

# Use and scope of derogations and opt-out

The detailed description of the building blocks of collective bargaining mainly relies on information provided by the responses to the policy questionnaires that were sent to Labour Ministries, employer organisations and trade unions in 2016. The information reported in the questionnaires represents the situation in **December 2015**.

The focus is on collective bargaining practices in the **private sector**. Unless otherwise stated, the information refers to the **entire economy** (but the actual application and use of certain instruments may differ across sectors). In the case of institutional differences across sectors, the answers focus on what is applicable in the agreement that prevails for the manufacturing sector (in case of differences within the manufacturing sector, for the metal workers).

All OECD and accession countries have filled in the questionnaire. Canada has sent detailed answers for the Federal level and the four biggest provinces (Alberta, British Columbia, Ontario and Québec). The information collected via the policy questionnaires has been complemented and cross-checked with existing data sources (in particular using data from ICTWSS, Eurofound, European Commission, ILO and various individual- and firm-level surveys and administrative data) and the relevant research literature.

The detailed description of the building blocks of collective bargaining could not have been prepared without the tireless co-operation of the Labour and Employment Ministry staff in OECD and accession countries as well as of the staff of many national employer associations and unions in completing the policy questionnaires on collective bargaining that underpin the analysis. The work has also benefitted from helpful discussions and suggestions from the participants at two OECD experts meetings on collective bargaining. The views expressed here cannot be attributed to any of the people, organisations and governments that helped the Secretariat during the research and drafting process.

	Derogations from the law	Derogations from collective agreements				
		Scope	Topics	Rationale	Criteria	Other
<b>OECD countries</b>						
Australia	Possible via making of enterprise agreement, but independent statutory agency determines if workers are “better off overall” at time of agreement approval.	No	-	-	-	-
Austria	Possible to favour agreements between SP on individual dismissal and working time.	General opening clauses can be foreseen in sector-level agreements.	Wages and working time.	Defensive and offensive measure.	An agreement with the WC is necessary.	none
Belgium	No	General opening clauses and temporary opt-out can be foreseen in sector-level agreements. They are exceptional.	Wages	Set by the higher level agreement.	Criteria are set in the higher-level agreement. They are based on a bilateral request and subject to the consent/approval of SP at the sector/peak level.	-
Estonia	Possible to favour agreements between SP on working time upon bilateral request.	No	-	-	-	-
Finland	Possible at sectoral level to favour agreements between SP for example on working time and re-employment law upon bilateral request.	Not in the law and not usually foreseen by sector-level agreement (but there are opening clauses in the metal sector).	e.g. Temporary employment, working time.	-	If the sector-level agreement grants the possibility to derogate, an agreement with workers' representative (shop stewards) is requested.	-

	Derogations from the law	Derogations from collective agreements				
		Scope	Topics	Rationale	Criteria	Other
France	Not in general (only if this is explicitly stated by the law).	General opening clauses and opt-out are granted by the law and/or foreseen by sector-level agreements. Opt-out are exceptional.	General opening clauses allow derogate on working time. Opt-out on wages and working time.	<ul style="list-style-type: none"> <li>General opening clauses: adapt norms to local realities.</li> <li>Opt-out: defensive measure.</li> </ul>	<ul style="list-style-type: none"> <li>General agreement with the TUs based on clearly <i>ex ante</i> criteria (the law explicitly forbid derogations on some topics).</li> <li>Opt-out: no clear criteria, evaluation case by case: need an agreements with TUs with &gt;50% votes. If no agreement with TUs, with an organisation in the branch or with employees clearly mandated if a vote approves it.</li> </ul>	Opt-out is granted on the condition of keeping employment constant.
Germany	Possible to favour agreements between SP on individual dismissal (length of dismissal notice periods), temporary agency work (maximum hiring-out period) and working time.	General opening clauses and opt-out can be foreseen in sector-level agreements.	Mainly wages, working time and temporary agency work. The collective bargaining parties may also allow derogations in other topics.	Defensive and offensive measure	Clearly defined criteria (by law or SP), for example in case of economic difficulties.	-
Greece	No	General opening clauses are granted by the law (firm-level agreements take precedence over sectoral or occupational agreements even when less favourable and firm-level agreements can be signed also by "associations of persons" not only TUs).	Wages	Defensive and offensive measure	Firm-level agreement and case-by-case assessment by SP at sector/peak level.	Lower wages should be compensated with increase in other standards.
Hungary	Possible to favour agreements by SP on part-time employment, derogation from the employment contract, employees' liability for inventory shortage upon bilateral request.	Derogations covering both general opening clauses can be foreseen by higher-level agreements.	-	-	-	-

