A  The legal framework of collective bargaining

1 The Norwegian Constitution, of 1814, contains a rather brief “bill of rights” only. Collective bargaining rights and related issues are not included.

2 The basic legal framework of collective bargaining and collective disputes resolution is set out in the labour disputes legislation, which consists essentially of two Acts: the Labour Disputes Act, 1927 (LDA; superseding the largely similar first LDA of 1915); and the Public Service Labour Disputes Act, 1958 (PSLDA). This legislation is based on the principle of freedom of collective bargaining and contains no specific limitations on the scope of bargaining issues. The PSLDA applies to the State civil service sector, essentially; the LDA covers the rest of the labour market, including other (and in terms of employment, the larger) parts of the public sector as well as any and all parts (activities, industries, etc.) of the private sector. Thus, no separate or ad hoc legislation concerning collective bargaining has been enacted for certain activities or industries.

In major parts of the labour market, framework collective agreements – commonly called “basic agreements” – supplement the statutory framework. There is a number of such agreements, in the private as well as the public sector, based largely on similar principles but with some variation as to bargaining structures and procedures.

The first LDA, 1915, recognising the right to collective bargaining and regulating the collective agreement as a legal instrument, also established the Labour Court as a national, special, court for the resolution of rights disputes concerning collective agreements, collective bargaining and industrial action. Through its case law the Labour Court has played an important role by developing in more detail the basic tenets of the system thus established, including the general legal norms on the effects and the legal bearing of
collective agreements. In the case of a dispute between parties, the Court also rules on the validity and interpretation of collective agreements; it is however not otherwise involved in determining the content of agreements (i.e., it is not involved in the resolution of disputes of interest as opposed to disputes of right).

3 There is no statutory definition of “collective bargaining” in Norwegian law. Nor is the concept commonly defined in collective (“basic”) agreements. When used, the relevant term (forhandlinger) is largely taken to denote a procedure between the employer side and the employee side, at least the latter collectively, with a view to attaining a collective agreement fixing terms and conditions of employment, “terms and conditions” then to be understood in a wide sense. It is to be distinguished from (mere) information and consultation procedures (technically often referred to as drøftelser) and negotiations in dispute resolution processes (at times denoted, in English, “dispute bargaining”).

4 Similarly, the notion of a “duty to bargain in good faith” does not obtain in the national legal context. In fact, within the purview of the LDA there is no legal duty to engage in or conduct collective bargaining. A legal duty to bargain may ensue from collective agreements already concluded; the scope of the legal obligation and the consequences of its breach then depend on the relevant provisions of the collective agreement and their interpretation. Disputes on this count, extremely rare in practice, pertain to the Labour Court; the breach of an obligation may entail the nullity of a unilateral decision or liability in damages.

If, in a dispute of interest, a party rejects to engage in collective bargaining or if bargaining does not result in the conclusion of a collective agreement, recourse may be taken to industrial action (strike or lockout), subject only to procedural rules on notices and mediation (compulsory, as the case may be) that entail a “cooling off period” of relatively limited duration (16-21 days if mediation is involved, unless both parties agree to prolong the time-limit).

5 The rules applicable to the State civil service are laid down in a separate Act, as mentioned above (A.1), the PSLDA. That Act applies to all levels of State administration (emanations of the State), including state-run public utilities, and all categories of state employees (thus not only civil servants in the strict
The basic system and rules of the state sector PSLDA largely correspond to those of the LDA. As is the LDA, the PSLDA is based on the principle of freedom of collective bargaining and contains no specific limitations on the scope of bargaining issues. Some differences maintain, however; two features in particular may be pointed to. Firstly, pursuant to PSLDA sec. 2, the State (state body concerned) and the relevant trade unions mutually have a legal right and duty to bargain collectively if and when a request for collective bargaining is put forward from either side. This does not imply a legal obligation to conclude a collective agreement, however; in this regard the regime is parallel to that within the purview of the LDA (see A.4, supra). Secondly, the PSLDA lays down provisions on the “representativeness” of trade unions in the form of minimum requirements for having the right to bargain and conclude collective agreements with the State (see further in C.9, infra). In addition, for the resolution of certain interest disputes apart from general collective agreements a particular dispute resolution machinery involving arbitration maintains under the PSLDA; no parallel exists under the LDA (see, also, in B.7, infra).

