Chapter 11
The role of extension for the strength and stability of collective bargaining in Europe
Thorsten Schulten, Line Eldring and Reinhard Naumann

1. Introduction

Nearly two-thirds of all employees in the European Union fall within the scope of a collective agreement, which makes Europe’s collective bargaining coverage higher than that of any other region of the world (European Commission 2015: 28). The reason for this relatively high collective bargaining coverage lies first of all in the predominance of multi-employer bargaining in many European countries.1 There is a clear-cut relationship between the level and the coverage of collective bargaining, as countries in which multi-employer bargaining predominates in general have a much higher bargaining coverage than countries in which company bargaining predominates (Visser 2013). While multi-employer agreements cover various companies of a certain bargaining unit –mostly a branch or sector– independent of their specific state of industrial relations, in company bargaining systems the existence of a collective agreement depends directly on the particular power relations between workers and employers at the individual firm.

Over the past two decades most traditional systems of multi-employer bargaining in Europe have undergone profound changes and have given more space to company bargaining (Marginson 2014). In most cases the decentralisation of collective bargaining took place in an ‘organised’ manner within the framework of multi-employer agreements and often led to a system of two-tier or multi-level bargaining. Against the background of the current economic crisis in Europe, however, several European countries – in particular in southern Europe – have experienced the emergence of a more radical form of decentralisation, leading to a

1. See also the contribution by Keune in this volume (Chapter 8).
significant weakening of multi-employer bargaining and a sharp decline in bargaining coverage (Schulten and Müller 2015).²

The strength and 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 in 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 (OECD 2012a; Visser 2013). Thus, there is a second factor that determines the spread and stability of multi-employer bargaining systems, namely the existence of supporting policies and regulations on the part of the state.

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, thereby buttressing the collective bargaining system as a whole.

Despite the importance of state support policies for the stability of collective bargaining, there are still only a few studies that explicitly examine this issue of extension on a comparative basis (Traxler and Behrens 2002; Ahlberg and Bruun 2009; Stokke 2010; Kamanabrou 2011; Kerckhofs 2011, Schulten 2012; Visser 2013). The analysis in this chapter therefore looks beyond the predominantly legalistic discourses to the question of the current significance of extension for the development and stability of collective bargaining systems in Europe. It first discusses some theoretical arguments on the pros and cons of extending collective agreements and analyses its significance from the perspective of the various social actors (the state, trade unions and employers) (Section 2). Thereafter, an empirical overview is provided of the different legal

². See also the contribution of Jesús Cruces, Ignacio Álvarez, Francisco Trillo and Salvo Leonardi in this volume (Chapter 3).
requirements for extension in Europe and its spread and use in practice (Section 3). In a further step more recent trends in the use of extension are analysed by elaborating the examples of Portugal, Norway and Germany (Section 4). The chapter also examines the importance of extension for collective bargaining coverage in Europe and asks how it is related to the organising power of unions and employers (Section 5). Finally, the main arguments are summarised in order to discuss the future role of extension with regard to the strength and stability of collective bargaining in Europe (Section 6).

2. Basic function of extension of collective agreements

The basic function of extension procedures is closely bound up with the particular nature and purpose of collective agreements. Rooted in the structural imbalance of power between labour and capital, the original aim of collective agreements was to limit competition between individual workers by means of collective arrangements and to safeguard certain (minimum) labour standards. Over time, however, with the emergence of national collective bargaining systems, the social and economic regulating functions of collective agreements have been extended, particularly in Western Europe (Bispinck and Schulten 1999; Visser 2013). From the workers’ point of view, the immediate protective function has been supplemented by a distributive and participative function, enabling them to exercise democratic participation in economic development. From the employers’ perspective, collective agreements mainly have a cartel function, by creating a certain competitive order in which competition on wage and labour costs is largely abolished. In addition, there is an order and peace function which ensures that, during the validity of a collective agreement, enterprises can count on the plannable and mostly undisrupted conduct of their economic activities. Finally, from the state’s point of view, collective agreements whose particular characteristic is ‘autonomous self-regulation’ (Sinzheimer 1916/1977) have an important function of easing the burden of the state, as they enable the authorities to steer clear of regulating certain potentially conflictual issues of labour, wage and, to some extent, social policy.

The extent to which collective bargaining is able to perform these regulatory functions depends, first and foremost, on the reach of the respective bargaining systems, and this is determined by three basic factors. The first significant element is the bargaining level, which defines the
applicability of the collective agreement, both geographically (regional/national) and functionally (enterprise, sector or multi-sector). Second, collective agreement coverage depends directly on the organisational strength of the employer organisations and trade unions involved. This is because collective agreements are directly applicable only to those who are party to them, namely organised workers in organised businesses.

Third and lastly, the coverage of a collective agreement can be broadened by extending its applicability to workers and enterprises that are not organised within one of the contracting parties. A fundamental distinction must be made here between two approaches. First, there is the extension of bargaining coverage to non-organised workers in organised workplaces. In order to prevent workplaces 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 (Kamanabrou 2011). This means that collective agreement provisions in workplaces bound by those provisions are also applicable to their non-organised employees. In practice, even in countries that do not have *erga omnes* provisions, such as Germany and Norway, agreement provisions are generally applied to all employees within the workplaces covered. One reason why equal treatment of organised and unorganised employees is in the employer’s own interest is that more advantageous collectively agreed provisions would otherwise provide employees with a strong incentive to join the union.

The second approach is the extension of agreement coverage to unorganised workplaces. Here, the usually preferred means is a declaration of general applicability, through which the state, by a legislative act, extends the scope of the collective agreement beyond those workplaces that are direct members of the contracting party. In addition, a number of countries have functional equivalents of extension, which also enables the state to ensure a high level of agreement coverage. One possibility is to have a legal *erga omnes* provision that applies to employers, by means of which the collective agreement is also virtually automatically applicable to unorganised firms. Furthermore, the state may also build into procurement legislation a requirement to abide by the prevailing collective agreement (Schulten et al. 2012). However, this approach –known in Germany as a ‘small extension’– is restricted to public procurement, in contrast to the ‘big extension’. Finally, the state may at the outset accord collective bargaining status only to such bodies –such as economic chambers– membership of which is compulsory, which is an indirect
means of achieving full coverage for collective agreements. This is the case, for example, in Austria.

State-supported extension of collective agreements by means of a declaration of general applicability or another functional equivalent sometimes runs into conflicting interests among the bargaining parties (for an early example, see Hamburger 1939). From both employers’ and employees’ point of view, extension of collective agreements has the attraction of depriving individual enterprises of the opportunity to secure a competitive advantage by undercutting collectively bargained standards. This makes a substantial contribution to the stability of the collective 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 pressure that the very existence of the collective agreement may be called into question. On the other hand, the employers may see a certain level of outside competition as wholly desirable, because it opens up exit options for firms, thus increasing their bargaining power vis-à-vis the unions.

