

Chapter 9

Estonia: simultaneous institutionalisation and waning of collective bargaining

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Estonia is a small open economy in northern Europe that regained independence from the Soviet Union in 1991 and joined the EU in 2004. The population of Estonia is 1.32 million (2018) with an employment rate of 74.1 per cent (Eurostat 2017), one of the highest in the EU28 and more than 5 per cent above the EU average. In 2017, per capita GDP was 18,000 euros, which according to Eurostat is approximately 60 per cent of the EU28 average.

Collective bargaining in Estonia as we know it today was shaped in two phases. The first comprises the 1990s with the end of the Soviet Union and the transition from a centrally planned to a market economy. This phase was marked by a high degree of political instability and an almost complete decoupling from eastern European product markets, which led to drastic changes in the role and influence of trade unions and collective bargaining in Estonian labour relations more generally. The most visible signs of this were a steady decline of trade union density and shrinking collective bargaining coverage. After the initial turmoil in the 1990s, however, when the institutions inherited from the centrally planned economy sought their place in the new market economy, Estonian labour relations entered a phase of stabilisation in the 2000s, which saw the institutionalisation of collective bargaining practices. The decline of trade union membership and collective bargaining coverage slowed down but to some extent because levels were already very low. At the beginning of the 2000s, most collective bargaining structures and state-level social dialogue institutions were already established in roughly in the same form in which we know them today (see Table 9.1). By 2017, the bargaining practices that survived the transition period were quite strongly established. This means that regular and institutionalised negotiations take place in sectors such as health care and transport and in companies with a long tradition of collective bargaining. At the same time, in industries and companies in which there is no bargaining, it is very difficult to introduce it: for instance, in the finance and retail sectors.

In 2012, the Ministry of Social Affairs launched a reform of collective labour relations regulations, aimed at modernising the framework for collective bargaining created in the 1990s. The reform did not succeed, however: the renewed draft law was abandoned with the change of government in 2014 when Social Democrats, a traditional supporter of the trade unions, entered the government. The reform was also opposed by the trade union confederations as ‘undemocratic’ (ERR 2014). In the wave of planned reforms only some changes were introduced into collective bargaining regulations.

Table 9.1 Principal characteristics of collective bargaining in Estonia

Key features	2000	2016/2017
Actors entitled to collective bargaining	Depending on the bargaining level collective agreements may be concluded by the following: – an employer and trade union or an authorised representative of employees (a trustee) – association/federation of employers and trade union/federation of trade unions – local government association and trade union/federation of trade unions – employers' confederation and trade union confederation – trade union confederation, employers' confederation and the government – local trade union federations, employers' federation and local governments There are no representativeness criteria for bargaining parties and also no regulation for cases in which several trade unions are present in a company	
Importance of bargaining levels	Most collective agreements are concluded at company level There are two industry-level agreements (public bus transport and health care) which are extended and some industry-level agreements that are not extended There is only one national-level agreement on minimum wages covering all employees	
Favourability principle/possibilities to derogate from (cross-)industry agreements	In the event of a conflict between the provisions of different collective agreements applicable to employees, the provision which is more favourable to the employees applies The terms of a collective agreement that are less favourable to employees than those prescribed by law are invalid, unless an option for such an agreement has been prescribed by law*	
Collective bargaining coverage (%)	28 (2001) ^a	19 (2015) ^b
Extension mechanism (or functional equivalent)	Industry- and national-level agreements may be extended by agreement of the parties concerning working time and wages The scope of extension is determined in the collective agreement	
Trade union density (%)	13.9 ^c	5.1
Employers' association rate (%)	35 (2002) ^d	25 (2011) ^e

Note: The Employment Contracts Act passed in 2008 widened the scope for collective agreements. Subsection 48(2) allows modifications of working time norms for health care workers professionals, welfare workers, agricultural and tourism workers if this is laid down in the collective agreement. Subsection 97(4) allows different notification periods for the terms of advance notice for cancellation of employment contracts by the employer if agreed in the collective agreement. Sources: (a) Data appendix, table A.1; (b) Work-life Survey 2015; (c) Labour Force Survey (LFS) 2000; (d) LFS 2016; (e) data appendix, table A.7.

In a nutshell, collective labour relations in Estonia are characterised by low and declining union representation, low and declining collective bargaining coverage and decentralised collective bargaining, with the company as the dominant level (Eurofound 2015). This is not a complete picture, however. Even though collective bargaining is not widespread, it includes a variety of practices at all bargaining levels.

Industrial relations context and principal actors

Collective bargaining and the development of industrial relations in Estonia during the period since regaining independence in 1991 may be characterised as transitional, lasting until the early 2000s, followed by a period of stability and only minor changes to collective bargaining institutions. This period in the 1990s was devoted to the creation

of regulations, the establishment of institutions and a search for their role in the new economic system.

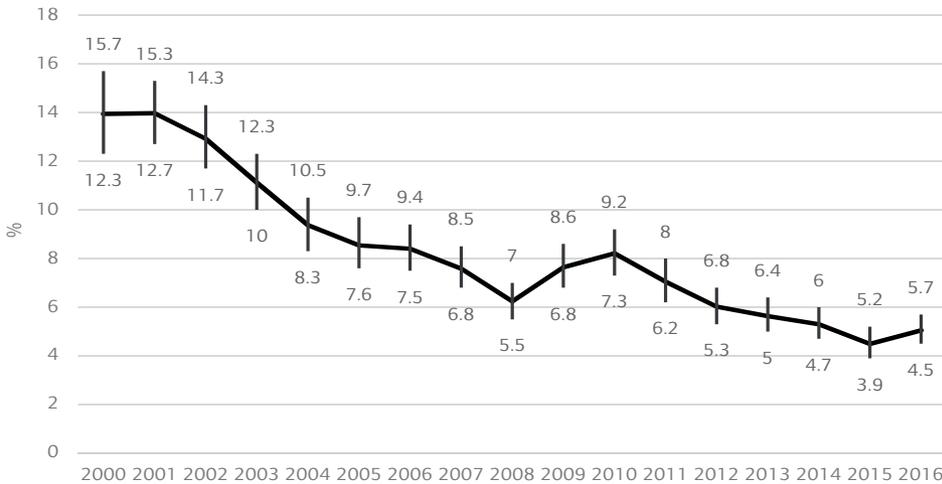
While in western Europe there had been a substantial policy shift towards a more 'liberal' economy since the early 1980s, in Estonia, as in the other Baltic countries, the transformation process was dominated from the outset by a neoliberal economic paradigm. In 1992, monetary reform took place and a currency board monetary regime introduced.¹ The criteria for maintaining the currency board system were a balanced state budget and no possibility to rely on monetary policy, leading to relatively low government intervention in the economic environment overall. Thus developments that in Western Europe were experienced as an abrupt change and put the institutions of collective bargaining under severe pressure, prevailed in the Baltic countries from the very beginning. In the Baltic countries therefore collective bargaining systems did not have to accommodate the new economic system, but rather were established from the outset to satisfy the needs of neoliberal policy.