B The level and structure of collective bargaining

In international comparison, Norway is usually ranked highly on centralisation in collective bargaining. At the outset, collective bargaining mainly takes place at a national level. That is true for the public sector, generally, and largely also for the private sector. Different models of collective bargaining has been used over the past 40-50 years but in the private sector, the general picture is one of alternation between peak intersectoral level bargaining and industry level bargaining within the dominant parts, in terms of economy and employment. At the intersectoral level, bargaining between the major trade union and (sectoral) employers’ federations typically covers broader issues including, as the case may be, general wage-setting standards, whereas industry level bargaining typically covers specific terms and conditions of employment also including general
provisions on pay. The structure and models of collective bargaining however varies between sectors and industries and typically consist of one or more levels of subsidiary, follow-up bargaining, predominantly at the enterprise or establishment level. Local or workplace follow-up, supplementary, bargaining is widespread not merely in private sector manufacturing but also in other parts of the private sector and, particularly in the past 10-15 years, in the public sector as well. Further, for white-collar employees in the private sector pay is, predominantly, determined at the enterprise level on an individual basis, with the (local branch) trade union involved, as the case may be, only in a framework consultation or advisory capacity.

7 Between different bargaining levels a hierarchical relationship exists by virtue of the legal norms on the binding effects of collective agreements.

As indicated already (in B.6, supra), general (or ‘superior’) collective agreements – commonly called overenskomster – are concluded mainly between labour market organisations at the national level, for a sector, an industry, etc. Predominantly, general agreements provide for the conclusion of forms of local follow-up agreements at the enterprise level – commonly called særavtaler, or local subordinate collective agreements. However, in the context of the LDA, no distinction is made; general collective agreements as well as local subordinate agreements both are ‘collective agreements’ (tariffavtaler) in the statutory sense and in principle, the same rules apply to both. But in practice, this is modified in that rules on the relation between national, superior, and local, subordinate, agreements are commonly contained in “basic agreements”, setting out the subordination of the latter to the former, specific rules on terms and termination, etc. (It is only in the PSLDA, sec. 11, that the distinction between general agreements and “særavtaler” has a statutory basis.) – “Basic agreements” are not a separate type of collective agreement, technically speaking, but merely one form of (national level) tariffavtale in the general legal sense. The importance of “basic agreements” lies primarily in that they are included into and thus form part of the various sector or branch specific collective agreements that are concluded between the basic agreement parties and their affiliated organisations.

In Norwegian law, a collective agreement is legally binding on the parties concluding the agreement and on those members affiliated to the parties (subordinate organisations, individual employers, and employees) to whom
the agreement is applicable pursuant to its own provisions on scope and application. For those members that are bound by a collective agreement, the agreement is mandatory by being binding and inderogable. In the relevant Acts (sec. 3 No. 3 LDA, sec. 13 PSLDA) it is expressly stated that an employment contract between an employer and an employee who are both bound by a collective agreement cannot contain any clause derogating from the collective agreement’s stipulations. Pursuant to case law and, typically, provisions in “basic agreements” the same applies to local subordinate agreements. Clauses contravening these norms of inderogability are null and void and are substituted by the relevant provisions set out in the applicable collective agreement. It should be noted, also, that in Norwegian law the norms on inderogability apply to provisions less favourable to the employee (or local union of employees) as well as to provisions more favourable to the employee than those of the collective agreement.

The extent to which collective agreements allow freedom to parties at the enterprise level to bargain on terms and conditions, individually or collectively, varies a great deal. Generally, as indicated already (in 6, supra), local follow-up collective bargaining plays a quite important role in actual industrial relations practice. In legal terms, all forms of lower level bargaining within the ambit of a superior (general) collective agreement are hierarchically subordinate to the latter and thus, a coordination between the different bargaining levels exist, which may be more or less tight depending on the superior level regulation.

