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The meaning of extension for the stability of collective bargaining in Europe

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Policy recommendations

If collective bargaining is to continue to be a distinctive feature of European labour market regulation and to contribute to a more equal distribution of income, as well as to more inclusive growth, many European countries need to reconstruct their bargaining systems in order to make sure that a majority of workers will again be covered by collective agreements. Such reconstruction would not be organised by trade unions and employers' associations alone but would also need the support of the state. Therefore, instead of supporting its abolition, the European Union should actively promote administrative extension in order to strengthen collective bargaining all over Europe.

Introduction¹

Nearly two-thirds of all employees in the European Union fall within the scope of a collective agreement. This makes Europe's collective bargaining coverage higher than in any other region of the world (European Commission 2015). High bargaining coverage has various social and economic advantages (Hayter 2015, Visser 2016). First of all, it contributes to a more equal distribution of wages and income, as it is widely accepted in the economic and industrial relations literature that collective bargaining tends to compress wage differentials, while lower coverage usually corresponds to a much higher level of wage inequality. Moreover, high bargaining coverage is a necessary institutional precondition for macroeconomic coordination of wage policy with other economic policies in order to promote sustainable and inclusive growth. Especially under the current economic conditions in Europe, the coordination of wage-setting needs to be a decisive factor for achieving price stability and to avoid a deflationary spiral.

Within Europe, however, the dissemination of collective bargaining shows huge differences and some countries are affected by an ongoing decline of their bargaining coverage. Therefore, it is important to ask about the possibilities of stabilising and strengthening collective bargaining.

The main reason for the relatively high collective bargaining coverage in many European countries is the predominance of

multi-employer bargaining. There is a clear-cut relationship between the level and the coverage of collective bargaining, as countries in which multi-employer bargaining predominates have, in general, much higher bargaining coverage than countries dominated by company bargaining (Visser 2016).

The spread of multi-employer bargaining depends mainly on two factors. The first is the existence of strong and encompassing bargaining parties that are able to guarantee a certain bargaining coverage through their own organisational strength. During the past two decades, however, there has been a decline in union density within almost all European states, leading to a significant weakening of labour's bargaining power. Against that background, it is all the more astonishing that the spread of multi-employer collective bargaining and bargaining coverage have remained particularly stable in many European countries. The second factor that determines the spread and stability of multi-employer bargaining systems is the existence of supporting government policies, such as the extension of collective agreements.

¹ This is an updated and shortened version of a longer paper (Schulten *et al.* 2015).

The concept of extension

The coverage of collective agreements can be broadened by extending their applicability to workers and enterprises that are not organised within one of the contracting parties. There are basically two approaches. First, there is the extension of bargaining coverage to non-organised workers in organised enterprises. In order to prevent companies bound by collective agreements from sidestepping this coverage by taking on non-organised employees, most European countries have a legal *erga omnes* provision for such cases. This means that collective agreement provisions in enterprises bound by those provisions are also applicable to their non-organised employees. The second approach is the extension of agreement coverage to unorganised enterprises. Here, the usually preferred means is a *declaration of general applicability*, through which the state, by a legislative act of its own, extends the scope of the collective agreement beyond those companies that are direct members of the contracting party.

The major function of extension is to establish a level-playing field for a certain sector or area and to deprive individual enterprises of the opportunity to secure competitive advantage by undercutting collectively bargained standards. This is a substantial contribution to the stability of a multi-employer bargaining system, inasmuch as competition from outsiders tends to undermine the cartel function of collective agreements and can, once it becomes sufficiently widespread, exert such great pressure that the very existence of the collective agreement may be called into question

The use of extension in Europe

Of the 30 European countries considered below (all 28 EU states plus Norway and Switzerland) only six have no legal requirements for administrative extension of collective agreements (see Table 1). These are, in addition to the special case of Cyprus, the Nordic

countries Denmark and Sweden and two countries that have an Anglo-Saxon industrial relations tradition, the United Kingdom and Malta. There is also no legal procedure for administrative extension in Italy. Due to Article 36 of the Italian constitution, however, every worker has the right to a 'fair remuneration', which in case of dispute Italian labour courts usually define as the remuneration laid down in the relevant collective agreement. This system might be interpreted as a more indirect form or a functional equivalent of extension.