Based on neoclassically oriented insider/outsider models, the thesis has also been advanced that large enterprises that are well established in the market have a particular interest in extension, as it enables the setting of certain collectively agreed standards that newly founded firms are unable to meet. Such standards discourage new firms from entering the market (Haucap et al. 2001) and therefore might have negative effects on overall economic performance (Murtin et al. 2014; Villanueva 2015). However, an objection to this view of extension as a protectionist instrument for market insiders is that provisions in collective agreements are only minimum standards, which are often surpassed precisely by larger and well-established firms through additional local bargaining. If new markets are created, there is, on the contrary, often the problem that a lack of binding sector-wide collective agreements often leads to a significant deterioration of working standards as competition is mainly on labour costs. This has often been the case, for example, after the liberalisation and privatisation of public services (Schulten and Brandt 2012).

In legal debates, extensions of collective agreements are often criticised as breaches of what is called ‘negative freedom of association’ (see, for example, Sittard 2010). This term is applied mainly to firms’ right to deliberately decide not to join an employers’ association and to make their own arrangements about working conditions. However, other lawyers
take the view—which in Germany has also been confirmed by the Federal Constitutional Court—that while an extension of a collective agreement does impose restrictions on a firm’s freedom to decide that are similar to labour law provisions, this should nonetheless not be considered a breach of negative freedom of association, as it is not associated with any obligation to be a member of a particular organisation (see, for example, Kempen 2006: 1105; Lakies 2006: 1339). A similar position is taken by the International Labour Organization (ILO) which, in its Collective Agreements Recommendation from 1951 (No. 91), explicitly points to extension as a possible instrument for promoting collective bargaining. As long as the extension concerns a collective agreement that was concluded by the most representative parties in each case, it does not, in the ILO’s opinion, constitute a violation of freedom of association (Gernigon et al. 2000: 62f).

From the state’s point of view, extensions are a way of supporting the collective bargaining system without interfering in the contracting parties’ autonomous decision-making. This is a ‘legislative act of a particular kind’ (Lakies 2006: 1342), through which collectively bargained standards acquire the character of general social rights. In this way, the state can increase its own powers of guidance without—as, for example, in the case of statutory minimum wages—having to take responsibility for the substantive content of the settlements. In many cases, the offloading function that collective agreements have for states can become operative only once the collective agreement provisions concerned have been declared generally applicable. This is particularly the case when social policy tasks are transferred to the bargaining parties, but it also applies, for example, to the setting of living minimum wages.

At first sight, trade unions have a rather ambivalent view of the extension of collective agreements. Unlike the employers’ associations, the unions often fear that extension might tend to decrease their organising power, as it will reduce the incentive to join a union and will considerably increase the free-rider problem. It also implies greater political dependency on the state and, depending on the political colour of the government in office, this may also work against the unions. Scepticism about extension is particularly prevalent among strong unions with relatively high densities.

On the other hand, experience shows that unions are often not in a position to secure comprehensive collective agreement coverage purely
on the basis of their own organising strength. That being the case, the extension of collective agreements does make it possible for a union to extend its influence considerably beyond its own organising arena and to exercise a power of public settlement. Thus, an established extension practice may also be seen as an expression of trade unions’ ‘institutional power’ (Schmalz and Dörre 2014). Whether extension really does have a negative impact on union organising rates is a question that can only be answered empirically (cf. Section 4).

3. The spread and use of extension in Europe

Although the extension of collective agreements is mainly a characteristic of European industrial relations, their earliest precursors, at the end of the nineteenth century, were to be found not in Europe but in New Zealand and Australia (Van der Veldt 2002). The first nation-wide regulation on extension was introduced in Germany with the Collective Agreement Order of 1918, followed during the 1920s and 1930s by several other European countries. Before the outbreak of the Second World War, more or less extensive legislative provisions on extension were in place in eleven European countries (Austria, Belgium, Czechoslovakia, France, Greece, Italy, Luxembourg, the Netherlands, Portugal, Switzerland and Yugoslavia; Hamburger 1939). The most comprehensive laws on extension were adopted in the mid-1930s in France and the Netherlands (Dufresne and Maggi-Germain 2012; Rojer and van der Veldt 2012). During the Second World War, extension was even temporarily introduced in the United Kingdom, which has otherwise had a strictly voluntaristic tradition of industrial relations (Kahn-Freund 1943).

After 1945, most European countries returned to developing their collective bargaining systems along their traditional pre-war lines. In most continental and southern European countries, administrative extension became an integral part of the national collective bargaining system, whereas the Anglo-Saxon and Scandinavian countries mainly did without legal requirements with regard to extension. Finally, in the 1990s and 2000s, the possibility of extension was made legally possible throughout central and eastern Europe as part of the reconstruction of collective bargaining systems in these countries (Kohl 2009: 30).
3.1 The current importance of extension in practice

Of the 30 European countries considered below (including all 28 EU states plus Norway and Switzerland) only six have no legal requirements for administrative extension of collective agreements (Table 1). These are, in addition to the special case of Cyprus, the Nordic countries Denmark and Sweden, along with 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 ‘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 (Treu 2014).

The great majority of the European states considered here (24 out of the 30) have legal requirements on 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’, ‘to a limited extent’ or ‘rarely’. In countries with ‘frequent’ use of extension, the majority of all sectoral or national agreements are regularly declared to be generally applicable. Countries in this group include the Benelux states, France, Spain and Finland. Until recently the group also covered Greece, Portugal and Romania, but they have recently undergone an extreme reduction in the number of extensions after some fundamental changes in the legal requirements (for Portugal see Section 4.1). To these should be added Austria and Italy, which both have functional equivalents according to 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 also existed in Slovenia, but compulsory membership was abolished in 2008 (Banerjee et al. 2013).

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). Countries belonging to that group are Germany, Switzerland, Ireland and Norway, as well as a few central and eastern European countries, such as Bulgaria, Croatia, Czech Republic, Slovakia and Slovenia.
Finally, there is a third group of countries in which the legal possibility for extension is only ‘rarely’ used in practice so that an extended collective agreement is absolutely exceptional. This group contains the Baltic States (Pärnits 2014), Poland and Hungary, as well as, more recently, also Greece and Romania.

To a certain extent the use of administrative extension or functional equivalents corresponds to the established classification of industrial relations systems in Europe. For example, taking the approach of Jelle Visser, who distinguishes a total of five different industrial relations systems across Europe (European Commission 2009: 51), the following ranking in the use of extension can be made: extensions of collective agreements have traditionally been most widespread in the southern European industrial relations system (France, Greece, Italy, Spain and Portugal), which in every case except Italy is marked by strong state influence. The use of extension is also of high relevance in most continental European industrial relations systems (Austria, Benelux countries, Slovenia) with the exception of Germany and Switzerland, where it only started to gain importance more recently (Eldring and Schulten 2012).