	Derogations from the law	Derogations from collective agreements				
		Scope	Topics	Rationale	Criteria	Other
Iceland	No	Derogations can be foreseen in sector-level agreements.				
Ireland	No	Opt-out in the form of inability-to-pay clauses for specific agreements.	-	Defensive measure.	-	-
Japan	Possible to derogate on working time, wages, breaks, leave upon the conclusion a labour-management agreement upon bilateral request.	No	-	-	-	-
Netherlands	Possible to derogate from temporary work regulation to favour agreement between SP (upon request).	Derogations including general opening clauses and opt-out are granted by law and can be foreseen by higher-level agreements.	Full agreement.	Avoid one-size- fit-all: opt-out derogations contribute to maintain high support for extensions of CA.	Unilateral request by the employer based on clearly ex ante criteria, subject to approval by SP.	
Norway	Possible to derogate upon an agreement. Conditions depend on the issue, e.g. in some cases derogations are allowed only with agreements signed by national TUs, in other cases by the employees' elected representatives.	No	-	-	-	-
Poland	No	Opt-out	Entire agreement or parts of it.	Defensive measure.	In case of financial difficulties of the employer the parties may suspend the application of a CA or parts of it.	-
Portugal	No	Opt-out clauses are granted by law.	Wages and working time.	Defensive and offensive measure.	There are no clearly defined criteria; derogations are set by agreement between signatory parties.	

	Derogations from the law	Derogations from collective agreements				
		Scope	Topics	Rationale	Criteria	Other
Slovenia	Possible to favour agreements between SP on some topics related to employment protection legislation, overtime work, particular working time arrangements, sanctions, bonuses.	-	-	-	-	-
Spain	No	General opening clauses and temporary opt-out are granted by the law.	Wage and working time.	Defensive and offensive measure.	<ul style="list-style-type: none"> <li>• General opening clause: with a firm-level agreement. Workers have to vote in favour.</li> <li>• Opt-out: upon clearly ex ante defined criteria for economic difficulty with an agreement at firm-level with workers' representatives or in the absence of an agreement recurring to the arbitration of a public tripartite body.</li> </ul>	No
Sweden	Possible to favour agreement with SP on collective dismissals, temporary work, working time (at firm-level it is based on the approval of TUs and central EOs).	No	-	-	-	-
Switzerland (only for manufacturing)	No	Temporary opt-out in case of economic difficulties can be foreseen in sector-level agreements.	Working time (and as a consequence reduction in wages).	Defensive and offensive measure.	Based on an agreement with firm-level TUs and with WC and subject to a vote by employees.	
OECD accession countries						
Lithuania	No	Derogations including general opening clauses and opt-out are granted by law.	-	-	No criteria and no agreement at firm-level required.	-

..: Information not available; -: Not applicable; CA: Collective Agreement; EO: Employer Organisation; SP: Social Partners; TU: Trade Union; WC: Work Council.

*Note:* Derogations from the law do not exist in Canada, Chile, Colombia, Costa Rica, the Czech Republic, Denmark, Israel, Italy, Korea, Latvia, Luxembourg, Mexico, New Zealand, the Slovak Republic, Turkey, the United Kingdom and the United States. Derogations/opt-out from higher level agreements not applicable in Australia, Colombia, Costa Rica, Japan, Korea, Mexico, New Zealand and the United States.

Derogations from the law and/or from higher-level agreements: opening or derogation clauses which allow to set lower standards, i.e. less favourable conditions for workers, in a generalised way and not specifically related to economic difficulties (in this latter case see "opt-out clause"). Retroactivity: extension of the provisions of a newly signed agreement to a period before its actual signature or extension (usually to the period between the expiration of the previous agreement and the entry into force of the new one). Usually it implies the payment of arrears corresponding to the increase in negotiated wages.

Opt-out clause: temporary "inability to pay" clauses allow the suspension or renegotiation of (part of) the agreement in cases of economic hardship.

Source: OECD Policy Questionnaires.

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