Trade unions inherited from the Soviet Union were reorganised to suit the new market economy. The trade unions gave up most of the functions they had had in the centrally planned economy, including labour inspections, and sought a new role. Two main trade union confederations were created: the Estonian Confederation of Trade Unions (Eesti Ametiühingute Keskliit, EAKL) and the Estonian Employees' Unions' Confederation (Teenistujate Ametiühingute Organisatsioon, TALO). At the beginning, TALO was largely an organisation for white-collar unions and EAKL the confederation for blue-collar unions, but these boundaries have blurred over time. EAKL is significantly bigger than TALO and some of its affiliates, such as the Estonian Union of Journalists (Eesti Ajakirjanike Liit) are former members of TALO that decided to switch confederations. Whereas TALO represents mainly public-sector unions, EAKL represents both public- and private-sector unions. In 2017 EAKL's membership consisted of 18 industry unions or union federations and TALO's seven (according to their websites). Although EAKL has gained members from TALO the membership of both confederations is in decline. In the early 2000s they had 25 and 12 industry unions, respectively (Kallaste 2004: 81). There are also some major unions that do not belong to any confederation, such as the Estonian Doctors' Union (Eesti Arstide Liit, EAL) and the Estonian Education Personnel Union (Eesti Haridustöötajate Liit, EHL).

Not only the number of trade unions but also union membership has decreased significantly. The most drastic changes took place in the early 1990s. By the beginning of the new millennium, union density had fallen from nearly 100 per cent at the end of the 1980s to slightly above 10 per cent (see Figure 9.1). Since 2000 the trend of declining membership has continued, with a slight reverse during the economic crisis in 2009–2010. According to the latest estimates, total union membership is around 25–33,000 or around 5 per cent of employees (see Figure 9.1).

1. The Estonian kroon was introduced and pegged to the then German mark at an exchange rate of 1 DM to 8 kroons. Afterwards it was pegged to the euro (1 euro = 15.6466 kroons). The currency board system was maintained until Estonia joined the euro in 2011. The currency board regime assumes that all currency in use is backed up by reserves and thus convertible. It eliminates the possibility of using monetary policy as a state governance tool in order to keep the monetary system reliable. This was set as a priority by all the governing parties and helped to build strong economic growth in Estonia.

Figure 9.1 Trade union membership (% of employees, 95% confidence intervals of estimates), 2000–2016



Source: Statistics Estonia, Estonian Labour Force Surveys 2000–2016, author's calculations.

Trade union structures are diverse. There are unions with a hierarchical structure consisting of company-level (or sometimes regional-level) unions, which in turn are affiliated to national industry-level associations, such as the unions representing Estonian energy workers (Association of Estonian Energy Workers' Unions [Eesti Energeetikatöötajate Ametiühingute Liit], EEAÜL) or education workers (Estonian Education Personnel Union [Eesti Haridustöötajate Liit]). There are also unions, however, that organise employees directly at the industry level, often by occupation, which in turn have representation in companies. This kind of structure is common in health care and transport. Health care and transport are also the only industries that have extended industry-level collective agreements. This suggests that the industry-based trade union structure has supported specific collective bargaining practices. Having government as one of the biggest sources of funding in the sector helps unify the goals of employers and employees and target their common demands towards the government. The industry-based union structure in health care is also supported by certain characteristics of the profession; all doctors in Estonia are trained at the same faculty of Tartu University.

The employers' organisations have had a slightly different history as, naturally, there were no predecessor organisations from the Soviet time. In the early 1990s two major employers' confederations emerged, one representing manufacturing employers (in 1991) and the other service sector employers (in 1995). They merged in 1997 to form a new employers' confederation, the Estonian Employers' Confederation (Eesti

Tööandjate Keskliit, ETK).² There are two other business representation organisations: the Estonian Association of Small and Medium Sized Companies (Eesti Väike- ja Keskmiste Ettevõtjate Assotsiatsioon, EVEA) and the Estonian Chamber of Commerce and Industry (Eesti Kaubandus-Tööstuskoda, EKTK). These organisations do not act as collective bargaining parties, however. According to 2015 estimates, around 18 per cent of employers belong to employers' federations or confederations and this has not changed essentially since 2009 (Kaldmäe 2017:71).

Regulations on individual and collective employment relations, occupational health and safety and working conditions were created in the 1990s. Even though knowledge was scant concerning possible employee representation and bargaining models (Kaadu 2008: 20) the Collective Agreements Act (Kollektiivlepingu seadus, KLS), the Collective Labour Dispute Resolution Act (Kollektiivse töötüli lahendamise seadus, KTTLS) and the Employees' Trustee Act (Töötjate usladusisiku seadus, TUIS) were passed in 1993. The Employees' Trustee Act was based on the concept of dual-channel representation of employees in accordance with ILO Convention No. C135 (Kaadu 2008: 20). The Act created the institution of an employees' trustee (union or non-union trustee³) who could also act as an authorised representative of employees in collective bargaining. A trustee is an employee who is elected as their representative by the general assembly of all employees. The main functions of a trustee are to participate in information and consultation, to communicate information between employees and employer, to monitor compliance with working conditions and to represent employees in labour disputes. Trustees may negotiate and conclude collective agreements with the employer if there is no trade union in the company. In this case, a trustee also represents employees in the resolution of collective labour disputes.