In the central and eastern European industrial relations model, as reconstructed post-1990, there is in general a legal possibility to extend collective agreements, but it is only limited or rarely used in practice.
Finally, there are the Anglo-Saxon and Nordic industrial relations systems which, despite all the differences between them, are both based on strongly autonomous collective bargaining systems with little interference by the state. Thus, in both systems most countries do not even have the legal requirements for extending collective agreements. There are, however, two interesting exceptions, namely Finland and Norway. In Finland the use of extension became very widespread after a labour law reform in the early 1970s (Ahlberg and Bruun 2009; Hellsten 2011), while in Norway the use of extension is a more recent phenomenon and is so far limited to a small number of sectors (see Section 4.2 below).

3.2 Preconditions and procedures for the use of extension

The extension of collective agreements is generally subject to many preconditions, which may impede or facilitate their spread (Table 2). Most countries have requirements regarding the representativeness of a 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 agreement.

The first group of countries, in which the representativeness requirement is determined by bargaining coverage, includes 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 quorum 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 quorum 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 at least 30 per cent of whose members are SMEs do not need to reach the 50 per cent threshold (see Section 4.1). In contrast, a recent reform of the Collective Bargaining Act in Germany abolished the former 50 per cent coverage quorum and replaced it by a more vague provision according to which the agreement should have ‘predominant importance’. The latter was intended to give the parties involved somewhat more flexibility to declare collective agreements universally binding (see Section 4.3).
Table 2 Requirements and procedures for the extension of collective agreements in selected European countries, 2015

<table>
<thead>
<tr>
<th>Country</th>
<th>Requirements</th>
<th>Application</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Representativeness of the bargaining parties</td>
<td>One or both parties to the agreement</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Representativeness of the bargaining parties</td>
<td>Joint request of both bargaining parties</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>Croatia</td>
<td>Public interest</td>
<td>One or both parties to the agreement</td>
<td>Ministry of Labour after consultation with the Tripartite Commission of the Economic and Social Council</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Representativeness of the bargaining parties</td>
<td>Joint request of both bargaining parties</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>France</td>
<td>Representativeness of the bargaining parties</td>
<td>One or both parties to the agreement, or the state</td>
<td>Ministry of Labour after consultation with the National Collective Bargaining Commission</td>
</tr>
<tr>
<td>Finland</td>
<td>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</td>
<td>No application needed/ automatically checked</td>
<td>Independent commission appointed by the state</td>
</tr>
<tr>
<td>Germany</td>
<td>Public interest Agreements should have 'predominant importance'</td>
<td>Joint request of both bargaining parties</td>
<td>Ministry of Labour after approval by the Collective Bargaining Committee</td>
</tr>
<tr>
<td>Netherlands</td>
<td>'Sufficient' bargaining coverage of all employees (55–60%)</td>
<td>One or both parties to the agreement</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>Norway</td>
<td>Documentation of migrant workers performing work under conditions below the collectively agreed standards</td>
<td>One or both parties to the agreement</td>
<td>Independent commission appointed by the state (one each from employers and trade union plus three independent members)</td>
</tr>
<tr>
<td>Portugal</td>
<td>50% bargaining coverage of all employees (30% if the majority of companies are SMEs)</td>
<td>One or both parties to the agreement</td>
<td>Ministry of Labour</td>
</tr>
</tbody>
</table>
Table 2 (cont.)

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Application</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Romania 50% bargaining coverage of all employees</td>
<td>Joint request of both bargaining parties</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>Spain Representativeness of the bargaining parties</td>
<td>No application/decision needed, as the repre-</td>
<td></td>
</tr>
<tr>
<td>sentative collective agreement automatically</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain Representativeness of the bargaining parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia Exclusion of companies with fewer than 20 employees, with more than</td>
<td>One or both parties to the agreement</td>
<td>Ministry of Labour after consultation within</td>
</tr>
<tr>
<td>10% disabled workers, which have been operating in the market for a period</td>
<td></td>
<td>a Tripartite Advisory Committee</td>
</tr>
<tr>
<td>shorter than 24 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia 50% bargaining coverage of all employees</td>
<td>One or both parties to the agreement</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>Switzerland 50% bargaining coverage of all employees</td>
<td>Joint application by both parties to the</td>
<td>Federal Council/</td>
</tr>
<tr>
<td>50% bargaining coverage of all employees (in some sectors with a high</td>
<td>agreement Tripartite commission</td>
<td>Canton</td>
</tr>
<tr>
<td>number of migrant workers)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


A more flexible regulation exists in Finland which also has the 50 per cent coverage quorum as one criterion, but adds the organisational importance of the contracting parties as well as the importance of the agreement in the past as additional criteria (Hellsten 2011). 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 can be found in Switzerland, which even has a double quorum, requiring that at least half of all employees and employers are covered. However, in recent years a number of sectors have been particularly affected by labour migration, for which the requirements for extension have been relaxed so that in these cases, only the agreement’s coverage of employees is taken into account (Eldring and Schulten 2012).

In a second group of countries covering, for example, Belgium, France, Spain as well as many central and eastern European states, it is not the particular collective agreement but the importance of the parties signing the agreement 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 concept 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 how to determine an organisation as representative may differ from country to country. On the trade union side, for example, the representativeness criteria often draw on union density and/or the election results for representative bodies at company level; this is the case, 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 (Kroupa 2006).

Apart from representativeness, some countries have further requirements for extending collective agreements. In Croatia and Germany, for example, there is the more unspecified provision that the extension has to be ‘in the public interest’. In Norway, before an agreement is extended, 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 a means of avoiding social dumping as a result of growing labour migration (see Section 4.2). 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 in operation for fewer than 24 months. Formerly, extension even needed the consent of the companies affected. This provision, however, was abolished with the most recent reform of the Slovakian collective bargaining law (Bednárik 2015).

To launch an extension procedure, most countries require explicit application from one or both of the contracting parties. In France, an application for extension can also be made by the state (Dufresne and Maggi-Germain 2012). No application is needed in Finland, where all sectoral agreements are checked automatically to see whether 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 (Trif 2014).

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 equally of representatives of the peak-level trade unions and employers’ organisations. 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 extending collective agreements also influence the frequency of its use in practice. Most countries with a frequent use of extension prescribe the representativeness of bargaining parties as the major legal criterion and not a bargaining coverage quorum, which seems to be a somewhat higher hurdle. The major exception is the Netherlands, which has a very high number of extensions despite a relatively high bargaining quorum. Behind the Dutch story stands a high degree of acceptance and support for extension procedures among both trade unions and employers’ associations (Royer and van der Veldt 2012). The support of 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 by the example of Portugal (see Section 4.1)

**4. Recent developments in the use of extension – Portugal, Norway and Germany**

In order to discuss recent developments in more detail the following sections provides three small case studies covering Portugal, Norway and Germany. While Portugal is an example of a sharp decline in the use of extension, in Norway and Germany the instrument has recently gained more importance.
4.1 Portugal

The current Portuguese collective bargaining system was established in the first decade after the overthrow of the dictatorship in 1974, when the trade unions were able to oblige employers to accept comprehensive collective framework agreements with detailed regulations on workers’ rights, work organisation and workers’ tasks (Naumann 2006). According to the Portuguese Constitution (Article 56) trade unions have a fundamental ‘right of collective bargaining’ (Article 56) with the exception of the public sector, in which wage bargaining is still prohibited (DGAEP 2013). In Portugal there are three types of collective agreement:

(i) branch-level agreements (*Contrato Colectivo de Trabalho*, CCT);
(ii) company agreements (*Acordo de Empresa*, AE); and
(iii) agreements of groups of companies (*Acordo Colectivo de Trabalho*, ACT).