The great majority (24) of the 30 European states considered here have legal requirements for the extension of collective agreements. The use of administrative extension in practice, however, differs widely. One can distinguish three groups of countries in which extension is used 'frequently', 'limited' or 'rarely'. In countries with 'frequent' use of extension, the majority of all sectoral or national agreements are regularly declared to be generally applicable. The countries in this group are the Benelux states, France, Spain and Finland. Until recently the group also included Greece, Portugal and Romania, but they have experienced an extreme reduction in the number of extensions after some fundamental changes in the legal requirements. To these should be added Austria and Italy, which both have functional equivalents in accordance with which most collective agreements are de facto universally applicable. In Austria most sectoral collective agreements are signed on the employers' side by economic chambers, which have compulsory membership so that all companies are covered by the agreements. A similar Chamber system existed also in Slovenia, but compulsory membership was abolished in 2008.

There is a second group of countries with a 'limited' use of extension. Here extension is limited to a small number of sectors, in particular in more labour-intensive and domestic-oriented branches with a high number of small and medium-sized companies (for example, construction). The countries belonging to this group are Germany, Switzerland, Ireland, Norway and (more recently

Table 1 Use of extension of collective agreements in Europe

| | |
|--|---|
| <p>Frequently The majority of sectoral agreements are generally applicable</p> | Belgium, Finland, France, Luxembourg, Netherlands, Spain (Greece, Portugal and Romania until 2011) |
| <p>Limited Only a limited number of sectors have agreements that are generally applicable</p> | Austria,* Bulgaria, Croatia, Czech Republic, Germany, Norway, Ireland, Slovakia, Slovenia, Switzerland (Portugal since 2012 and Slovenija since 2010) |
| <p>Rarely Agreements that are generally applicable are very rare</p> | Estonia, Hungary, Latvia, Lithuania, Poland (Romania since 2012) |
| <p>Functional equivalents Most sectoral agreements are de facto generally applicable</p> | Austria, Italy (Slovenia until 2009) |
| <p>No legal requirements for extension</p> | Cyprus, Denmark, Italy,** Malta, Sweden, United Kingdom (Greece: suspension of the mechanism of extension for sectoral agreements since 2012) |

Notes:

* Only in sectors and professions that are not members of the Austrian Economic Chamber.

** No legal provisions for extension, but indirect forms of extensions through established practice of labour court judgements (functional equivalent).

Sources: Schulten et al. 2015.

also) Portugal, as well as a few eastern European countries such as Bulgaria, Croatia, the Czech Republic, Slovakia and Slovenia. Finally, there is a third group of countries in which the legal possibility for extension is 'rarely' used in practice, so that an extended collective agreement is exceptional. This group contains the Baltic States, Poland and Hungary, as well as more recently also Greece and Romania.

Preconditions and procedures for the use of extension

The extension of collective agreements is generally subject to a whole series of preconditions, which may either impede or facilitate their spread (see Table 2). Most countries have certain requirements, regarding the representativeness of the collective agreement that is to be declared generally applicable. In principle, there are two basic variants of representativeness: one relies on collective bargaining coverage and the other is based on the importance of the trade unions and employers' associations that concluded the agreements.

In the first group of countries, in which the representativeness requirement is determined by bargaining coverage, are Finland, the Netherlands, Portugal, Slovenia and Switzerland. In these countries, an agreement can be extended only if it already covers a certain number of employees. Often the necessary coverage level is set at 50 per cent of all the employees in workplaces covered by the agreement, regardless of union membership. In the case of the Netherlands extension requires a 'meaningful majority' of workers covered, which in practice is usually interpreted as coverage of between 55 and 60 per cent. In the case of Portugal the coverage level introduced in 2012 was set at 50 per cent, but in 2014 the government created the possibility to bypass this restrictive criterion by introducing an alternative one: employers' associations that have at least 30 per cent SMEs in their ranks do not need to reach the 50 per cent threshold. In contrast, a recent reform of the Collective Bargaining Act in Germany abolished the former 50 per cent coverage level and replaced it by a more open provision according to which the agreement should have a 'predominant importance'. The latter was intended to give the parties involved more flexibility to declare collective agreements universally binding.