The social partners, including the trade unions, supported the establishment of minimum standards for working conditions on a legal basis. This was deemed necessary in order to guarantee decent working conditions for everybody as there was much uncertainty regarding economic developments, the social partners' role and power in the new economic situation. Defining employment conditions in regulations, however, reduced the scope for collective bargaining, reinforcing its decline.

At the beginning of the transformation process social dialogue and collective bargaining were essentially influenced by the Soviet time. Collective bargaining came with the relevant trade union institutions in reorganised companies and industries in which trade unions remained collective agreements were signed; examples include mining, electricity and big textile companies, such as Kreenholm.⁴ Because of the major changes in the economic structure, reconstruction, privatisation and bankruptcies, trade unions and their membership declined rapidly and therefore so did collective bargaining coverage.

2. In 1997–2001 it was called the Estonian Employers' and Industry Confederation (Eesti Tööandjate ja Tööstuse Keskliit). In 2003, its membership included 31 industry associations and 24 commercial undertakings (Kallaste and Eamets 2004: 50). In 2017, its membership comprised 22 industry associations and 93 commercial undertakings (ETK 2017).
3. In 2006 the new Employees' Trustee Act was passed, replacing the earlier 1993 Act. The new Act concentrates only on trustees and applies to union trustees within the scope specified in the Trade Unions Act.
4. Bought by the Swedish company Boras Wäferi AB in 1994. It went bankrupt in 2010.

In the 1990s state-level social dialogue involving both trade unions and employers' federations included a wide range of topics. From 1992 there were annual tripartite negotiations and by 2004 16 tripartite agreements had been concluded. In addition to the minimum wage this included topics such as unemployment benefits, tax-exempt income, vocational education and employment guarantees (Kallaste 2004: 46). Since then, however, there have been no regular tripartite negotiations between the confederation of employers, trade unions and the government leading to formal tripartite agreements. National-level collective bargaining has been reduced to bipartite negotiations on the minimum wage between EAKL and ETK; agreements were signed each year in 2002–2007 and then in 2011, 2012, 2013, 2015, 2017 and 2018. The other topics are discussed with the social partners in numerous multipartite bodies and some ad hoc negotiations are held and agreements signed, such as an agreement on the principles of the new Employment Contract Act (Töölepingu seadus, TLS) in 2008. This was signed by the government, EAKL, TALO, ETK, and EKTK.

The system of social dialogue, which includes collective bargaining as one specific variant, has been influenced by two developments: on one hand, union membership and collective agreement coverage have declined, so that the impact of collective bargaining on employment conditions has also declined. On the other hand, there has been strong support for the development of social dialogue by the EU, which has empowered central-level organisations. Therefore there has been a certain polarisation of social dialogue institutions, in which the top-level organisations and their role are not derived from organising power at the lower levels.

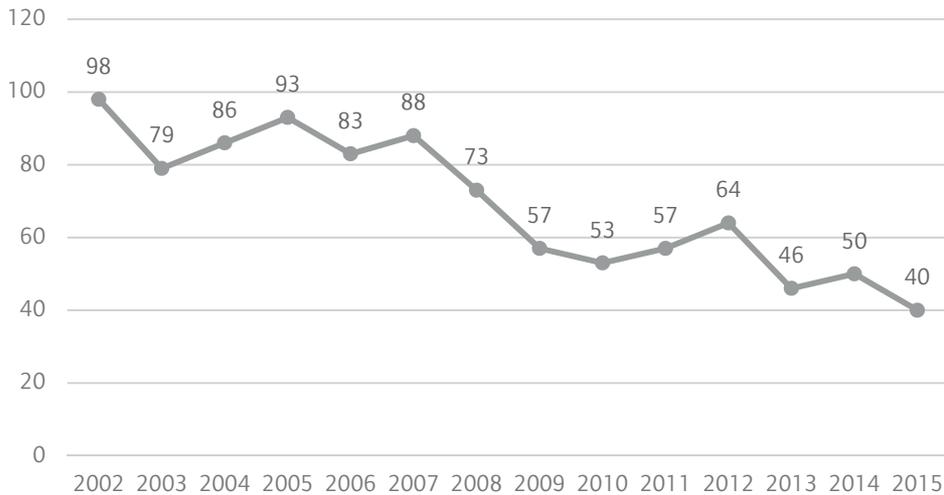
After the initial rapid developments, the main participants and institutions were established. Some have lasted and been institutionalised and some have disappeared. Most of the regulations that essentially influence collective bargaining have lasted, with some modifications. Nationwide collective agreements have narrowed to only one topic, the minimum wage. At the same time representatives of social partners' confederations still participate in various tripartite bodies that have some influence over public policy matters, for example, the Unemployment Insurance Board and the Health Insurance Board.

Extent of bargaining

In Estonia 18–19 per cent of employees are covered by either industry- or company-level collective agreements.⁵ During the past 15 years, coverage has decreased by approximately 10 percentage points. The national-level minimum wage agreement has a stable coverage of 100 per cent because it is compulsorily extended to all employers and employees in Estonia. It is more interesting to look at the development of the coverage of company and industry-level agreements; this is the statistic usually reported when discussing bargaining coverage in Estonia. The overall decline of

5. The estimates based on the work-life survey 2015 (see Kaldmäe 2017) and the Collective Agreements Register. Based on the agreements registered in the Collective Agreements Register, active agreements cover the working conditions of 105,087 employees (including extended industry-level contracts and apart from the national-level minimum wage contract), which is 18 per cent of all employees in 2016. There were 583,600 employees in Estonia in 2016 (Statistics Estonia, table ML217: Employed).

Figure 9.2 Number of collective agreements concluded and registered during the year (including industrial and national agreements), 2002–2015



Source: Kaldmäe 2017: 76, based on register of collective agreements.

collective bargaining coverage is due mainly to the decline of the coverage of company-level bargaining. There has been no substantial decline in the coverage of industry-level agreements.