Until recently, most collective agreements were concluded at branch level (Table 3). As the Portuguese economy is dominated by small companies, it is the employers who have a particular interest in creating a certain competitive order within branches. The agreements of groups of companies are a special form of multi-employer bargaining with a limited number of firms, which became relevant in particular in formerly nationalised public industries and utilities. There are also a number of company agreements (especially in some larger firms) but with fairly limited scope.

**The role of extension in Portuguese collective bargaining**

Collective agreements in Portugal cover directly only those workers who, first, are employed by companies that are affiliated with the signatory employers’ association(s) and, second, are members of one of the signatory trade union organisations. There is some evidence that in practice companies apply collective agreements to all workers no matter whether they are trade union members. In addition, Portugal has a long tradition of administrative extension, so that unorganised companies in a certain area or sector are also covered by the respective collective agreement. According to the Portuguese Labour Code (Código do Trabalho) (Articles 514–516), the Ministry of Labour had the possibility to extend every collective agreement if requested by employers and/or trade unions. Until recently, there were no further criteria for extension (for example, concerning the representativeness of an agreement or that of the
Table 3  Number of renewed collective agreements in Portugal published by the Ministry of Labour

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Branch-level agreements (CCT)</td>
<td>264</td>
<td>245</td>
<td>238</td>
<td>230</td>
<td>232</td>
<td>100</td>
<td>155</td>
<td>153</td>
<td>160</td>
<td>172</td>
<td>142</td>
<td>141</td>
<td>93</td>
<td>36</td>
<td>27</td>
<td>49</td>
</tr>
<tr>
<td>Groups of companies agreements (ACT)</td>
<td>18</td>
<td>22</td>
<td>22</td>
<td>19</td>
<td>30</td>
<td>15</td>
<td>28</td>
<td>26</td>
<td>27</td>
<td>27</td>
<td>22</td>
<td>25</td>
<td>22</td>
<td>9</td>
<td>18</td>
<td>23</td>
</tr>
<tr>
<td>Company agreements (AE)</td>
<td>105</td>
<td>103</td>
<td>100</td>
<td>88</td>
<td>80</td>
<td>46</td>
<td>73</td>
<td>65</td>
<td>64</td>
<td>97</td>
<td>87</td>
<td>64</td>
<td>55</td>
<td>40</td>
<td>49</td>
<td>80</td>
</tr>
<tr>
<td>Total number of agreements</td>
<td>388</td>
<td>371</td>
<td>361</td>
<td>338</td>
<td>342</td>
<td>162</td>
<td>254</td>
<td>245</td>
<td>252</td>
<td>296</td>
<td>252</td>
<td>230</td>
<td>170</td>
<td>85</td>
<td>93</td>
<td>152</td>
</tr>
<tr>
<td>Number of extension decrees</td>
<td>183</td>
<td>144</td>
<td>185</td>
<td>147</td>
<td>152</td>
<td>4</td>
<td>56</td>
<td>137</td>
<td>74</td>
<td>131</td>
<td>101</td>
<td>116</td>
<td>17</td>
<td>12</td>
<td>9</td>
<td>13</td>
</tr>
<tr>
<td>Workers covered (in 1000)</td>
<td>1465</td>
<td>1453</td>
<td>1396</td>
<td>1386</td>
<td>1512</td>
<td>600</td>
<td>1125</td>
<td>1419</td>
<td>1570</td>
<td>1704</td>
<td>1303</td>
<td>1407</td>
<td>1237</td>
<td>328</td>
<td>187</td>
<td>214</td>
</tr>
</tbody>
</table>

Source: DGERT (Portuguese Ministry of Labour).
bargaining parties). Thus, in practice Portugal had a system of quasi-automatic extension, in which a majority of multi-employer agreements were regularly extended (Table 3).

While, according to different sources, only between 11 per cent (Addinson et al. 2015) and 18 per cent (ICTWSS Database, see below Figure 4) of workers in Portugal are members of a trade union, the widespread use of extension has largely contributed to fairly high collective bargaining coverage. Until the 1990s, almost all workers were covered by a valid collective agreement. Since then formal bargaining coverage has shown a slight decline, to 87 per cent in 2013 (Figure 1). Formal coverage, however, includes all collective agreements in force, including framework agreements and agreements that often have not been renewed for a longer period. In order to measure the real importance of collective bargaining in Portugal a more important figure is current bargaining coverage, which takes into account only the annually renewed collective agreements. The latter can be taken as an indicator of the extent

Figure 1  Collective bargaining coverage in Portugal as a percentage of all workers entitled to collective bargaining

Source: DGERT (Portuguese Ministry of Labour), authors’ calculations.
to which especially wages are regulated by collective agreements. Until the late 2000s, current collective bargaining coverage varied mainly between 50 and 60 per cent. The high number of annual extension decrees underlines its importance for the scope and stability of the Portuguese collective bargaining system. The latter became obvious when in 2004, after some legal reforms in collective bargaining, the conservative government under Prime Minister Barroso temporarily stopped extending collective agreements and current collective bargaining coverage immediately fell.

Recent changes in the legal criteria and practice of extension
The widespread use of extension in Portugal has been strongly supported by both trade unions and the majority of employers' associations. Criticisms of the system come mainly from some economists who – often supported and promoted by the Bank of Portugal – see extension as a barrier to the downward flexibility of wages, which from a neoclassical point of view has negative consequences on employment (for example, Addison 2015; Martins 2014; Murtin et al. 2014; Portugal and Vilares 2013). These criticisms have been supported by some international organisations, such as the OECD, which openly demanded the abolition of extension in Portugal in order to promote more company bargaining (OECD 2012b: 10).

In 2011, when Portugal was forced to ask the EU and the IMF for a bailout, the national government had to sign a Memorandum of Understanding (MoU) with the so-called ‘Troika’ comprising the European Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF), in which it committed itself to a set of reforms in various policy areas.³ Labour market policy in general and the revision of the wage-setting mechanism in particular have played a particularly prominent role in the MoU.

In order to reduce labour costs and to promote wage flexibility at the individual firm-level, the MoU called on the Portuguese government to ‘define clear criteria to be followed for the extension of collective agreements and commit to them’. Furthermore, it stated that ‘the representativeness of the negotiating organisations and the implications of extension for the competitive position of non-affiliated firms will have to be

---

among these criteria’ (European Commission 2011: 80). The aim of this reform was pointed out more explicitly in the second review of the Memorandum: ‘The authorities’ new commitment not to grant automatic extension of collective agreements in 2012 should reduce wage pressures inconsistent with the economic situation of firms not represented in the bargaining process’ (IMF 2011: 11).