Table 2 Requirements and procedures for the extension of collective agreements in selected European countries

| | Requirements | Application | Decision |
|-----------------------|---|--|---|
| Belgium | Representativeness of the bargaining parties | One or both parties to the agreement | Ministry of Labour |
| Bulgaria | Representativeness of the bargaining parties | Joint request of both bargaining parties | Ministry of Labour |
| Croatia | Public interest | One or both parties to the agreement | Ministry of Labour after consultation with the Tripartite Commission of the Economic and Social Council |
| Czech Republic | Representativeness of the bargaining parties | Joint request of both bargaining parties | Ministry of Labour |
| France | Representativeness of the bargaining parties | One or both parties to the agreement, or the state | Ministry of Labour after consultation with the National Collective Bargaining Commission |
| Finland | Representativeness of the agreement to be proved by at least one of the following criteria: 1. 50% bargaining coverage of all employees 2. high organisational density of both bargaining parties 3. established bargaining practice in a sector | No application needed/ automatically checked | Independent commission appointed by the state |
| Germany | Public interest Agreements should have a 'predominant importance' | Joint request of both bargaining parties | Ministry of Labour after approval by the Collective Bargaining Committee |
| Netherlands | 'Sufficient' bargaining coverage of all employees (55–60%) | One or both parties to the agreement | Ministry of Labour |

| | | | |
|--------------------|---|---|---|
| Norway | Documentation of migrant workers performing work under conditions below the collectively agreed standards | One or both parties to the agreement | Independent commission appointed by the state (one each from employers and trade unions plus three independent members) |
| Portugal | 50% bargaining coverage of all employees (30% if the majority of companies are SMEs) | One or both parties to the agreement | Ministry of Labour |
| Romania | 50% bargaining coverage of all employees | Joint request of both bargaining parties | Ministry of Labour |
| Spain | Representativeness of the bargaining parties | No application/decision needed, as the representative collective agreement automatically becomes applicable, without further checking, to all enterprises within the bargaining area defined (sector/region). | |
| Slovakia | Exclusion of companies: – with fewer than 20 employees, – with more than 10% disabled workers, – which have been operating for a period shorter than 24 months | One or both parties to the agreement | Ministry of Labour after consultation with a Tripartite Advisory Committee |
| Slovenia | 50% bargaining coverage of all employees | One or both parties to the agreement | Ministry of Labour |
| Switzerland | 50% bargaining coverage of all employees and employers 50% bargaining coverage of all employees (in some sectors with a high number of migrant workers) | Joint application by both parties to the agreement Tripartite commission | Federal Council/ Canton Tripartite commission |

Sources: Schulten *et al.* 2015

A more flexible regulation exists in Finland, which also has the 50 per cent coverage level as one criteria, but adds, as additional criteria, the organisational importance of the contracting parties and the importance of the agreement in the past. This leaves some room for discretion, so that in certain cases agreements with less than 50 per cent coverage can be declared generally applicable. Finally, the most restrictive regulation could be found in Switzerland, which even has a double threshold, requiring that at least half of all employees and employers are covered. However, in recent years some sectors have been particularly affected by labour migration, for which the requirements for extension have been relaxed; in these cases, only the agreement's coverage of employees is taken into account.