By law, collective agreements regulate the working conditions of those who belong to the organisation that concluded the agreement, unless otherwise specified. In at least two-thirds of cases the agreement applies to over 90 per cent of employees in the company or companies that have concluded the agreement (Kallaste 2011; Põldis and Proos 2013; Kaldmäe 2017), thus also covering employees who do not belong to trade unions.

In Estonia, the conclusion of collective agreements is closely related to the presence of trade unions in companies. In companies without a trade union only 2 per cent have a collective agreement, which in this case is signed by a non-union employees' trustee. By contrast, 41 per cent of those companies with union presence have a collective agreement (Põldis and Proos 2017: 81). At the same time, union presence and collective bargaining is concentrated in larger companies. Thus, the decline of trade union density also explains the (somewhat smaller) decline of collective bargaining. This is because of the *erga omnes* principle which entails that all employees, irrespective of whether they are a member of a union, are covered by a collective agreement, if there is one.

The number of collective agreements registered on an annual basis decreased from around 90 in 2002 to 40 in 2015 (Figure 9.2). The share of companies covered by a collective agreement decreased from 6 per cent in 2009 to 4 per cent in 2015 (Kaldmäe 2017: 79–80).

The coverage of industry-level collective agreements is influenced mainly by the extension mechanism. All in all, the extension mechanism increases coverage (excluding national-level agreements) by around a quarter (based on collective agreement register data).

The extension of collective agreements is restricted to the issues of wages and working time in industry- or national-level agreements. Scope is laid down in the agreement and there are no conditions for enforcement other than publication in the official gazette *Ametlikud Teadaanded*. No representativeness criteria or authorisation mechanisms are envisaged for the bargaining parties, if they wish to extend the agreement. The parties themselves determine to whom they shall extend the conditions they agreed upon.

This extremely loose regulation of extension is considered to infringe the constitution, as ruled by the Chancellor of Justice (Õiguskantsler) in 2005 (Õiguskantsler 2006: 284). Ahlberg and Bruun (2009: 4) identified three main problems regarding the extension of collective agreements and fundamental rights in Estonia: first, every social partner has the possibility to extend the agreement without restrictions; second, there are no representativeness criteria for the parties that may extend collective agreements; and third, the third parties to whom the contract is extended have no possibility to express their opinions about the agreement at any stage of the negotiation process.

This was about to change in 2014 with a proposed reform of collective labour relations when a new draft act on collective bargaining and collective labour disputes was presented to the parliament. The draft act was abandoned after the parliamentary election in 2015, however, and no changes were introduced to the extension mechanism. In January 2018, the social partners themselves (EAKL and ETK) signed a historic agreement on good practice in extending collective agreements that addresses the issues brought out by the Chancellor of Justice (EAKL 2017). The agreement suggests that:

- the organisation with the highest membership in the industry shall conclude the agreement that is to be extended;
- the parties shall inform the public of their intention to conclude an extended collective agreement through the media, including social media, one month before starting negotiations;
- the public shall be informed through the media, including social media, of the draft agreement after the negotiations and interested persons may suggest amendments within one month; these suggestions are not mandatory for the parties to the agreement;
- the conclusion of the augmented final agreement shall also be published in the media.

The agreement is considered historic in the sense that the social partners have assumed roles similar to those of the social partners in the Nordic countries, replacing and amending the law by agreement among themselves.

Security of bargaining

Security of bargaining comprises factors that determine the bargaining role of trade unions, such as legislation, union recognition procedures and strike regulation. No representativeness criteria have been laid down for bargaining parties at any bargaining level in Estonia. This means that parties are entitled to bargain of their own volition. Trade union representatives, however, have a prerogative to engage in collective bargaining, as specified in the Collective Agreements Act (KLS). If no trade union is present, the employees may be represented by a non-union employees' trustee. There are legal guarantees for both union and non-union employees' representatives. These include the right to information and consultation and paid free time for representation work⁶ and for participating in training. In practice, despite the trade union prerogative, there have been situations in which the non-union employees' representative has bargained on the side of the employees together with or alongside the trade union (see Kallaste *et al.* 2007). Trade unions have claimed that employers have initiated collective bargaining with the non-union employees' representative in order to weaken the union bargaining position (Kallaste 2011: 147). Employers claim that this is the only possibility for ensuring the representativeness of the employees' bargaining party as trade unions represent only a small minority of employees.

The trade unions' bargaining prerogative has been questioned by employers in situations in which a union represents only a minority of employees in a company, whereas an employees' trustee is elected by the workforce assembly and therefore, in theory, represents all employees (Kallaste *et al.* 2007).

There is also no regulation for cases in which two or more trade unions want to bargain. In principle, all trade unions have a right to bargain and there is no obligation to coordinate their demands or to form a united delegation. In one case unions started negotiations as a single delegation and two trade unions refused to sign the agreement while the other two continued bargaining and signed the agreement.⁷ The necessity of introducing some representativeness criteria to bestow legitimacy on bargaining and the results of bargaining has been discussed on many occasions, but there is no consensus and the issue was not addressed even in the draft act that was designed to renew the entire collective bargaining framework in 2014.

For the employees the main concern is to bring the employers to the bargaining table against the backdrop of a general aversion to collective bargaining. Collective Agreements Act (KLS) subsection 7(3) states that parties start bargaining within seven days of the other party's call for bargaining. At the same time, the bargaining parties have no mechanisms for forcing the other party to start negotiations. This concerns mainly trade unions who have no power to force employers to enter into negotiations if the employer does not want to negotiate.

6. The amount of free time depends on the number of employees and ranges from 4 hours per working week in the case of 5–100 employees to a full-time paid representative in the case of 500 or more employees.

7. This happened in 2007 in the health care sector when EAL and ETTK refused to sign the agreement while the Estonian Nurses' Union (Eesti Õdede Liit, EÕL) and the Federation of Estonian Healthcare Professionals Union (Eesti Tervishoiutöötajate Ametiühingute Liit, ETTAL) signed.