A few months after the MoU was signed, the extension of collective agreements was almost completely suspended by the newly elected conservative government, even before reform of the legal criteria for extension was adopted. Finally, in October 2012 the Portuguese government passed Resolution 90/2012, which introduced a 50 per cent threshold, in accordance with which the employers covered by collective agreements have to represent at least half of the workers in the respective sector before it can be extended. The decree was introduced against the resistance of the two major trade union confederations, CGTP-IN and UGT, as well as the most important peak-level employers’ organisation, CIP (Confederação Empresarial de Portugal). In a meeting with representatives of the Troika the CIP declared that suspension of extensions ‘favours unfair competition, restrains and disintegrates organised interest, fosters the informal economy and is deadly to collective bargaining’ (CIP 2012).

In most sectors the proportion of workers covered by collective agreements is clearly below 50 per cent, which makes an extension unlikely. Since 2011 the number of annual extension decrees has varied between 9 and 17 in comparison with more than 100 in previous years (Table 3). Along with the crisis and its profound economic uncertainty this was one important reason for the strong decline in the number of branch-level agreements. Without extension many employers no longer support branch-level agreements as outside competition cannot be avoided. The strong decline in the number of branch-level agreements finally led to a dramatic fall in current bargaining coverage to a historical low of less than 10 per cent (Figure 1). Although some observers have tried to downplay the changes by referring to the still fairly high formal bargaining

---

4. Resolution 90/2012, adopted on 10 October 2012, opened up the possibility for extending the agreements of employers’ associations with less than 50 per cent representativeness if SMEs were exempted from the respective agreement. It seems that no association has made use of this possibility. Official designation of the resolution: Resolução do Conselho de Ministros No 90/2012; available at: http://dre.tretas.org/dre/304490/
coverage (Addison et al. 2015), the fact that less than 10 per cent of workers currently have renewed wage agreements marks a more fundamental crisis of Portuguese collective bargaining.

In reaction to growing criticism from both trade unions and employers’ associations, in June 2014 the government passed Resolution 43/2014, which revised the criteria for extension. The new resolution has added an additional criterion according to which an extension is also possible if at least 30 per cent of the contracting employers association’s members are small, medium and micro-companies. Taking into consideration that more than two-thirds of Portuguese companies employ four workers or less (GEE 2013), this new criterion meant that probably almost all employers’ associations would qualify for the extension of their agreements. However, this new regulation has not had an immediate impact on collective bargaining so far. It remains to be seen whether extension could regain a stronger role to restabilise Portuguese collective bargaining.

4.2 Norway

Norway’s law on the extension of collective agreements (Lov om allmenngjøring av tariffavtaler m.v.) was introduced only in 1994, as a consequence of Norway’s signing the EEA agreement. The background was a fear that the country’s inclusion in EU’s joint labour market would lead to a flow of foreign ‘cheap labour’ into Norway. The purpose of the act was to ensure that wages offered to foreign workers were equal to those of Norwegian employees. However, the expected influx of foreign workers failed to materialise and application of the new Act became relevant only after the EU’s eastward enlargement in 2004. During the past ten years Norway has received large numbers of labour migrants and posted workers, in particular from Poland and the Baltic states. Trade union density is low compared with the other Nordic countries; in the private sector only 50 per cent of employees are covered by collective agreements (Stokke et al. 2013) and there is no statutory minimum wage. The inflow of migrant workers from the accession countries has exposed existing weaknesses in the regulatory system, with a large section of the labour market being left more or less open for low wage competition and

5. Resolution 43/2014, adopted on 26 June 2014 (Resolução do Conselho de Ministros No. 43/2014 can be consulted at: http://dre.tretas.org/dre/317923/
The role of extension for the strength and stability of collective bargaining in Europe

Wage bargaining under the new European Economic Governance

‘social dumping’ (Alsos and Eldring 2008). Although it implied a shift from the long-standing tradition of leaving all responsibility for ensuring minimum wage levels to the social partners, the development led the Norwegian Confederation of Trade Unions (LO) to apply for extension of certain collective agreements. The extension mechanism was soon recognised to be one the most powerful tools for combatting wage dumping in the Norwegian labour market, but still only a few agreements have been extended. As of today, parts of the collective agreements in construction, shipbuilding, agriculture, cleaning, fish processing and electrical work are extended (Table 4). All in all, extended collective agreements cover around 10 per cent of all workers in private industry.

Table 4 Extended collective agreements in Norway (as of May 2015)

<table>
<thead>
<tr>
<th>Sector (Year of introduction)</th>
<th>Minimum wage rates in euros per hour*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unskilled workers</td>
</tr>
<tr>
<td>Construction (2007)</td>
<td>19.60</td>
</tr>
<tr>
<td>Shipbuilding (2008)</td>
<td>17.40</td>
</tr>
<tr>
<td>Agriculture (2010)</td>
<td></td>
</tr>
<tr>
<td>Cleaning (2011)</td>
<td>19.60</td>
</tr>
<tr>
<td>Fish processing (2015)</td>
<td>19.50</td>
</tr>
<tr>
<td>Electricians (2015)</td>
<td>20.30</td>
</tr>
</tbody>
</table>

Note: * Calculated on the basis of the average exchange rate for 2014. Source: Authors’ composition.

Purpose and process
There is a considerable difference between Norway and other European countries with regard to the purpose of its erga omnes measures (Stokke 2010). In most European countries the objective of extending collective agreements is to ensure their widespread diffusion in the labour market. When the law on extension was introduced in Norway, it was emphasised that this was not the objective, but rather to ensure that the wage levels and labour conditions offered to foreign workers are equal to those of Norwegian employees. In 2010, the act was amended to also include the objective of ‘hampering unfair competition’ in its purpose paragraph. The Norwegian system also takes a separate approach in terms of the criteria to be fulfilled before a collective agreement can be extended. Most European systems specify the parties entitled to apply for extension, the
requirements of the collective agreement to be extended and the precondi-
tions for an extension to be approved. The precondition for enforcing
an extension in Norway is that it is probable that, without such an ex-
tension, foreign workers would perform work under conditions that are
generally inferior to the norms stipulated by nationwide collective agree-
ments for the relevant occupation or industry, or to the general condi-
tions prevailing in the relevant location or trade. This type of criterion
is not found in any other country. The decision to enforce an extension
is made by the Tariff Committee (Tariffnemnda), which is appointed by
the government. The committee comprises three independent members
(currently, a judge from a district court heads the committee and the
two other independent members are academics from the University of
Oslo), one representative from the employers’ organisations and one
from the trade unions, meaning that neither employers nor unions can
veto a decision. The provisions extended are made generally binding by
means of administrative regulation. The law only allows for extension of
provisions regarding wages and other individual working conditions and
addresses the provisions to be encompassed by a decision on a case-by-
case basis. In particular cases it can also determine wage levels and la-
bour conditions other than those stipulated by the collective agreement.
To date, only very few of the provisions in collective agreements have
been extended. The extent to which such provisions should be made gen-
erally binding has been a contentious issue ever since the initial deci-
sion to use this instrument (in 2004). The employers’ organisations in
particular have argued that provisions regulating issues that are already
covered by applicable law should not be extended. Subsequent decisions
by the Tariffnemnda have taken this criticism into account, resulting
in extension only of provisions that regulate issues not already covered
by legislation, mainly those that specify minimum wages for skilled and
unskilled workers (see Table 1). This characteristic, as well as those men-
tioned above, makes Norwegian practice somewhat different from other
European erga omnes instruments (Alsos and Eldring 2008).