In a second group of countries – for example, Belgium, France, Spain and many Eastern European states – it is not the particular collective agreement but the importance of the parties signing it that is decisive in determining its representativeness. If the trade unions and employers' associations involved are defined as representative the agreement can be extended irrespective of its individual bargaining coverage. Consequently, no minimum coverage is required in order to extend a collective agreement. The idea behind this is that employers' organisations and trade unions not only represent the immediate interests of their members but also perform an important regulatory function for society as a whole. The criteria on the basis of which an organisation is deemed to be representative differ from country to country.

On the trade union side, for example, the representativeness criteria often include union density and/or the election results for representative bodies at company level (for example, in France or Spain). Sometimes representativeness is also determined in relative terms, so that only the largest trade union and employers' association in the respective area is seen as representative. In the Czech Republic, for example, only collective agreements concluded by the largest organisations can be extended.

Apart from the issue of representativeness, some countries have further requirements for the extension of collective agreements. In Croatia and Germany, for example, there is a vague provision that the extension has to be 'in the public interest'. In Norway, before the extension of an agreement it has to be proved that foreign workers are not receiving the collectively agreed conditions. This reflects the origin of the Norwegian regulations, which were introduced as an instrument to avoid social dumping as the result of growing labour migration. Finally, some countries have explicitly excluded particular groups of companies from extension. In Slovakia, for example, collective agreements cannot be extended to small and newly-established companies with fewer than 20 employees or operations shorter than 24 months.²

² In March 2016 the Slovak Constitutional Court declared the current provisions on extension as 'unconstitutional, so that the Slovak government has to revise the current legal framework.

To launch an extension procedure, most countries require an explicit application from one or both of the contracting parties. In France, the application for an extension can also be made by the state. No application is needed in Finland where all sectoral agreements are automatically checked to determine whether or not they should be extended. The same holds true for Spain, which has an *erga omnes* provision according to which all collective agreements are automatically extended to non-organised workplaces in the respective bargaining area, without any special legislative act. A similar arrangement existed in Romania until the *erga omnes* regulation was abolished with the Labour Law revision of 2011.

In most countries the final decision on the extension of a collective agreement is taken by the Ministry of Labour, often after consultation with trade unions and employers' associations. In Germany, the decision has to be approved by a majority of the national Collective Bargaining Committee, which is composed of representatives of the peak-level trade unions and employers' organisations on a parity basis. Consequently, both parties have a *de facto* veto power to block an extension. Finally, in Finland and Norway it is not the Ministry of Labour but an independent commission that decides on extension.

All in all, the requirements and procedures for the extension of collective agreements also influence the frequency of its use in practice. Most countries with frequent use of extension prescribe the representativeness of bargaining parties as the major legal criterion and not a bargaining coverage level, which seem to be a somewhat higher hurdle. The major exception is the Netherlands, which has a high number of extensions despite a relatively high bargaining level. Behind the Dutch story stands a high degree of acceptance and support for extension procedures among both trade unions and employers' associations. Support from both