International collective bargaining thus far has had no actual impact on domestic bargaining, whether in structure or in content, nor is domestic bargaining linked with or subsidiary to bargaining on some international level. Whereas forms of “economic policy bargaining concertation” between actors internationally has been discussed, among some trade union groupings in particular, it is not envisaged that international collective bargaining – in itself difficult to define and develop – is likely to impact in tangible ways on national collective bargaining practices.

The parties to collective bargaining: Workers’ representation

As a matter of law, under the LDA the parties to a collective agreement are a “trade union” and, on the other side, an employer or an employers’
association. For the purpose of the Act, a “trade union” is any combination of workers acting in concert to attend to their interest vis-à-vis their employer (sec. 1 No. 3 LDA); the concept of “employers’ association” is defined in similar terms (sec. 1 No. 4 LDA). Hence, the concept of “trade union” covers anything and everything from a combination of two workers acting in concert to the largest trade union confederation. No notion of “representativeness” or anything to a similar effect obtains for a trade union to be able to conclude a collective agreement (or to undertake industrial action). This legal facet, in combination with the norms on the binding effects of collective agreements (see B.5, first paragraph, above), also features importantly in practice.

In the larger picture, given the multiplicity of trade unions in the labour market (see f, infra), “representativeness” may still be seen to figure as an issue in different contexts. A 1996 White Paper (NOU 1996: 14) proposed the introduction of forms of representativeness criteria into the LDA. Those proposals met with considerable opposition, however, and have since been emphatically shelved (see, now the Bill – Ot.prp. nr. 46 (2001-2002) – on amendments to the LDA, enacted on 28 June 2002 (No. 58)).

But in different ways, the issue features in industrial relations practice. Employers’ associations mostly are reluctant to conclude a collective agreement with a trade union unless it has a certain presence in the industry or enterprise(s) concerned, in particular if a collective agreement for that industry or enterprise already exists with a different trade union. Moreover, forms of representativeness requirements may be found within the framework of existing collective agreement relationships. In particular in the private sector, the predominant practice is that a national (branch or industry) collective agreement does not automatically apply to all affiliated employers; it will apply only when having been “made binding” for the individual enterprise pursuant to a decision to that effect to be made, at the outset, by the (superior) parties to the collective agreement. Rules on this are contained in a number of “basic agreements”. Varying as to the requirements and procedures that apply, it is however now a common feature that it is a prerequisite to having the collective agreement “made binding” that the trade union has a certain presence in the enterprise concerned (in the form of a minimum number of members or a certain percentage (10, or 30, as the case may be) of the employees performing work of the kind regulated by the collective agreement). Commonly, disputes on whether a right to have a collective agreement “made binding” obtains pursuant to such rules are
subject to bargaining procedures and, possibly, arbitration; disputes on the 
“basic agreement” rules themselves however pertain to the Labour Court.

Under the PSLDA, the legal regime is different. The parties to (general) 
collective agreements are the State and, on the other side, trade unions (or 
federations) that meet certain requirements as regards size and 
representativeness (sec. 11, cf. sec. 3, PSLDA). The criteria obtaining 
pursuant to the PSLDA are set out in the Act itself (sec. 3; most recently 
amended by Act 15 May 2002 No. 15) in the form of minimum requirements 
for having the right to bargain and conclude collective agreements with the 
State at the central (national) level. The requirements pertain to the size 
(number of affiliated civil servants) of the trade union (or federation) and its 
representing civil servants in some proportion or in a certain number of 
institutions or establishments. While aiming primarily to centralise 
bargaining at the national level to be conducted with federations of civil 
servants’ trade unions, the requirements are sufficiently flexible to also 
enable national independent unions to obtain bargaining rights. In practice, 
however, trade unions in the state civil service sector predominantly are 
federation affiliated and collective agreements are concluded with the 
federations. – At subordinate levels, branch or local unions affiliated to 
parties at the national level have bargaining rights (so-called “derivative 
bargaining rights”; sec. 4 PSLDA).