Experiences and effects
In 2011, an evaluation of the government’s action plan to combat social
dumping included the measures that were implemented to improve the
system for the general application of collective agreements. The overall
conclusion was that the situation would probably have been consider-
ably worse without the measures implemented. This was true in particu-
lar in the areas with extended collective agreements, where regulations,
controls and sanctions were strengthened, and much less in areas with-
out *erga omnes* extensions. In sectors without generally binding agreements the risk of low wage competition and wage dumping was still very high (Eldring et al. 2011). The evaluation documented that the majority of employers in the affected sectors had a positive attitude towards the generally binding agreements, although employers in export-oriented industries, such as shipbuilding, were somewhat more sceptical.

A central, but complex question concerns the extent to which generally binding agreements affect labour migrants’ wage conditions. An analysis of register-based wage data showed that few employees in the relevant sectors had wages below the minimum rates in the collective agreements, although central and eastern European workers in the construction and shipbuilding industries on average earned less than native workers (Eldring et al. 2011). A more recent study indicates that the average wage among construction workers has increased as a result of the extension, and that the share of workers with wages below the collectively agreed minimum wage has shrunk (Bratsberg and Holden 2015). Because the register data do not include posted workers or short-term and unregistered migrants, there is a risk that the register data overestimate real wage levels. A survey carried out in Oslo in 2010 among Polish migrants documented that 19 per cent earned less than the legally extended minimum wage, of which most were posted workers and/or worked in the black market. Despite the tendency towards non-compliance with the regulations in certain segments of the labour market, the evaluation report concluded that the situation would probably have been worse without the legal extension of collective agreements (Eldring et al. 2011). An overall reflection is that as long as only a few sectors are covered by generally binding agreements, there are ample opportunities for wage dumping in large parts of the labour market.

The trade unions have mixed views on the legal extension of agreements. Their main fear is that it would exacerbate the free-rider problem and also that it would interfere with the strong principle of autonomous collective bargaining. After a few years’ experience with the mechanism, however, the scepticism has turned into enthusiasm, above all because extensions have proved to be effective in the struggle against social dumping, but also because it is has become a useful tool in the unionisation of labour migrants. Extension means that the unions can help migrants to get the minimum wage, even if there is no collective agreement in their company (Eldring et al. 2012; Hardy et al. 2012).
Despite the largely positive experiences, the introduction of the extension mechanism has not been uncontroversial. The service sector employers’ association Virke has repeatedly declared that they wish to replace the extension scheme with a statutory minimum wage, and even the Confederation of Norwegian Enterprise (Næringslivets Hovedorganisasjon, NHO) has repeatedly stated that it sees a national minimum wage as a more attractive solution than extensions of collective agreements. In the Norwegian context, a statutory minimum wage does not appear as a supplement to extensions (as in many other European countries), but more as an alternative. The proposal for a statutory minimum wage is used by the employers almost as a threat, in response to various trade union initiatives to improve and activate the current extension scheme (Eldring and Alsos 2012). As of today, the situation is more or less deadlocked; the unions want to strengthen the mechanism and argue that the documentation criteria are too strict, and that the period for each extension should be prolonged. The previous Red-Green government adopted the fight against social dumping as a kind of ‘power brand’ and implemented several revisions of the extensions act. The current, conservative, government has declared that the extension mechanism will continue, but so far seems unwilling to enter into discussions or initiatives related to improving the system.

As described above, EU enlargement to the east in 2004 was an immediate rationale for introducing the extension of collective agreements as an instrument to combat low-wage competition in Norway. However, extensions focus on industries with a high number of labour immigrants and presuppose that the partners wish to extend the agreement to all employees of the industry in question. To date, only a few agreements have been extended, and we can find industries that have low coverage by collective agreements where there are no mandatory minimum wage rates. As things stand, it seems likely that more agreements will be extended in the coming years. There has been a clear tendency towards new applications for extension in recent years and several unions have signalled that they are considering initiating extension processes within their sectors. However, there is still a certain tension between the labour market parties related to the extension mechanism, with regard to both extension procedures and the content of extended agreements. The latter has been most pronounced in the shipbuilding sector, where the decision to extend parts of the collective agreement has been disputed in court by nine shipyards and the main employers’ confederation NHO. Despite a very clear Supreme Court ruling in 2013 in favour of the current practice,
the employers are still claiming that the extension, which includes the right to compensation for travel, lodging and board, is disproportionate and that it is hampering competition. However, due to the composition of the Tariff Committee, disagreement between the bargaining partners does not necessarily hinder new extensions. In the longer term, conflicts related to the extension system will probably affect the further development and future of the mechanism. Whether this will lead to deterioration or strengthening of the current system will probably depend on the strength of the bargaining partners, the situation in the labour market and, not least, how the national political landscape evolves.

4.3 Germany

With the adoption of the Collective Agreement Order (Tarifvertragsordnung) of 1918 Germany was the first country in Europe to introduce a nationwide regulation on the extension of collective agreements (Hamburger 1939). After the Second World War the newly adopted Collective Agreement Act (Tarifvertragsgesetz, TVG) of 1949 contains a separate paragraph on ‘general bindingness’ (Allgemeinverbindlichkeit), which determines the legal preconditions for extension; these are basically still valid today. On the application of at least one bargaining party the German Federal Ministry of Labour – or in case of regional agreements the ministry of labour of the affected federal state – has the possibility to declare a collective agreement universally applicable if the following preconditions are met (Table 5):

- the employer directly covered by the agreement represents at least 50 per cent of the affected workforce (until 2015);
- the extension is ‘in the public interest’;
- the extension has the support of the national or regional Collective Bargaining Committee (Tarifausschuss), which is composed of representatives of the peak employers’ and trade union organisations on a parity basis, so that both parties have a de facto veto.

