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# **Industrial action in Europe: What employers need to know now**

Wednesday, 7 December 2022

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# Speakers



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# Industrial action on the rise

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Wage Increases, Labor  
Strikes May Eat Into  
European Corporate Profits

(November 2022)

**Bloomberg**

“

Energy crisis and inflation  
drives UK workers to  
industrial action

(September 2022)

**Reuters**

“

Thousands strike in France  
for higher wages

(October 2022)

**Le Monde**

“

Strikes Roll Across Europe  
as Unions Push for Higher  
Wages to Offset Inflation

(July 2022)

**WSJ**

“

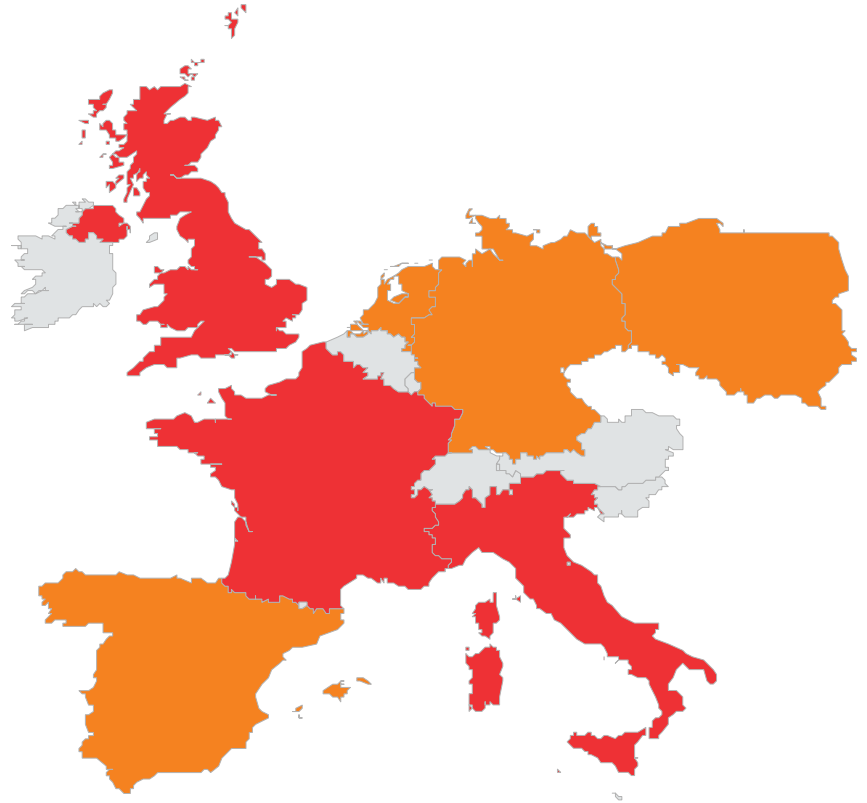
Germany's Biggest Union  
Starts Warning Strikes Over  
Wage Demands

(October 2022)

**Bloomberg**

# On what grounds can a union call industrial action?

- Minor limitations on ability to call industrial action
- Specific but narrow limitations on ability to call industrial action
- Strict limitations on ability to call industrial action



# On what grounds can a union call industrial action?



In most jurisdictions the grounds on which a union can call for industrial action are limited in some way.



However those grounds are broad where they do exist (e.g., in the UK limited to a "trade dispute" or in France a "professional claim" and in the Netherlands to a dispute between an employer and part of the workforce which can be resolved through collective bargaining and which concerns terms and conditions of employment).



In Spain and Germany there is greater scope to challenge industrial action on the basis that it is being called for an unlawful reason.