The difficulties involved in forcing an employer to bargain are illustrated by the bargaining process for example at Nordea Bank, in which trade unions submitted the draft collective agreement to the employer in January 2016 but received a response to it only in September. After this, in autumn 2016, the employer decided to halt negotiations due to the ongoing merger of Nordea Bank and DNB. The trade union sought conciliation from the public conciliator and the process ended in January 2017 without a compromise being found. The unions organised a picket line in front of Nordea's head office in Sweden, but bargaining has nonetheless not continued.

There is a right to strike in case of a collective labour dispute. Strikes are prohibited in government authorities and other state bodies and local governments. In 2013, the right to strike was broadened by exempting employees working on a regular employment contract from this rule. Now, striking is possible for public sector employees irrespective of form of contract, except for civil servants, rescue and defence⁸ workers.

A strike may be started only after the obligatory conciliation procedure has been undergone. In addition to conciliation, another precondition for strike action is the absence of a peace obligation. Industrial peace must be maintained if there is a valid collective agreement. Without conciliation it is possible to call a warning strike for one hour. In order to support the demands of other strikes it is possible to organise support strikes, which may be up to three days long.

Striking has been used effectively to back up employees' demands and to force the employer to the bargaining table. This has been effective, however, only in sectors in which unionisation is relatively high. In general, strikes are fairly rare in Estonia; there have been only four since 2000. These took place in sectors in which the strike threat is credible due to earlier strike experience, such as health care. Warning strikes have been an effective tool for backing up union demands in sectors in which the strike threat is credible due to earlier strike experience, such as health care.

To conclude, even though trade unions have a bargaining prerogative there is no system of trade union recognition and in case of disputes over starting negotiations there is the possibility of strike action. A trade union's ability to assert its desire to bargain in relation to employers depends on their power, however. The main source of trade union power in Estonian company-level bargaining comes from trade union membership and density, which have been in continuous decline.

Level of bargaining

The division between different bargaining levels is indicated by the signatory parties on the employers' side (Table 9.2). The signatory party on the employees' side does not indicate the dominance of particular bargaining levels because trade unions and trade union federations might be involved both in company- and industry-level bargaining.

8. Ministry of Defence, the Defence Resources Agency, the Defence Forces or the Defence League.

Table 9.2 Signatory parties of collective agreements in practice (valid in 2016; %)

Signatory party from employees' side	Share of collective agreements
Employees' trustee	30
Trade union	52
Trade union federation	16
Union Confederation	1
Total	100
Signatory party from employers' side	Share of collective agreements
Single employer	97
Employers' association	2
Employers' confederation	1
Total	100

Sources: Collective Agreements' Register as of 10.08.2016.

While some bargaining takes place at all levels, company-level bargaining is by far the most widespread, accounting for 97 per cent of collective agreements in Estonia (Table 9.2). These include some regional agreements in which the local government authority acts as an employer to several educational institutions and these institutions are represented by a regional association of educational staff unions. The proportion of industry-level agreements is 2 per cent, while the proportion of national-level agreements signed by the confederations is 1 per cent. The latter is the minimum wage agreement between EAKL and ETK.

There are only three industries in which industry-level bargaining takes place and regular industry-level agreements are signed: health care, transport and performing arts (theatres).

Several industries that are mainly in public ownership do not have industry-level bargaining as there is no employer-side negotiation partner. There are examples, such as education and culture, in which, in the absence of a negotiation partner trade unions have replaced official collective bargaining with more general social dialogue. At the same time, more powerful trade unions in health care have been able to force the government to take part in collective bargaining.

According to the Collective Agreements Act, there can be bipartite collective bargaining also between a local government association and a trade union federation, but such bargaining does not exist in practice. Local government associations have said that they do not have a mandate to represent local governments as employers (Kallaste and Anspal 2003). Local governments are autonomous and have mandated the associations to negotiate on working conditions on their behalf. Thus, there is no association of employers with whom it is possible to bargain. This has been a concern mainly for the education sector as municipalities own the majority of general schools. Despite the regulation that lays down tripartite bargaining on teachers' minimum wages in compulsory education between the Minister of Education and Research, national

associations of local authorities and authorised representatives of registered associations of teachers, no collective bargaining takes place. The basic problem is that local authorities' representative organisations do not have a mandate for bargaining; this is main hindrance to industry-level collective bargaining in education (Voltri 2017).

The industries that face the problem of not having a local government bargaining partner have developed dialogue at state level with the relevant ministries. Thus, in education there is officially no collective bargaining, but dialogue is held between the EHL and the ministry. The EHL monitors wage levels and if they consider compliance unsatisfactory, industrial action might follow. The most prominent example was a fairly far-reaching three-day strike in 2012, in which 12,093 education workers⁹ took part, demanding a 20 per cent minimum wage increase for all teachers' wage grades.

The situation is similar in the domain of the Ministry of Culture, in which TALO regularly signs a common interest agreement with the Ministry, which sets the minimum wage for cultural workers in partly or totally state-owned institutions. This is not termed a 'collective agreement', however, but rather a 'agreement on common intent' and is not registered in the collective agreements register.

In health care, collective bargaining also takes place in a tripartite setting. Even though the government does not sign the agreement, trade unions and employers have insisted on its participation. The Ministry of Social Affairs and the Health Insurance Fund have both claimed that they are not employers within the meaning of collective labour law (see for the 2012 bargaining round Delfi [2012] and for the 2016 bargaining round Estonian Parliament [2016]). Facing labour disputes and strike threats, however, the government has been forced to take part in bargaining at least in the two latest bargaining rounds

In Estonia, there is no explicit pattern bargaining. It is evident that the minimum wage agreement influences wage levels (see Ferraro *et al.* 2016), but this does not happen through pattern bargaining. There is some coordination of bargaining in arts and entertainment. TALO and the Ministry of Culture sign an agreement of common interests which sets the minimum wage for qualified cultural workers in the public sector. The Estonian Actors' Union (Eesti Näitlejate Liit, ENL), which operates under the umbrella of TALO member the Estonian Theatre Union (Eesti Teatriliit, ETL) and the Estonian Association of Performing Arts Institutions (Eesti Etendusasutuste Liit, EETEAL) conclude a collective agreement that takes the rate fixed in the agreement of common interests as the base level.