In the mid-1990s Germany introduced a second extension system through the Posted Workers Act (Arbeitnehmer-Entsendegesetz, AEntG) of 1996 (renewed 2009) in order to cover also posted workers from foreign countries. In comparison with the first system based on the Collective Agreement Act the second system based on the Posted Workers Act was originally more restricted as, in terms of content, it could
cover only minimum wages and conditions and in terms of scope it could be used only by a limited number of sectors (Table 5). However, the preconditions for an extension on the basis of the Posted Workers Act were somewhat less restricted, as there is no minimum threshold for collective bargaining coverage and no need for confirmation by the Collective Bargaining Committee.

**Use of extension in practice**

In contrast to many other European countries, in Germany the extension of collective agreements has always been of only limited importance (Bispinck 2012). During the 1950s Germany saw the development of a fairly comprehensive collective bargaining system, which in most sectors guaranteed a high bargaining coverage of between 80 and 90 per cent, so that there was no need for state support. However, there was always a limited number of sectors in which extension played an important role in stabilising sectoral collective bargaining. They included more labour-intensive branches with a high number of small and medium-

---

Table 5  *Two systems for extension of collective agreements in Germany* *

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A quorum of 50% collective bargaining coverage</td>
<td>Until 2015: Yes Since 2015: No</td>
<td>No</td>
</tr>
<tr>
<td>Extension has to be 'in the public interest'</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Application for extension</td>
<td>Until 2015: At least one party Since 2015: Both parties</td>
<td>Both parties</td>
</tr>
<tr>
<td>Confirmation by Collective Bargaining Committee</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Content of extended agreements</td>
<td>No limitation</td>
<td>Limited to minimum wages and other minimum conditions</td>
</tr>
<tr>
<td>Sectoral scope</td>
<td>Total economy</td>
<td>Until 2015: Limited to certain sector Since 2015: total economy</td>
</tr>
<tr>
<td>Collective agreements to be extended</td>
<td>National and regional agreements</td>
<td>Only nationwide agreements</td>
</tr>
</tbody>
</table>

sized companies, such as construction, retail trade, textiles, hotels and restaurants, as well as various craft trades.

At the beginning of the 1990s there were around 400 original branch-level agreements that were declared generally binding. This corresponded to 5.4 per cent of all original branch-level agreements. Until the mid-2000s there was a continuous decline in the number and proportion of extended agreements (Figure 2). Since then they have remained at an extremely low level. In 2014 there were only 233 extended collective agreements, equivalent to 1.6 per cent of all branch-level agreements.
Most of the agreements that are still extended on the basis of the Collective Agreement Act are framework agreements that cover working time, holidays, special bonuses, pensions and so on, but not regular pay. Very few wage agreements have been declared universally binding on the basis of the Collective Agreement Act. In recent years, however, a growing number of wage agreements have been extended on the basis of the Posted Workers Act (Table 6). In contrast to the former, however, the latter cover only sectoral minimum wages and not wages as a whole.

### Reform of the legal framework for extension

During the past two decades German collective bargaining has experienced a continuous decline and partial erosion (Schulten and Bispinck 2014). German bargaining coverage decreased from around 80 per cent at the beginning of the 1990s to less than 60 per cent in 2014. Against that background there has been a growing discussion on how to reestablish German collective bargaining (Bispinck and Schulten 2009). Among other things, there was a broad debate on how to reinforce the instrument of extension in order to reinforce the bargaining system (Schulten and Bispinck 2013).

---

**Table 6 Collectively agreed minimum wages extended on the basis of the Posted Workers Act**

<table>
<thead>
<tr>
<th>Sector</th>
<th>West Germany</th>
<th>East Germany</th>
<th>Sector</th>
<th>West Germany</th>
<th>East Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>11.15/14.20</td>
<td>10.75</td>
<td>Agriculture Care</td>
<td>7.40</td>
<td>7.20</td>
</tr>
<tr>
<td>Roofing</td>
<td>11.85</td>
<td></td>
<td>Commercial cleaning</td>
<td>9.40</td>
<td>8.65</td>
</tr>
<tr>
<td>Electro trade</td>
<td>10.10</td>
<td>9.35</td>
<td>Further training</td>
<td>13.35</td>
<td>12.50</td>
</tr>
<tr>
<td>Painting</td>
<td>10.00/12.80</td>
<td>10.00/10.90</td>
<td>Meat industry</td>
<td>8.60</td>
<td></td>
</tr>
<tr>
<td>Stonemasonry</td>
<td>11.30</td>
<td>10.90</td>
<td>Waste disposal</td>
<td>8.86</td>
<td></td>
</tr>
<tr>
<td>Scaffolding</td>
<td>10.50</td>
<td></td>
<td>Hairdressers</td>
<td>8.00</td>
<td>7.50</td>
</tr>
<tr>
<td>Laundry services</td>
<td>8.50</td>
<td>8.00</td>
<td>Textiles &amp; clothing</td>
<td>8.50</td>
<td>7.50</td>
</tr>
<tr>
<td>Chimney sweeping</td>
<td>12.78</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary agency work</td>
<td>8.80</td>
<td>8.20</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: WSI Collective Agreement Archive (June 2015).
In July 2014 the German Parliament finally adopted a legislative package on ‘strengthening free collective bargaining’ (*Gesetz zur Stärkung der Tarifautonomie*), which apart from introducing a national statutory minimum wage also includes some revisions of the legal preconditions for extension of collective agreements (Bundesregierung 2014; see also Table 5). The most important change is the abolition of the 50 per cent bargaining coverage threshold for extension on the basis of the Collective Agreement Act. Because, against the background of declining bargaining coverage, the threshold became a more and more substantial obstacle to the use of extensions it has now been replaced by a more flexible regulation which gives the Ministry of Labour more space to decide whether or not an extension is in the public interest. Another important revision concerns extension on the basis of the Posted Workers Act, which is no longer restricted to certain sectors but can now be used throughout the whole economy. All in all, it is hoped that the less restrictive criteria can promote the use of extensions in Germany and therewith can make a contribution to reinforcing the bargaining system.

5. The importance of extension for collective bargaining coverage and its relationship with the organisational strength of unions and employers’ associations

5.1 Extension and bargaining coverage

The importance of extension for the scope of collective bargaining systems in Europe may be seen most clearly if its use is compared with collective agreement coverage in individual European states. At first sight, collective bargaining coverage varies widely across Europe, ranging from 99 per cent in Belgium to 9 per cent in Portugal (Figure 3). The countries with very high coverage of 80 per cent or more are mainly states that make frequent use of administrative extension or functional equivalents. The only exceptions are Denmark and Sweden, where high coverage is achieved without extension, purely through the organisational strength of the contracting parties. High bargaining coverage can also be found in Slovenia which currently makes only limited use of extensions but still benefits from the period before 2009 when bargaining coverage was ensured by means of employers’ compulsory membership of economic chambers (Banerjee *et al.* 2013). On the other hand, the group with low agreement coverage of 50 per cent or less is composed mainly of countries with limited or rare use of extensions or—as in the case of the
United Kingdom—lacks legal requirements for any form of extension. In these countries, too, there is a strong correlation between bargaining coverage and the organisational strength of the contracting parties.

