

# **Collective bargaining in Europe: towards an endgame**

Volume III

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Edited by

**Torsten Müller, Kurt Vandaele and Jeremy Waddington**

**etui.**



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## Chapter 23

# Portugal: reforms and the turn to neoliberal austerity

Maria da Paz Campos Lima

The Portuguese system of industrial relations that developed after the 1974 democratic revolution has experienced important changes over the years. This intensified from the late 1980s, with the emergence and institutionalisation of tripartite concertation and its direct and indirect influence on labour legislation and collective bargaining. Since around 2000, however, after the integration in the euro zone and in the new context of global competition, the legal foundations and institutions of collective bargaining have been significantly challenged. In 2003 and 2009 major changes in labour legislation reconfigured the legal framework of collective bargaining, established in late 1970. This paved the way for the erosion of the unions' bargaining power by breaking with the favourability principle, as well as allowing the unilateral termination of collective

Table 23.1 Principal characteristics of collective bargaining in Portugal

Key features	2000	2016
Actors entitled to collective bargaining	Unions and employers/employers' associations at industry and company level. Since 2009, non-union structures with a union mandate can also negotiate company agreements (first in firms with more than 500 employees and since 2012 in firms with more than 150 employees). A union mandate is a constitutional requirement.	
Importance of bargaining levels	The industry level is the most important level in terms of bargaining coverage.	
Favourability principle/ derogation possibilities	The favourability principle, according to which collective agreements may not set worse standards for employees than those laid down in labour legislation, was reversed in 2003 and only partly re-established in 2009.	
Collective bargaining coverage (private sector) (%)	95 (2002)	87*
Extension mechanism (or functional equivalent)	Collective agreements were extended almost automatically until 2011. During the period 2012–2016, extension was conditional on the representativeness of employers' associations. Since 2017 more inclusive criteria have been in place, based on the constitutional principle of 'equal pay for equal work'.	
Trade union density (%)	22	19 (2015)
Employers' association rate (%)	52 (2002)	39 (2014)**

Note:

\* Author's calculations based on information (2002–2016) from DGERT/Ministry of Labour, Solidarity and Social Security regarding the agreements in force and the agreements published annually, based on the mandatory questionnaire to all private sector companies (Quadros de Pessoal).

\*\* See Green Paper on Labour Relations 2016, analysis based on data collected through the mandatory questionnaire conducted at all private sector companies for the Relatório Único, implemented by the Ministry of Labour, Solidarity and Social Security (Dray 2016).

Sources: Appendix A1.

agreements. Furthermore, after the intervention of the Troika, consisting of the European Commission, the European Central Bank and the International Monetary Fund, between 2011 and 2014, drastic legislative and other government measures, in particular limiting the extension of collective agreements and reducing agreements' period of validity, have plunged collective bargaining into the greatest crisis seen in 40 years of democracy. This has put Portugal in the category of countries under 'frontal assault' (Marginson 2015). Attempts to reconstruct bargaining dynamics and rebuild its institutions have been on the political agenda since the left returned to power in 2015 (Table 23.1).

## Industrial relations context and principal actors

In Portugal, the building of a pluralist democratic society and collective bargaining institutions went hand in hand, following the democratic revolution in 1974 (Ferreira 1993; Barreto and Naumann 1998). The revolution had a long-lasting influence on the emerging labour movement, which was fractured by ideological and political divisions. In the first years of democracy, the hegemony of the General Confederation of Portuguese Workers–Inter-Union National (Confederação Geral dos Trabalhadores Portugueses–Intersindical Nacional, CGTP) was challenged by the creation of the General Union of Workers (União Geral de Trabalhadores, UGT) in 1978. Competition and divergence between the two confederations continued, although mutual recognition and occasional joint action improved as time passed (Campos Lima and Martin Artiles 2011 2014). CGTP has proved able over the years to achieve higher membership<sup>1</sup> and has a much higher mobilisation capacity. UGT has played a crucial role in the emergence and institutionalisation of social pacts in Portugal (Campos Lima and Naumann 2011). The division between the confederations impacted collective bargaining because it created competing unions and, in some industries and occupations, resulted in parallel collective agreements.

Employers have four associations that participate in tripartite concertation: the Confederation of Portuguese Business (Confederação Empresarial de Portugal, CIP, 1974), which is the largest, dominant in manufacturing and at present also important in other industries; the Portuguese Trade and Services Confederation (Confederação do Comércio Português, 1976); the Portuguese Confederation of Farmers (Confederação dos Agricultores de Portugal, 1975); and the Portuguese Tourism Confederation (Confederação do Turismo Português, 1995). Until the turn of the century the state played a crucial role in regulating industrial relations, under the principles defined by the Constitution and the Collective Bargaining Act of 1979. Key principles included: the exclusive prerogative of unions to negotiate collective agreements; application of the favourability principle to the relationship between statutory regulations and