Regarding trends in industry- versus company-level bargaining, in health care the importance of company-level agreements seems to have been diminishing in favour of industry-level agreements. In the transport sector, there is a dual system in which company agreements add and specify the industry agreement with regard to company-specific details (Toomsalu 2016).

9. Statistics Estonia, web database, table PA S01: Streigid.

To conclude, bargaining takes place at all levels, but the company level is by far the most important. In addition to collective bargaining, there are some forms of dialogue whose aim is to fix wage levels, but this dialogue does not lead to collective agreements; instead the outcome is fixed by law or by agreement of common intent. The possibility to resort to industrial disputes and strikes in this process, however, means that it is part of collective bargaining.

Depth of bargaining

Depth of bargaining primarily concerns the process and practice of collective bargaining. The main focus is on internal union processes related to the formulation of demands, on which little information is available for Estonia. Depth of bargaining in Estonia is also related to conciliation, which is an obligatory step in the bargaining process before calling a strike if the bargaining parties cannot reach an agreement.

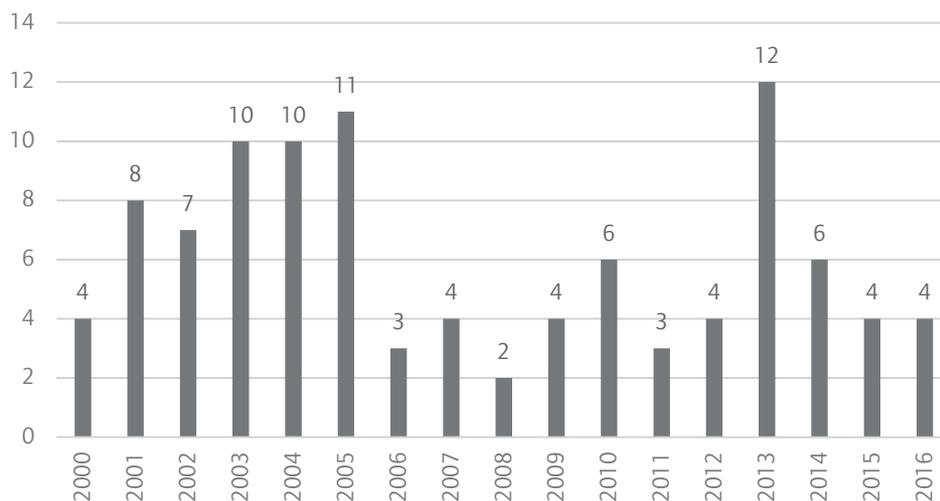
In industry-level bargaining, trade unions form bargaining delegations of their own members. Thus, at least in the transport sector, company-level union members are directly involved in negotiations. In health care, the delegation consists of representatives of different unions. According to Lauringson (2010: 21), there was little coordination between the different trade unions regarding their demands. This may now have changed, however, as bargaining has become regular, more experience has been gained and there has been some clarification regarding occupational representation between unions. In the health sector, demands are formed based on input from union local trustees and confirmed by the union executive. If the initial demand is changed, the approval of the trade union board is required. National-level minimum-wage bargaining delegations are also formed of industry union representatives. The claims and decisions are approved or declined by the board of EAKL.

Bargaining parties may turn to the public conciliator if they do not reach an agreement and if there is a threat of work disruption. Conciliation is mandatory in the process of collective labour dispute resolution and a prerequisite for announcing a strike. Conciliation is led by the state-financed public conciliator who identifies the reasons for and circumstances underlying the labour dispute and proposes solutions. The proposed solutions are not binding on the parties. The public conciliator is appointed by consensus of social partners' confederations. If consensus is not reached, the conciliator is appointed by way of open application.¹⁰

As few collective agreements are concluded each year, the number of requests to the public conciliator's office is small (Figure 9.3). In the years 2009–2016, there were 43 appeals (Kiin, 2017a), which makes 6.7 appeals per year during past six years. It seems that the business cycle has a fairly strong influence on the number of disputes. During the financial and economic crisis (2008–2009) appeals to the public conciliator

10. This innovation was introduced into the law in 2015 after trade unions' and employer' confederations were not able to reach a consensus about candidates for public conciliator for years. The previous conciliator had been in office since 2001 and a new conciliator was never found as the confederations could not reach a consensus. A new conciliator took office in summer 2017, appointed by way of open application.

Figure 9.3 Appeals to the public conciliator, 2000–2016



Source: 2000–2008 Kallaste and Kraut 2010:3; 2009–2016 Kiin 2017b.

decreased to only two or three per year. After the crisis receded, conciliation appeals increased slightly. Despite the small number of appeals, for some parties the conciliation procedure has turned into a customary part of negotiations. This seems to be the case in the health sector, where all three bargaining rounds since the 2008 crisis have been handled by the public conciliator.

Most conciliations end with the agreement of the bargaining parties. One-third of conciliations in 2009–2016 did not end positively (Kiin, 15 May 2017). Strikes were called in this period on only two occasions, however, so even in cases where no agreement is reached, strikes are rarely organised.

All in all, during the whole period 2000–2016 there were only four strikes in Estonia: one strike by train drivers in 2004, two by teachers in 2003 and 2012, and one by health care professionals in 2012. In addition, there was one strike organised by EAKL in 2012, which had wider scope and was not preceded by conciliation. This strike aimed to guarantee a balanced budget in unemployment insurance funds to stop the revision of the Employment Contracts Act and to add amendments to the Collective Agreements Act demanded by the trade union confederation. This raised the questions of the legality of strikes and the boundaries of political strikes, which still lack a clear answer.

