must inform the workers involved and the public about these proposals.

The right to strike in the state administration and administration of local communities is regulated similarly to the right to strike in activities of special public importance, as explained above.

The new Law on Public Employees states the way in which the right of public employees to strike may be exercised. The limitations on strikes in order to protect the public interest are determined by a separate law.

The right to strike in the military and police forces is exercised under the conditions determined by specific laws. For example, the Defence Act states that military personnel on duty do not have the right to strike.

An employer may not employ alternative workers to replace those on strike.

***Effects:***

Under the terms of the Law on strike, organisation of or participation in a strike affects the employment relationship in the following ways:

- it may not be grounds for the procedure assessing the disciplinary and financial responsibility of a worker
- it may not constitute grounds for termination of the employment relationship
- the basic rights deriving from the employment relationship are maintained, except the right to pay.

## 29. Sweden

### ***Legal basis:***

The right to strike is a fundamental civil right guaranteed to trade unions by the Constitution – 2:17

*Any trade union and any employer or any association of employers shall have the right to take strike or lock-out actions or any similar measures, except as otherwise provided by law or ensuing from an agreement.*

The rules governing the exercise of the right to strike are laid down in the agreement negotiated in 1938 between the social partners, as well as in the Swedish Codetermination Act of 1976.

### ***Definition:***

Collective action must have a collective concerted character and must exert pressure on the opposite party in a work-related dispute.

### ***Types of collective action:***

Industrial action is lawful unless specifically prohibited. The spectrum of permissible action is extremely broad, e.g.:

- strikes
- boycotts
- blockades
- solidarity action
- overtime ban
- go-slow
- work-to-rule

Solidarity strike:

The right to take secondary action is very broad in Swedish law. Thus, there is no explicit requirement for:

- reasonable proportion between primary and secondary action
- legal or economic connection between the targeted parties.

As long as the primary action is lawful, the peace obligation does not apply to secondary action.

### ***Restrictions:***

To be legal, the action must take place in an organised manner following a decision taken in accordance with the rules of an organisation entitled to sign a collective agreement. In practice, the decision is taken by the board of the sectoral union.

The industrial peace obligation is inherent in each collective agreement except:

- where the objective of the industrial action is not covered by the collective agreement

- if action is taken to demand unpaid wages
- in the case of secondary action to support primary action.

In all other cases, strikes are permissible only if a collective agreement has terminated or expired and after all channels for mediation provided for in the collective agreement, or any other agreement binding the parties, have been exhausted.

At least seven working days before the start of extension of the collective action, notice must be given to the opposite party and the Mediation Agency. The reason for and extent of the action must be specified. Failure to give notice does not, however, make an action illegal.

A strike or lock-out may be postponed for up to 14 days by the Mediation Agency if there are grounds to believe that such a measure may help to remedy the dispute.

Non-striking employees cannot be ordered to perform the work of the striking employees.

In the public sector also the right to take collective action is very broad and only purely political strikes are unlawful. Nearly all employees in the public sector are entitled to strike. Industrial action involving essential services is also lawful. The right to take secondary action is restricted in the case of work which consists in the exercise of public authority.

Industrial action may not be taken with the aim of concluding a collective agreement with an enterprise which has no employees or in which the only employees are the entrepreneur and his or her family members. However, a union may urge its members and other individuals not to enter into employment in the enterprise concerned.

The agreement negotiated in 1938 between the social partners restricts actions which disrupt the normal functioning of society. Further, the agreement protects uninvolved third parties and prohibits a number of unacceptable motives for taking action. The general rule is that industrial action against a neutral third party is prohibited. An exception is allowed in the case of secondary action in support of a lawful primary dispute.

### ***Effects:***

Participation in a lawful strike effectively suspends the employment contract. Strikers are supported from trade union funds for the duration of any industrial action. An unlawful breach of industrial peace can give rise to damages against the trade union. A union is liable to pay pecuniary damages. Individual participants may not be fined if a trade union has authorised an unlawful action. Individual participants in a wildcat strike may be fined, or if they have committed serious offences, dismissed. A union may not support a wildcat strike.

### ***International disputes:***

As mentioned above, provided the primary action is lawful, there is no requirement to respect the peace obligation of a collective agreement. The lawfulness of primary action is always considered according to the legislation of the country where it takes place except if the labour law of a foreign country is contrary to the Swedish legal system.

## 30. United Kingdom

There is no fundamental right to strike in Britain.

According to common law the organisers of and participants in industrial action can be made liable for damages if the action is not protected by immunities. Industrial action will also amount to a breach of the employment contract, allowing the employer to dismiss the worker once the period of statutory protection has expired.

### ***Legal basis:***

Regulations are to be found in the Trade Union and Labour Relations (Consolidation) Act of 1992.

### ***Definition:***

A trade dispute in relation to which immunity may be granted is a dispute between workers and their employers relating exclusively or mainly to specific issues at the workplace (the Act details which issues can form the basis of a trade dispute).

### ***Types of collective action:***

The industrial action may be a concerted stoppage (a strike) but there exist other forms of industrial action short of a strike, e.g. overtime ban.

- political (unlawful)
- solidarity (unlawful)
- work-to-rule
- go-slows
- picketing (lawful if peaceful but only if carried out at the worker's place of work)

### ***Restrictions:***

Proper procedures have to be observed, such as strike ballot and information to the employer, to ensure protection from claims for damages or to avoid a court application being made by the employer for an injunction to prevent any action from taking place.

A trade dispute must, however, be established before members can be balloted for industrial action.

The trade unions must hold a secret ballot before taking industrial action. It is a legal requirement that the ballot be conducted by post. It must include all members who – it is reasonable for the trade union to believe – will be called upon to participate in the action and a majority of the votes must be in favour of the action.

An independent person must be appointed by the trade union to manage the voting if 50 or more workers are involved.

The employer needs to be informed in two stages, first concerning the employees to be balloted – in writing and at least seven days in advance – and, secondly, on the outcome of the vote.

The employer must receive, at least 7 days before the start of the industrial action, written notice stating which categories of workers will be involved, where they work, whether the action will be continuous or discontinuous, the starting date or dates, and whether the action is strike action or action short of a strike.

***Effects:***

The protection granted to anyone organising a lawful strike or action short of a strike under the 1992 Act is restricted to what would otherwise be the following civil offences, or torts:

- inducing another person to break a contract or interfering with its performance
- threatening breach of contract
- interfering with the trade or business or employment of another
- conspiracy.

The Employment Relations Act 1999 (with effect from April 2000) provides that the dismissal of employees who take part in protected industrial action will be automatically unfair if the reason or principal reason for dismissal is that the employee took part in protected industrial action and

- the employee is dismissed within 12 weeks from the start of the protected industrial action or
- after 12 weeks, if the employee has ceased taking part in the industrial action within 12 weeks or
- when dismissed after 12 weeks, the employee has not ceased action within 12 weeks and the employer has failed to take such procedural steps as would have been reasonable for the purpose of resolving the dispute.

Unless the trade union rejects unlawful industrial action the officials or members are liable for those actions under the Act 1999.





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