b Disputes on representativeness under the PSLDA are under the jurisdiction 
of the Labour Court. Such disputes are rare, however; since the Act’s entry 
into force in 1959, merely two cases have reached the Court (ARD\(^1\) 1994, p. 

c When a trade union is affiliated to a federation or confederation of unions 
their respective bargaining rights are not determined by statute law; this is a 
matter of the by-laws of the trade union organisations themselves. This is 
true also within the ambit of the PSLDA; however, the rules of the PSLDA 
on representativeness and bargaining structures encourages the centralisation 
of bargaining rights at federation level and this also predominates in 
practice. Within the ambit of the LDA, how bargaining rights are divided 
between union levels varies across the – currently four – trade union 
(con)federations as to whether it is primarily the federation or the national 
union that is vested with the right to conclude general collective agreements. 
Mostly, the federations are empowered to conclude collective agreements in 
their own behalf and for their affiliated national unions and this also is

\(^1\) ARD = Dommer og kjennelser av Arbeidsretten (the Labour Court Law Reports).
mirrored in actual practice. Hence, typically, a general national level collective agreement is concluded between the relevant employers’ association on the one side, and on the other side a trade union federation (with its relevant national union as a subordinate party). With regard to the trade union side, certain exceptions maintain, however, as some private sector collective agreement relationships are concerned, i.e., agreements are concluded between the (federation affiliated) national union alone and the employers’ association. – In addition to this comes “accession agreements” – i.e., a collective agreement concluded between a trade union and an unaffiliated employer, identical to one already existing between organisations for the relevant kind of business. In actual practice, this is the predominant way of concluding collective agreements with employers not affiliated to an employers’ association. “Accession agreements” typically are concluded between a national trade union (whether federation affiliated or not) and a single employer.

d Pursuant to provisions of the various “basic agreements” (elected) trade unions delegates at enterprise level are authorised to conduct collective bargaining on issues on which local subordinate agreements may be concluded, and to conclude such agreements in behalf of the membership they represent. It follows from the norms of inderogability (see in B.7, supra) that arrangements contravening a superior collective agreement cannot be stipulated at enterprise level in so far as members of the parties to the superior collective agreement are concerned.

e To what extent a collective agreement must be ratified by the rank and file is, generally, dependent on the by-laws of the trade union (or federation) concerned. As for the (biannual) general collective agreements, the prevailing practice is that they are put to a referendum with the rank and file, whereas mid-term revisions (generally on pay only) mostly are decided upon by a representative body of the union/federation concerned. As regards local subordinate agreements at enterprise level, “basic agreement” provisions usually stipulate that the relevant elected trade union representatives may conclude such agreements, without requiring rank and file ratification by referendum; in practice, it varies whether a proposed local agreement is put to a membership vote or not.

f The overall trade union density rate currently stands at about 52.5 per cent, a slight decrease from the 56-57 per cent at which the density rate was stable for almost 40 years up until 1996. However, there is considerable variation between sectors; whereas slightly more than 80 per cent of public sector
employees are unionised, total trade union density in the private sector is merely about 40 per cent but differing substantially across industries and branches.

Trade union multiplicity is a feature of some importance in Norwegian industrial relations. One category of employees may well be organised by two or more trade unions (or federations); and it is commonplace to find employees of the same category in a given enterprise being affiliated to different trade unions. On that account, an employer may frequently be bound by two or more collective agreements for the same category of personnel – and thus by several for different categories of employees.

It follows from what has been said already (in C.9.a, supra) that minority unions have collective bargaining rights – or, more precisely, freedom to bargain and, as the case may be, to take recourse to collective action with a view to concluding collective agreements. As far as statute law is concerned, restrictions in this regard maintain only under the PLDA.

g  Whether in statute law or in collective (“basic”) agreements, a right for a trade union to unilaterally join, or adhere to, a collective agreement is not provided for.\(^2\) Where a collective agreement already exists, if a union presses for an agreement on its own, the prevailing practice is for the employer side – if acceding to the union’s claim – to conclude a collective agreement identical in substance to that already existing. In legal terms, such a “parallel collective agreement” is a separate and independent collective agreement in its own right.