All strikes have been backed up by support strikes. In addition, there have been many warning strikes, at least eight since 2000. Given the lack of experience with strikes, several fundamental questions and problems remain regarding the right to strike and the relevant regulations (see Blanpain *et al.* 2011; Raidve 2012; Õiguskantsler 2006; Tiraboschi and Tomassetti 2011). Key issues in this respect include the following:

- the total ban on strikes in the civil service;
- the minimum services that have to be guaranteed during a strike are decided by the public conciliator if the bargaining parties disagree, whereas there is no list of companies or services that are considered to satisfy the primary needs of the population and the economy even though it is the obligation of the government;
- the lack of clear regulations for resolving conflicts of interest and legal conflicts;
- the three-day notice period for support strikes while for regular strikes the notice period is two weeks.

Some of these questions were addressed with amendments to the existing regulations on collective labour disputes in 2015, while the proposed act to reform collective agreements and collective labour disputes was not passed. The amendments improved the conditions applying to the right to strike in public services and increased the notification period for support strikes from three to five days.

Scope of agreements

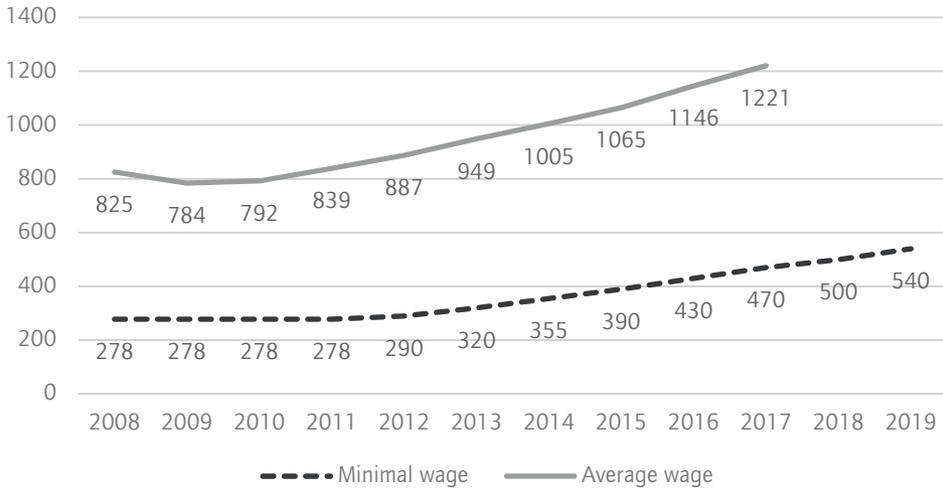
The scope of agreements depends on the bargaining level. National-level agreements concern mainly wages, industry-level agreements primarily wages and working time and company-level agreements deal with a wider range of issues.

The overall scope of the national-level agreements regularly concluded between confederations of unions and employers has been narrowed to the minimum wage, in contrast to the 1990s when more issues, such as minimum after tax income and unemployment benefits, were covered. This might be because in 2000 the Collective Agreements Act was supplemented with a specific regulation that stipulated certain issues which may be extended. This list, however, was rather short, including only wages and working time. Therefore, even if broader social and employment policy matters are discussed and from time to time also included in declarations or agreements, as in the 2008 agreement on the new Employment Contracts Act, they are not defined as collective agreements but part of the wider social dialogue.

Minimum wage developments in Estonia are illustrated in Figure 9.4. The latest research suggests that increases in the minimum wage have influenced the growth of overall wages and the impact is greater on the lower percentiles of the wage distribution (Ferraro *et al.* 2016). Thus, it might be that increasing minimum wages has helped to reduce inequality in the wage distribution. At the same time, in the early 2000s Hinnosaar and Rõõm (2003) found that minimum wage increases reduced the employment of low-wage earners, implying that minimum wage increases may have had negative employment effects.

Extended industry-level agreements also mainly concern wages and working time as these are the conditions that may be extended by law. Reform of collective agreements regulations would have widened the scope for potential extensions with regard to holidays.

Figure 9.4 Minimum and average gross wage per month, 2008–2018 (euros)



Source: Estonian Tax and Customs Board, Statistics Estonia web database, table PA5211.

Company-level agreements in Estonia can be rather extensive and include a wide range of issues. All agreements establish at least some individual working conditions, such as pay, working time and vacation terms; 95 per cent regulate collective labour relations and 86 per cent occupational health and safety conditions (Table 9.3).

Thus, even though there are only a few collective agreements, they still improve employees' working conditions compared with statutory minimum standards.

Degree of control of collective agreements

Degree of control concerns, first, the extent to which collective agreements set terms and conditions, and second, the means and procedures for compliance with a collective agreement. The impact of collective agreements on actual working conditions was touched upon in the previous section. In addition to the level of working conditions the time during which the conditions apply is relevant.

Usually, collective agreements are concluded for a fixed term of one or two years. In 1997–2012, 75 per cent of all agreements were fixed-term agreements, 19 per cent were prolonged automatically and 7 per cent were open-ended (Põldis and Proos 2013: 3). Up to 2012, the termination of a collective agreement was not regulated and the law did not specify grounds for exiting a collective agreement. The conditions of collective agreements that were signed for a fixed period had to be followed even if the agreement expired; only the peace obligation no longer applied. The only possibility to terminate a collective agreement was to conclude a new one. According to the Chancellor of Justice

Table 9.3 Share of active collective agreements regulating different issues (%)

Issues covered by collective agreement	Share of agreements covering the issue	Share of agreements in which conditions are more favourable than required by law
Agreement on individual working conditions	100	96
Agreement on pay conditions	94	80
Agreement on vacation conditions	89	83
Agreement on telework	2	1
Agreement on working and rest time conditions	92	69
Agreement on termination of employment contract	67	49
Agreement on training conditions	73	54
Agreement on additional benefits	33	31
Agreement on individual labour dispute conditions	26	13
Agreement on equal opportunities	5	1
Agreement on other individual working conditions	80	51
Agreement on collective industrial relations	95	84
Employee representatives' rights and obligations	77	59
Free time for representation work	48	6
Representatives' training conditions	29	16
Information and consultation	54	23
Conditions for changing or concluding a new collective agreement	76	37
Benefits for trade union members compared with non-union employees	32	27
Other collective industrial relations conditions	87	59
Workplace health and safety conditions	86	67

Sources: Register of collective agreements as of 10.08.2017.