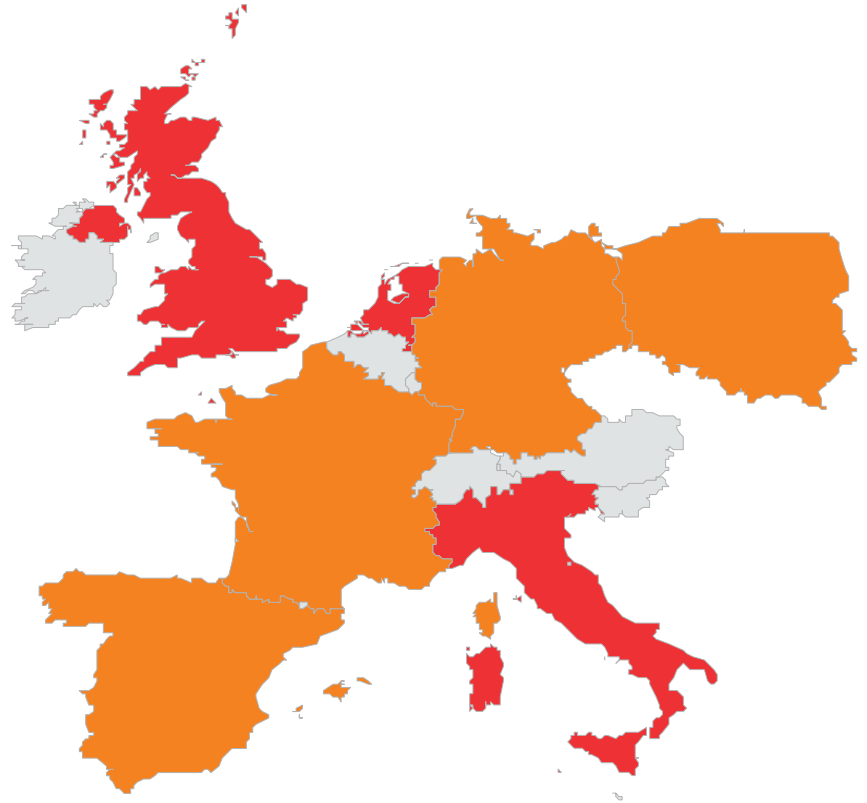
For example:

- In Spain, Poland and the Netherlands, political strikes are restricted;
- In Spain and Germany, when the purpose is to alter what has been agreed in a collective bargaining agreement whilst the agreement is still valid.



# What types of lawful industrial action are common?

- Strike action and action short of a strike such as go-slow or work-to-rule
- Strike action only
- Only action short of a strike



# What types of lawful industrial action are common?



In all jurisdictions strike action is lawful but there are restrictions in law or practice which vary in relation to action short of a strike.



In France, Germany, Spain and Poland almost all industrial action will consist of strike action.






In the UK, Italy and the Netherlands forms of industrial action are more varied and may or may not be lawful depending on the circumstances. For example:

- In the UK overtime bans and work-to-rule are very common but it is not lawful to prevent goods or services from being supplied other than through withdrawing labour;
- In Italy it is more common for employees to consider blocking goods from leaving the warehouse although there are some restrictions on this;
- In the Netherlands, collective action increasingly takes place through go-slow actions.





# Procedural requirements

-  No notice requirements
-  Some notice requirement but non-specific
-  Strict and specific notice requirements



# What notice and procedural requirements must be complied with?



Italy and France are high risk for employers due to lack of notice and procedural requirements.



In Germany a ballot is required and notice must be given but there is no specific timeframe for doing this.



In the Netherlands, there is no specific notice requirement but whether (sufficient) notice is given is part of the court's assessment of the lawfulness of the collective action.

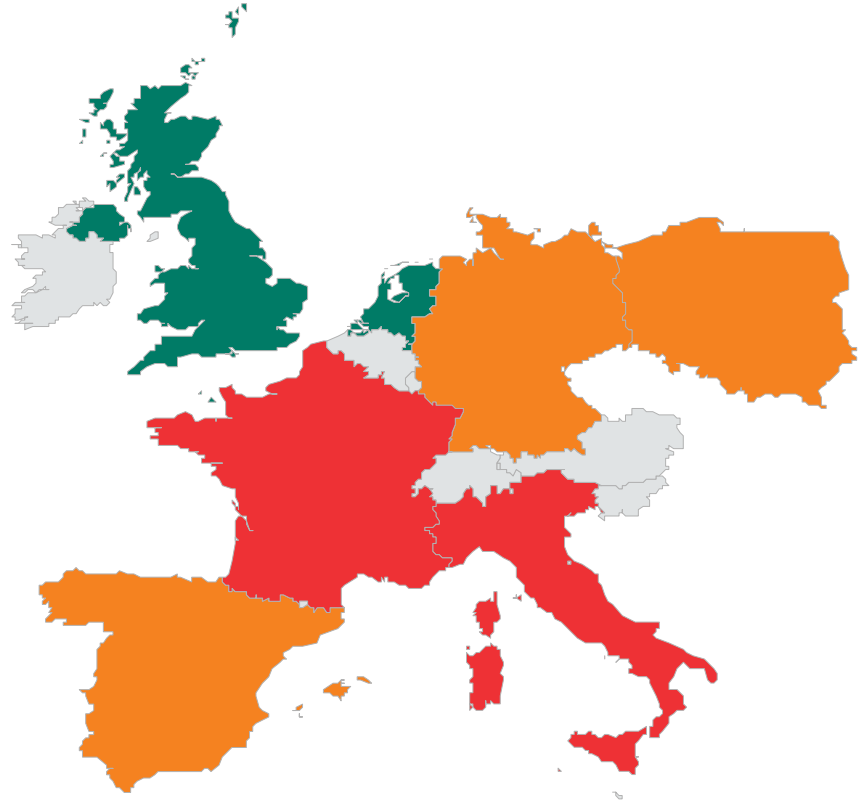


In the UK, Poland and Spain there are detailed notice and ballot requirements.