h  It follows from what has been said above that a trade union does not and cannot represent non-unionised workers for collective bargaining purposes (see in B.7, supra). A collective agreement is legally binding only on the parties concluding the agreement and on those members affiliated to the parties (subordinate organisations, individual employers, and employees) to whom the agreement is applicable pursuant to its own provisions on scope and application. Consequently, an agreement is not binding on non-signatories and other “outsiders” – neither on other employers’ associations or trade unions and their members, nor on non-unionised employees working with an employer who is bound by the agreement. This applies

\(^2\) One exception applies. Pursuant to sec. 41 of the “basic agreement” for the State civil service sector, which is concluded between the State and the confederations of civil servants’ trade unions, the agreement may be “joined” by independent unions having bargaining rights under the PSLDA, whereby the adhering union acquires bargaining rights and standing in dispute resolution procedures in matters covered by the “basic agreement”.

equally to general collective agreements and to local subordinate agreements.

\textit{i} In this context, a further aspect of inderogability norms should be noted, however. An employer who is bound by a collective agreement is, by virtue of explicit or implicit clauses therein, generally under the obligation to respect the collective agreement also in employment contracts with ‘outsider’ (non-unionised) employees performing work within the enterprise of the same kind that is governed by the collective agreement. From the legal point of view, this is an obligation on the employer vis-à-vis the trade union party to the collective agreement. It does not entail rights (or obligations) for the non-unionised employees; their individual employment contracts take precedence. However, the prevailing practice is to respect this aspect of the norms on inderogability, by “incorporating” the applicable collective agreement into the employment contracts of non-unionised employees, and hence, by and large unionised and non-unionised employees within the enterprise are treated equally in the context of the collective agreement.

This does not, however, impinge on the freedom of those not legally bound to bargain and, as the case may be, to take recourse to collective action with a view to concluding a collective agreement of their own (see in f, \textit{supra}).

Extension (or forms of \textit{Allgemeinverbindlichkeitserklärung}) of collective agreements for all practical purposes is \textit{not} a part of Norwegian labour law.

A special act on the topic does exist, however. The Act of 4 June 1993 No. 58 empowers a special board to issue (public administrative law) Regulations corresponding more or less stringently with collective agreement standards on minimum pay and minimum terms of individual employment relationships. Regulations can however not be issued on matters of a collective character, e.g., employee representation or local level collective bargaining arrangements. The Act was adopted in the context of Norwegian accession to the EEA Agreement, with a view to providing a means to safeguard against “social dumping”. But in actual fact, the Act has not yet been put to use. Hence, I leave the rather intricate procedures provided for in the Act itself aside here.

To this may be added that the European Works Council Directive, 94/45/EC, is transposed into Norwegian law by way of the Act 23 August 1996 No. 63, pursuant to which, in the form for Regulations, the collective agreement provisions of the LO – NHO “basic agreement” on this particular subject are accorded general application. In the Norwegian context, this is however an exceptional measure and, as already indicated, a unique example in practice of a form of “extension”.

\textit{j} A trade union, signatory party to a collective agreement, may initiate litigation on its own behalf – subject, however, to the proviso that pursuant
to sec. 8 LDA\(^3\), in disputes pertaining to a collective agreement the right of action is reserved for the superior party to the agreement. I.e., where a union is a (subordinate) party to an agreement to which its superior organisation is also a party, it is only the latter that may initiate litigation and act as plaintiff or, as the case may be, as defendant before the Labour Court. – In disputes pertaining to the collective agreement as such, the union plaintiff appears and acts in its own name but can also act on behalf of its members (subordinate organisations or individuals). However, a suit may be filed also against members, e.g., against a subordinate member organisation or employees for the payment of damages. In such instances, the relevant member must be sued and then obtains status as a defendant alongside the defendant organisation party.

A signatory party to a collective agreement, as well as its affiliated members bound by the agreement, are under the obligation generally to respect, uphold and enforce the agreement; and in particular, a signatory party and its relevant subordinate organisation members have an obligation – subject to liability in damages – to uphold and enforce the “peace obligation” ensuing, from the agreement itself, from being bound by a collective agreement.