(Õiguskantsler 2011) this regulation violated the constitution¹¹ and was reformed in 2012 when the grounds for termination of the agreement were written into the Collective Agreements Act.

Without the possibility to terminate a collective agreement, employers are not interested in concluding one with favourable terms for employees. This is because there is no possibility to circumvent the agreement if the economic situation worsens. Obviously, employees have no interest in concluding a new agreement that has less favourable

11. The Chancellor of Justice found that this practice violated the freedom to conclude (collective) contracts at the parties' volition and freedom to conduct a business. Even in a situation in which the parties would like to terminate an existing contract, it is not possible. Only a new collective contract could replace the old one. The continuation of a collective agreement serves the purpose of ensuring stability of working conditions so that termination does not leave a void in the regulation of employees' terms and conditions. However, the Chancellor of Justice found that this purpose might be served with terms that infringe constitutional rights less.

terms than the previous one. The impossibility of terminating agreed conditions without the trade unions' consent has resulted in the persistence of some relatively favourable terms in collective agreements. For example, the Estonian Air agreement with pilots in 2011 included a minimum three-month notification period and two months average pay in case of lay-off, while the Employment Contract Act since 2008 requires only a two-week to a one-month notification period and one month's pay in similar situations. Mineworkers' holidays are set at 48 days a year and for some other occupations and officials it is 35 days per year, while according to the Employment Contract Act it is generally only 28 days.

Given the declining trade union membership, this regulation led to a situation in which some companies had valid collective agreements but the signatory union no longer existed (Centar 2011) and thus there was not even the possibility of signing a new agreement to update the conditions.

Usually, collective agreements are complied with. Only a few disputes have occurred based on the interpretation of agreements. As of 2010, 20 per cent of appeals to the public conciliator had been on the grounds of interpretation (Kallaste and Kraut 2010). Such claims are always raised by employees, not employers, and most were in response to employers' violations of pay conditions laid down in the collective agreement (Kallaste and Kraut 2010). In the case of disputes on implementation parties may also turn to the courts.

The surveillance of employment relations is the task of the Labour Inspectorate (Tööinspektsioon). The latter concentrates mainly on workplace health and safety and compliance inspections with regard to individual employment relations, but they also conduct surveillance on the implementation of collective agreements. Even though the Labour Inspectorate may notify a company that it must implement a collective agreement, it is not seen as an essential channel guaranteeing implementation.

In some cases, the terms of a collective agreement are enforced through state regulation. The national minimum wage is set in this way, even though it is supposed to apply on the basis of the collective agreement concluded at national level. A similar enforcement of minimum wages for teachers by government regulation is also laid down in the law, even if a collective agreement is concluded by the tripartite parties (Basic Schools and Upper Secondary Schools Act, Põhikooli ja gümnaasiumiseadus, PGS, section 76 subsection 2). Thus, in some cases government regulation is used to enforce collective bargaining outcomes.

Conclusions

The Estonian collective bargaining system was almost fully developed by about 2005. Since then collective bargaining and social dialogue have been institutionalised in companies and industries in which it has survived. A major reform of collective bargaining and conflict resolution regulations was abandoned after a change of government in 2014 and only minor revisions have been made. A reform of collective bargaining regulations

was not favoured by the trade unions. Updating the regulations in a form that would gain the support of all the social partners and boost collective bargaining as a necessary democratic instrument in employee management is a challenge.

Even though most trade unions operate and conclude collective agreements at company level there are different practices for industry-level bargaining. In the health sector and public bus transport, strong industry-based unions regularly have negotiated and extended industry-level agreements since the early 2000s.

The main challenges that trade unions face are declining membership and employers' resistance to bargaining. In addition to the difficulties in the private sector, in the public sector the government and local government associations are unwilling to accept the role of employer and refuse to bargain in health care, education or cultural activities. In some cases, however, collective bargaining with the government has been replaced by social dialogue, which has resulted in the regulation or imposition of minimum wages.

There is also a striking polarisation in collective bargaining: industries and sectors that have strong trade unions have institutionalised bargaining and agreements have substantial influence on working conditions. National-level minimum wage bargaining and collective bargaining have been institutionalised in industries such as health care and transport, while in other sectors and at company level collective bargaining is waning. In industries in which union membership is on the decline, there is no bargaining and it is very difficult to establish it; for example, in the financial industry.

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All links were checked on 3 April 2019.

Abbreviations

AÜS	Trade Unions Act (Ametiühingute seadus)
EAKL	Estonian Confederation of Trade Unions (Eesti Ametiühingute Keskliit)
EAL	Estonian Doctors' Union (Eesti Arstide Liit)
EEAÜL	Association of Estonian Energy Workers' Unions (Eesti Energeetikatöötajate Ametiühingute Liit)
EETEAL	Estonian Association of Performing Arts Institutions (Eesti Etendusasutuste Liit)
EHL	Estonian Education Personnel Union (Eesti Haridustöötajate Liit)
EKTK	Estonian Chamber of Commerce and Industry (Eesti Kaubandus-Tööstuskoda)
ENL	Estonian Actors' Union (Eesti Näitlejate Liit)
ETK	Estonian Employers' Confederation (Eesti Tööandjate Keskliit)
ETTAL	Federation of Estonian Healthcare Professionals Union (Eesti Tervishoiutöötajate Ametiühingute Liit)
EVEA	Association of Small and Medium Sized Companies (Eesti Väike- ja Keskmise Suurusega Ettevõtjate Assotsiatsioon)
EÕL	Estonian Nurses' Union (Eesti Õdede Liit)
KLS	Collective Agreements Act (Kollektiivlepingu seadus)
KLTS	Collective Labour Dispute Resolution Act (Kollektiivse töötüli lahendamise seadus)
LFS	Labour Force Survey
PGS	Basic Schools and Upper Secondary Schools Act (Põhikooli ja gümnaasiumiseadus)
TALO	Estonian Employees' Unions' Confederation (Teenistujate Ametiliitude Organisatsioon)
TLS	Employment Contracts Act (Töölepingu seadus)
TUIS	Employees' Trustee Act (Töötajate usaldusisiku seadus)