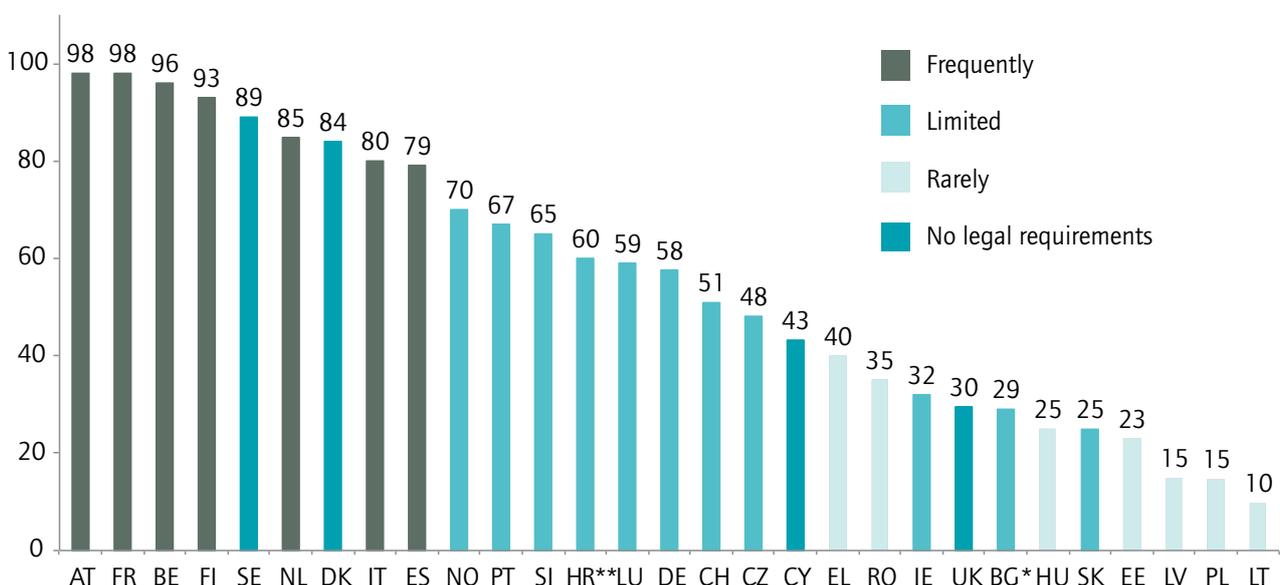
parties is also a major precondition for frequent use of extension in other countries. However, under certain circumstances stricter rules for extension can also lead to a significant decline, as shown more recently by the example of Portugal.

The importance of extension for collective bargaining coverage

As already argued by Traxler *et al.* (2001, 194ff.) in many European countries state support is the most important variable explaining high bargaining coverage. The most important instrument here is the administrative extension of collective agreements, which makes them applicable beyond the immediate contracting parties, covering all workplaces and workers in a certain area and/or sector. The agreement's reach can thus be significantly increased and the collective bargaining system as a whole can be supported.

The importance of extension for the scope of collective bargaining systems in Europe may be seen primarily when its use is compared with collective agreement coverage in the different European states. At first sight, collective bargaining coverage varies widely across Europe, ranging from 98 per cent in Austria and France to 10 per cent in Lithuania (see Figure 1). The countries with a very high coverage of 80 per cent or more are mainly states with frequent use of administrative extension or functional equivalents. The only exceptions are Denmark and Sweden, where high coverage is achieved without any extension purely through the organisational strength of the contracting parties. On the other hand, the group with low agreement coverage of 50 per cent or less is composed mostly of countries with limited or rarely use of extensions or – as in the case of the United Kingdom – the lack of legal requirements for any form of extension.

Figure 1 Collective bargaining coverage and the use of extension or functional equivalents, 2013 (employees covered by a collective agreement as a percentage of all employees entitled to collective bargaining)



Notes:

* Data from 2012

** Data from 2009

Source: ILO and ICTWSS Database (Version 5.0).

All in all, this confirms the thesis propounded by Traxler *et al.* (2001: 203) that, in principle, there are only two ways of achieving high collective agreement coverage. The Nordic way, namely to ensure high coverage through a high organising density, particularly on the union side, is however an absolutely exceptional phenomenon, which is also bound up with a whole series of political and institutional peculiarities of the Nordic model of capitalism. By contrast, the continental and southern European path of achieving high collective agreement coverage through comprehensive use of extension can be regarded more as the rule. As an expression of the institutional power of the bargaining parties, extensions of collective bargaining have also contributed to keeping agreement coverage relatively stable in many countries, despite a fall in union density. Conversely, a reduction of administrative extension might lead to a significant decline of bargaining coverage, as it has been the case more recently in Greece, Portugal and Romania. At the same time, the relaxation and increased use of extension can help to stabilise or even increase bargaining coverage, as has been the aim more recently in Germany, Norway and Switzerland.

As high collective bargaining coverage is a major precondition of a more equal distribution of wages and incomes, as well as the promotion of a more inclusive growth strategy, many European countries need to reconstruct their bargaining systems. Better and more frequent use of the extension of collective agreements could be a major instrument to this end, which should be supported at both national and EU level.

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