# Can you take out an injunction to stop industrial action from taking place?

- Theoretically possible but highly unlikely in practice
- Practically effective but limited grounds
- Practically effective and broad grounds



# Can you take out an injunction to stop industrial action from taking place?



In all jurisdictions injunction is a theoretical remedy which would prevent industrial action from taking place if it is unlawful.



However, in France, because there are so few grounds on which industrial action would be unlawful there is very limited practical value to this strategy.






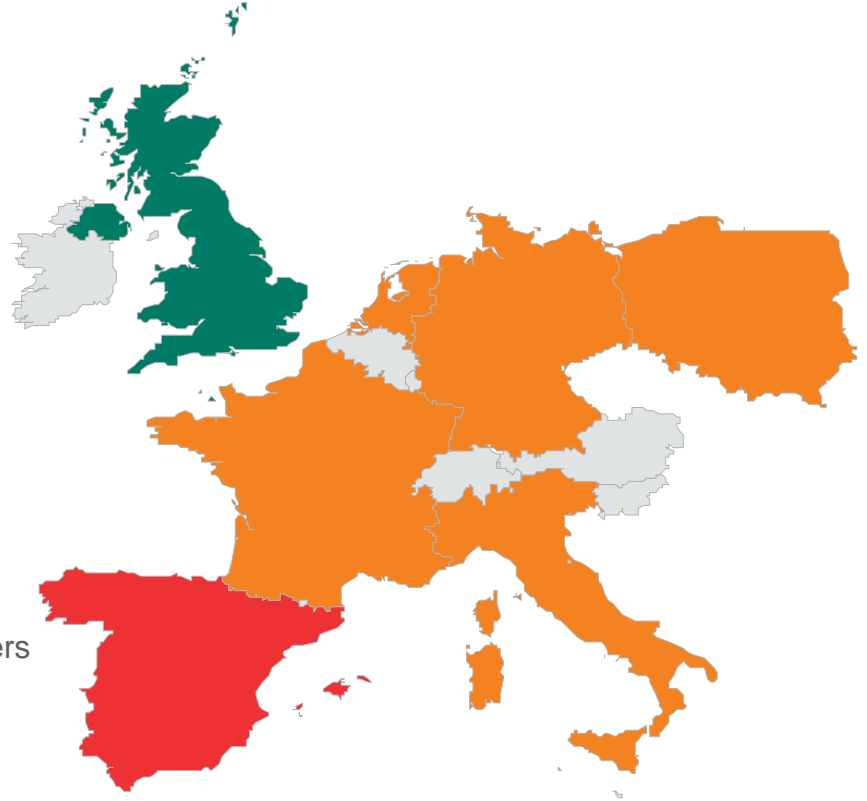
In the remaining jurisdictions injunctions are an effective strategy to consider but there are relatively strict limitations on the ability to pursue one. For example:

- In Italy, only a blockage of goods or an occupation of the premises can be restrained;
- In Germany, Spain and the UK, injunctions are normally limited to circumstances where the procedural requirements have not been met;
- In Poland, injunctions are granted where the grounds of industrial action were unlawful or the procedural requirements have not been met.
- In the Netherlands, the court weighs all circumstances including the damage caused by the action to the interests of the employer or third parties (such as the general public).



# Contingency planning 1 – Options to keep the business running

-  Not possible to use other workers to cover striking workers
-  Limited options for cover of striking workers
-  Multiple possible options for cover of striking workers



# Contingency planning 1 – Options to keep the business running



In most countries, it is possible to use workers from other parts of the business to cover workers who are on strike.



There has been a recent change in the law in the UK which makes it possible for employers to use other workers (including agency workers) to cover periods of strike.



It is also possible to use third party or temporary workers to cover strike periods in Germany. However temporary workers have a right to refuse the work.



In Spain, it is not possible to use either internal or external workers to cover workers on strike.