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. One, the Nordic way, which ensures high coverage through a high organising density, particularly on the union side, is absolutely exceptional, bound up with a whole series of political and

---

**Figure 3** Collective bargaining coverage and the use of extension 2011-2013* (as a percentage of all employees covered by a collective agreement)

Note: * Most recent data.
Source: ICTWSS Database (Version 5.0). For Portugal and Spain: authors’ calculations based on figures from labour ministries. For Norway: Stokke *et al.* (2013) (numbers for Norway do not include workers covered through extensions).
institutional peculiarities of the Nordic model of capitalism. However, the continental and southern European path of achieving high collective agreement coverage through comprehensive use of extension can be seen 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 (Visser 2013). Conversely, a reduction of administrative extension or its functional equivalents might lead to a significant decline in bargaining coverage, as has been the case more recently in Greece and Portugal. At the same time, the relaxation and increased use of extension can help to stabilise or even increase bargaining coverage, as seen for example in Norway or Switzerland.

5.2 Extension and union density

Trade unions sometimes fear that frequent use of extension might have a negative impact on union density as workers obtain collectively agreed standards for free and therefore lose a major incentive to become a union member. A frequent use of extension might also lull the unions into ‘institutional security’ (Hassel 2007) and make them highly dependent on the state, while at the same time preventing them from building up their own organisational power basis. When the state revokes its support for extension this could become highly problematic as the unions might be too weak to defend high collective bargaining coverage by their own organisational power alone. Recent developments in countries such as Greece or Portugal might be a good example of such a development. However, if unions rely only on their organisational strength, in most European countries collective agreements would cover only a minority of workers and collectively agreed conditions would not be transformed into universal working standards (Schulten 2013).

A comparison of the use of extension and union density in Europe, however, shows that there is not at all a clear correlation (Figure 4). On one hand, Denmark and Sweden, two of the three countries with the highest

---

6. In particular, the so-called Ghent System comes to mind here (except for Norway, which did not have this system), under which the trade unions administer the unemployment benefit funds and thus have particular recruitment opportunities. Recently, however, conservative governments in both Denmark and Sweden have put through political reforms that have led to a weakening of the Ghent System and a clear decline in union density (Kjellberg 2011).
union density, have no extension instruments at all. On the other hand, in Finland, union density has clearly risen since the introduction of administrative extension in the early 1970s (Ahlberg and Bruun 2009). In Norway, too, there is no evidence that the increasing use of extension has had negative consequences for recruiting new union members (Eldring et al. 2012).

There are other countries, such as Spain, the Netherlands and, in particular, France, which at first sight seem to confirm the proposal that high bargaining coverage secured by extension has a strong negative impact on union density. However, there are also a couple of other coun-

Figure 4  Trade union density and the use of extension, 2011–2013* (working trade union members as a percentage of all workers)

Note: * Most recent data.
Source: ICTWSS Database (Version 5.0).
tries with a similar low union density in which extension plays only a limited role. All in all, the overall European picture shows that different kinds of combinations between the use of extension and union density are possible. In fact, the organisational strength of trade unions depends on a wide range of economic, social and political factors and cannot be reduced to a single issue, such as the use of extension. From the trade union point of view high bargaining coverage, which depends solely on extension, is of course a risk. However, this risk will be less if organisational and institutional power are strengthened as a complementary strategy.

5.3 Extension and employers’ density

The relationship between the use of extension and employers’ organising power is a different matter. Earlier studies already identified a clear positive correlation in this regard (Traxler 2004). Comparing both issues with more current data from eight countries with the highest employers’ density of at least 70 per cent, seven countries have made frequent use of extension (Figure 4). The fact that employers know that they will be covered by a collective agreement anyway obviously seems to create an incentive for them to join an employers’ association in order to exercise their voice option (and perhaps to benefit from other services of the association). A high employers’ density, which in most European countries is much higher than union density, also strongly supports high bargaining coverage (Visser 2013). Thus, the use of extension supports the collective bargaining system, not only through direct widening of bargaining coverage, but also through the more indirect effects on employers’ associations.
6. Conclusion: the future of extension as a factor in stabilising collective bargaining in Europe

This chapter has shown that the use of administrative extension is of high importance for the scope of collective bargaining in Europe. In many European countries, it has ensured high and stable collective bargaining coverage, which supports the use of collective agreements as a central institution for the regulation of employment conditions, something that is often regarded as a cornerstone of the European social model. In the wake of the current economic crisis, however, in many European coun-
tries collective bargaining systems are under strong pressure to follow a strategy of a more radical decentralisation, leading to a hollowing out or even abolition of multi-employer bargaining (Marginson 2014; Schulten and Müller 2015). The outcome of these ‘reforms’ is a drastic decline in collective bargaining coverage and a widespread devalorisation of collective agreements as an instrument for determining working conditions.

In the neoliberal strategy of dismantling collective bargaining the diminution or even abolition of administrative extension is a core issue. Drawing on the tiny number of econometric studies which on the basis of neoclassical labour market models claim to find evidence of the negative impact of administrative extension on employment performance (Murtin et al. 2014; Villanueva 2015) the ‘decrease of extension’ is justified as an ‘employment-friendly reform’ (European Commission 2012: 103). The impact of such a ‘reform’ can be observed most clearly in Portugal where the Troika imposed the introduction of representativeness criteria for the use of extension, thus provoking a strong decline in the number of extension decrees and, consequently, contributing to the dramatic fall in bargaining coverage. Similar developments could also be observed in Greece and Romania, where the use of extension has de facto been abolished.

Besides the situation in many southern and central and eastern European countries, there are, however, also some countervailing developments that indicate a strengthening of collective bargaining through an increased use of administrative extension. The most prominent examples here are Norway and Germany where in recent years extension has continuously gained importance. While Germany has further relaxed its legal requirements for the use of extension, the Norwegian experiences are being debated intensively in other Nordic states, such as Denmark and Sweden. In particular, the consequences of EU enlargement and the growing number of migrant workers has functioned as a catalyst for the increasing importance of extension as an important instrument to counter social dumping (Eldring and Schulten 2012). A further boost has come from some important rulings of the European Court of Justice, which tend to accept only universally applicable collective agreements as legitimate limitations on basic European freedoms (Kocher 2010).

If collective bargaining is to remain a distinctive feature of European labour market regulation many European countries need to undertake a ‘reconstruction of their bargaining systems’ (Ewing and Hendy 2013)
in order to make sure that a majority of workers will again be covered by collective agreements. Such reconstruction cannot be organised by trade unions and employers’ associations alone, but also needs 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.

References


The role of extension for the strength and stability of collective bargaining in Europe

Hartwich M. and Portmann L. (2011) Switzerland’s Trade Unions’ experiences with the extension/enlargement of collective agreements, presentation to the


Presidencia do conselho de ministros (2012).
Quadros de Pessona (2013).
Schulten T. et al. (2012) Pay and other clauses in the European Public Procurement: An overview on regulation and practices with a focus on Denmark,