A union, whether a signatory party to a collective agreement or not, may represent and assist members in individual grievances. It does however not have a right to initiate litigation on the worker’s behalf in disputes concerning its individual employment relationship or contract. In such disputes, the right of action rests solely with the individual worker. Nor is there, generally speaking, a right for trade unions to file “class action” suits on matters concerning employment, etc.

Matters concerning the interpretation, application, and enforcement of a collective agreement are, primarily, subject to “dispute bargaining” pursuant to rules laid down in the collective agreements themselves – mainly, in “basic agreements”. Generally, a procedure is provided for whereby dispute bargaining starts at the local level and is carried upwards in the hierarchy of organisations, parties to the collective agreement. If no settlement is reached through such bargaining, suit may be filed with the Labour Court. Prior dispute bargaining between the (superior) parties to the collective agreement, it should be added, is a prerequisite to bringing suit with the Labour Court (pursuant to sec. 18, No. 2, LDA).

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\(^3\) Sec. 8 LDA and other procedural law provisions of the LDA apply similarly to litigation pursuant to the PSLDA.
In the case of breach of a collective agreement, by a party or by a member being bound by the agreement, the Labour Court may hold action taken to be null and void, and grant an order for restoration, back payment, etc., as appropriate in the individual case. Otherwise, the applicable sanction for breach of collective agreement is that of damages, which is for incurred economic loss only. There are no provisions, in the LDA or the PSLDA, empowering the imposition of a fine of any sort (as, e.g., in Denmark) or an award for non-economic compensation (as, e.g., in Sweden). – Whether interlocutory injunctions may be issued, in disputes on breach of collective agreement or the “peace obligation” or otherwise is a moot point. It has still not been pushed to the point; in practice, the Labour Court deals with “urgent cases” involving pending or on-going industrial action expeditiously, in a matter of relatively few days, as the case may be.

10 Workers’ representation by a non-union body

Bodies including representatives of, in principle, all employees in the enterprise or undertaking exist, albeit to a limited extent only. The Worker Protection and Working Environment Act, 1977, provides for bipartite Working Environment (Health and Safety) Committees in enterprises with more than 50 employees (or 20, if requested by either side locally). Under company law legislation (joint stock companies, and other), in companies with more than 30 employees there is a right to minority (one-third) representation on the company Board of Directors; if the company has more than 200 employees, as a main rule it shall have a “corporate assembly” on which employees similarly have a right to minority (one-third) representation. In addition, certain private sector “basic agreements” provide for bipartite “works committees” at the enterprise level – and also at departmental level, or for a company group, as the case may be – in enterprises with more than 100 employees.

In principle, the workforce at large elects worker representatives to these bodies. The actual rules on elections are however thus framed as to facilitate the election of representatives nominated by local trade unions if they represent more than half of the workforce and act in concert. Otherwise, there is no formal relationship between these bodies and the trade union(s) concerned.

The role of the bodies, or the worker representatives on them, is mainly one of information and consultation, as well as being a form of participation in decision-making processes. They are not empowered to conclude collective
agreements or other form of agreements legally binding on the employer and its workforce. The power to conclude (local subordinate) collective agreements (særavtaler; see B.7, supra) at the enterprise level essentially rests exclusively with the (local) trade union representation, pursuant to superior collective agreement rules, separate and independent from the bodies referred to above.

11 Norwegian industrial relations exhibit no experience of *ad hoc* bodies of worker representation as referred to in the Questionnaire.

12 Workers’ representatives involved in pressing for or in the negotiation of a collective agreement are not accorded any particular protection in statutory law. The same goes, for that matter, for workers, trade union members, affected by a demand for or the negotiation of a collective agreement. However, protection is afforded by general statute law rules on dismissal protection. Dismissal by the employer for reasons of trade union membership or activity, including the above, is without reservation unlawful (not “justified”) and thus null and void under statutory dismissal protection law, entailing liability in damages for the employer and the right of reinstatement, as the case may be, for the worker(s) concerned. Moreover, dismissal or other forms of retaliatory measures by the employer in conjunction with a demand being made for a collective agreement, or its negotiation, is deemed a form of unlawful industrial action, pursuant to LDA sec. 6 No. 3 (and PSLDA sec. 20 No. 2), equally entailing the sanctions of null and void and liability in damages. See, e.g., ARD 1973, p. 122, ARD 1976, p. 116, and ARD 1981, p. 269.