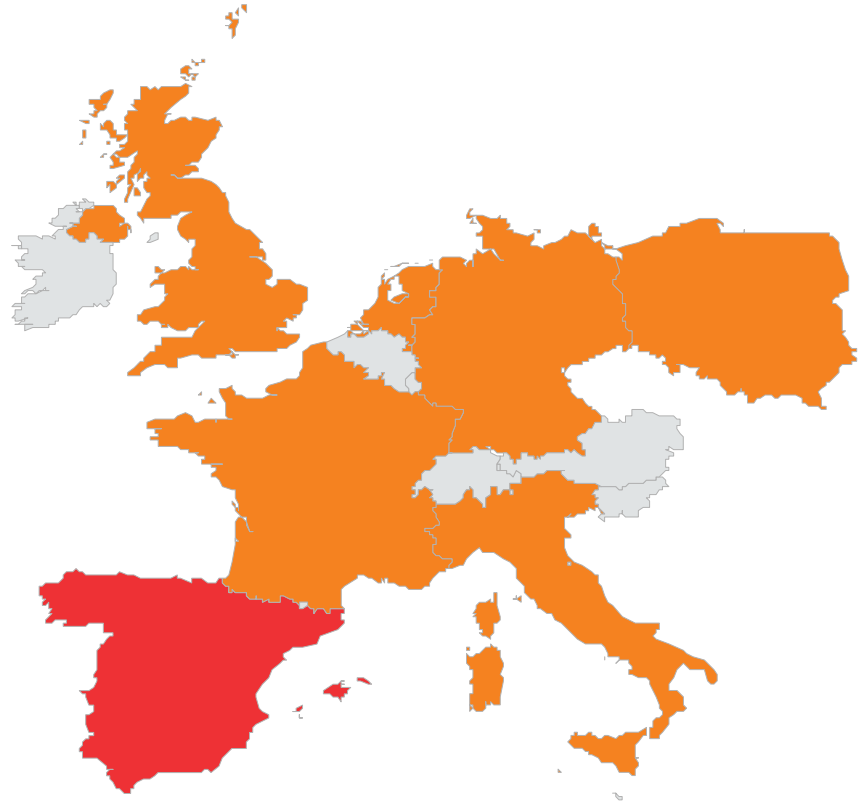


In Poland, it is possible to use workers from other parts of the business, but it is not possible to use temporary workers. The same applies for the Netherlands although there have been instances where employers have circumvented the prohibition by engaging independent contractors. It is still to be decided in case law whether this is permitted.



# Contingency planning 2 – Options to deal with demonstrations /picketing

- Very difficult to prevent demonstrations
- Employer can intervene in limited circumstances
- Demonstrations/picketing prohibited



# Contingency planning 2 – How to deal with demonstrations/picketing



Picketing/demonstrations are generally permitted in all countries.



In France, Italy, Germany, the UK and the Netherlands injunctions are possible to prevent unlawful picketing/demonstrations.



In Germany and Italy it is possible to inform the police and the state prosecutor of unlawful picketing/demonstrations. In the Netherlands, the mayor of a municipality ultimately decides on the lawfulness.



In Spain, whilst picketing/participating in a demonstration is a limited right, strikers have a right to publicity and this is frequently used to block workplace entrances or industrial sites.






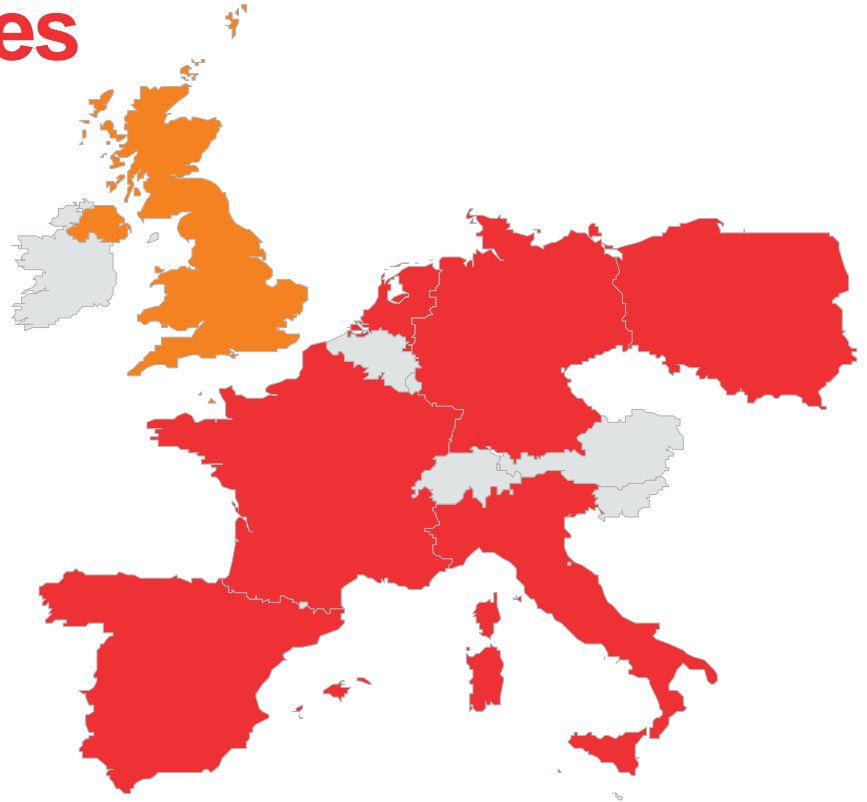
In Poland, picketing/demonstrations are not permitted if they threaten proper operation of the workplace or threaten people's life or health.