Once a collective agreement is concluded, under standard rules of “basic agreements” elected workers’ representatives in the enterprise are afforded special protection, whereby any dispute on dismissal or sanctions for breach of obligations involved in their office is a matter for the organisations, parties to the (superior) collective agreement, and pertains, in the final instance, to the Labour Court. See, e.g., ARD 1986, p. 189.

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D The parties to collective bargaining: Representation of the employers

13 a In collective bargaining at a level above that of the enterprise, individual private sector employers are represented by the employers’ association to which they are affiliated. Representation is determined by affiliation and the by-laws of the employers’ association concerned. Again, no criteria of “representativeness” or the like apply in order for an employers’ association to represent members and conclude collective agreements (cf. in C.9, a, supra).

Several private sector employers’ associations exist, for different industries, branches, and sub-sectors. About 58 per cent of all private sector employers (enterprises) are affiliated to an employers’ association.

b If an employer is bound by a collective agreement concluded by an employers’ association to which it is affiliated, the norms of inderogability apply (see in B.7, supra). Hence, the scope for bargaining by the employer itself for a (subordinate) agreement applicable to the enterprise is contingent on the superior (upper level) collective agreement by which the employer is bound. – Otherwise, the scope for individual bargaining by an affiliated employer may be dependent on the by-laws of the employers’ association concerned. Typically in practice, the power to conclude collective agreements rests with the employers’ association to which an employer is affiliated.

c A collective agreement cannot be made binding on enterprises not members of the employers’ association having concluded the agreement. See in C.9, h and i, supra.

d As for the rights and obligations of an employers’ association having signed a collective agreement, see in C.9, j and k, supra; the same applies.

14 a, b The systems of employer representation in the public administration differ between the State and the municipal parts of the public sector.

In so far as State public administration, at all levels, is concerned it is the State that is the employer and technically, it is the “King in Council” – i.e. the Cabinet – that is vested with the employer functions, which in practice are attended to primarily by the Ministry of Labour and Government Administration. It is the Ministry of Labour and Government Administration that acts for the State in collective bargaining, with no exception as far as general collective agreements are concerned. Other Ministries, specialised
administrations, and regional and local State bodies, may act in collective bargaining on authority delegated by the Ministry of Labour and Government Administration or by virtue of provisions stipulated in general collective agreements. To the extent that other bodies act on delegated authority, as a rule no ratification or approval by the Ministry of Labour and Government Administration is required for the conclusion of a special or subordinate collective agreement; the ordinary norms of inderogability apply, however.

Regional and local municipalities, on the other hand, are affiliated\(^5\) to the Norwegian Association of Local and Regional Authorities, which has the status of an employers’ association and is empowered to conclude collective agreements in behalf of members (in the sphere of public administration as well as for public enterprises under municipal ownership) wholly similar to private sector employers’ associations. No requirement of ratification by any higher authority applies; the conclusion of general collective agreements is however subject to membership ratification by referendum pursuant to rules laid down in the by-laws of the Association.

\(^{\text{c}}\) The conclusion of general collective agreements in the State sector, applicable to the State sector as a whole, is subject to approval by the Storting (Parliament), pursuant to sec. 31 PSLDA, for reason of the presumed impact on the State budget, for which the power to adopt is constitutionally vested in the Storting. No involvement of the Storting is however required for the conclusion of special or subordinate collective agreements; the underlying assumption being that such agreements do not have as extensive budgetary impact as to necessitate Parliamentary approval under the provisions of the Constitution.

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\(^5\) With the sole exception of the municipality of Oslo, the capital city, which operates as an unaffiliated employer in collective bargaining matters.