# Contingency planning 3 – Sanctions for employees

-  Possible to dock pay but can't dismiss or subject to any other detriment
-  Possible to dock pay, not possible to dismiss but can subject to other detriment
-  All sanctions available



# Contingency planning 3 – Sanctions for employees



In all jurisdictions it is unlawful to dismiss somebody for taking part in industrial action (save in limited circumstances in the UK).



In all jurisdictions it is permitted to remove salary and (certain) benefits for the period of the industrial action.




In Germany and the UK it is possible to pay premiums to employees who do not strike.



In the UK it is lawful to subject somebody to a detriment short of dismissal such as removing discretionary benefits permanently even if the reason for doing so is because of participation in industrial action.

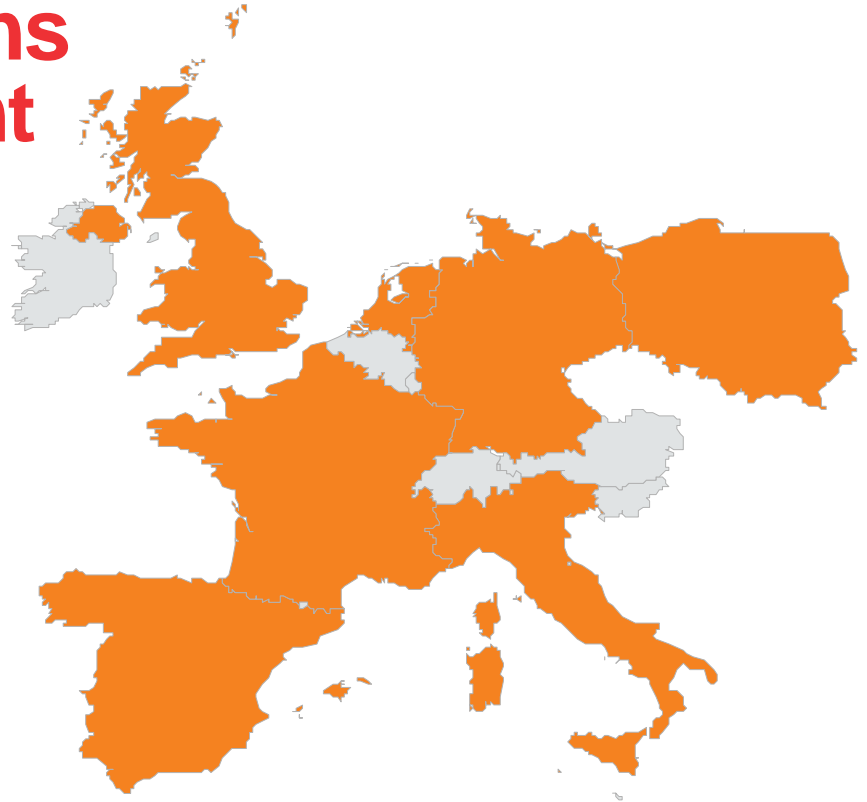


# Are there other effective remedies against unions who call and implement unlawful action?

 Theoretically possible but highly unlikely in practice

 Yes remedies available but limited grounds

 Yes remedies available on broad grounds



# Are there other effective remedies against unions who call and implement unlawful action?



In all jurisdictions claims for damages are available for unlawful action.



In France, there is limited practical value in trying to obtain remedies from unions calling for a strike. However, if an unlawful strike is implemented it is possible to obtain an injunction to stop the strike and request damages.



In the UK, damages are capped at £1 million.



In Italy, the employer can apply to the state prosecutor to determine whether the workers have committed a criminal offence during the industrial action.



In the Netherlands, damages incurred as a result of a lawful collective action must be tolerated. In case of unlawful action, the employer can seek damages from the organizer(s) of the action.





**Questions**

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