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1. According to the latest published data (see Appendix A1), in 2011 CGTP had around 460,000 members, UGT around 193,000 and independent unions around 19,000 members. There is some discrepancy between these data and the union confederations' own assessment, in particular UGT. According to its latest report (13th congress of CGTP /February 2016), CGTP has lost almost 64,000 members in the past four years, one-tenth of the 614,000 members it had in 2012. UGT reported (Expresso, 20 April 2016) that it had lost 80,000 members between 2012 and 2016, estimating at present it has around 420,000 members (Perista *et al.* 2018).

collective agreements; the principle of the continuing validity of collective agreements, whereby an agreement could expire only by joint decision of the signatory parties and when replaced by another agreement; and the principle of extending agreements to all companies and workers. Tripartite concertation added new challenges to collective bargaining in the late 1980s and in the 1990s, in particular regarding wage moderation and working time flexibility (Campos Lima and Naumann 2011; Dornelas 2010). The existing collective bargaining institutions showed sufficient elasticity to accommodate such challenges, however.

The picture changed radically after the turn of the century, when the Labour Code (Código do Trabalho) entered into force in 2003. The new Code, a unilateral initiative of the centre-right coalition between the Social Democratic Party (Partido Social Democrata, PSD) and the Social and Democratic Centre (CDS-Partido Popular, CDS-PP), represented a major shift. First of all it broke with the favourability principle, allowing collective agreements to deviate *in pejus* from statutory regulations; and secondly it broke with the principle of continuity by allowing any signatory party to request unilaterally the expiry (*caducidade*) of existing agreements after a period of unsuccessful negotiations (Pernot 2003; Ramalho 2013; Naumann 2014). In 2004, following the entry into force of the new Code, the government used its prerogative to block the publication of extension ordinances. Collective bargaining entered into crisis with an unprecedented fall in the number of collective agreements that were updated and the proportion of workers covered.

After the Socialist Party won an absolute majority in the 2005 national elections, labour market and collective bargaining reforms were back on the political agenda. In 2006 the government and the social partners signed an agreement on a minimum wage increase. This was the first tripartite mid-term agreement (2007–2011) and its explicit goal was to raise lower wages. This agreement influenced collective bargaining developments, in particular in industries in which the collective agreement wage floor corresponded to the statutory minimum wage. When the global financial crisis started in 2008, new labour market reforms were already under way. The government and social partners, with the exception of CGTP, concluded a tripartite agreement in 2008. This served as the basis for the 2009 Labour Code. Important reforms were also launched in the public sector, aligning its regulations to a certain extent with those in the private sector. This included the right to conclude collective agreements in public administration, although with much more limited scope. The 2009 Labour Code did not re-establish the favourability principle but did lay down conditions on which collective agreements could not deviate *in pejus* from statutory regulations. It not only failed to reverse the possibility of cancelling collective agreements unilaterally, but also introduced new rules facilitating the expiry of existing agreements with a ‘survival clause’ (Naumann 2014). On the other hand, guarantees were introduced to protect certain individual rights of workers whose collective agreements expired. It also introduced the possibility for non-union representative structures to conclude agreements at company level, if they have a trade union mandate (Pernot 2009; Távora and González 2016; Campos Lima and Abrantes 2016).

Despite these in-depth reforms, the Memorandum of Understanding (MoU) between the Troika institutions and the interim government of the Socialist Party (Partido Socialista, PS), signed on 17 May 2011, required new far-reaching measures with direct and indirect impacts on collective bargaining. These measures were implemented by the centre-right PSD–CDS coalition, in power between June 2011 and November 2015. This government also took steps beyond what the Troika had demanded, using the crisis to advance its own agenda (Campos Lima and Abrantes 2016; Moury and Standing 2017). The neoliberal austerity package included the following:

- blocking collective bargaining in the public sector, unilateral cuts in nominal wages and working time increases;
- freezing the minimum wage from 2011 to 2014;
- facilitating dismissals and temporary work and reducing unemployment protection;
- reductions in overtime payments and individual working time accounts, circumventing collective bargaining.

The most critical measures with a direct impact on the legal framework of collective bargaining included breaking the principle of general extension of collective agreements; reducing the expiry deadlines of collective agreements; shortening the period of validity of expired agreements; and introducing the possibility for companies in financial difficulties to derogate from collective agreements. The result was an unprecedented and dramatic crisis in collective bargaining (Schulten and Müller 2013; Cruces *et al.* 2015; Campos Lima and Abrantes 2016; Távora and González 2016; ILO 2018).

A new political cycle started in November 2015, with an unprecedented political alliance at national level between the PS government and the left parties, including the Left Block (Bloco de Esquerda, BE), the Portuguese Communist Party (Partido Comunista Português, PCP) and the Ecologist Green Party (Partido Ecologista os Verdes, PEV). The new government enacted a number of new economic and social policies. They included the reversal of cuts in wages, pensions and social benefits, as well as the introduction of an upward trajectory for the national minimum wage and commitments to combat precarious employment. This favoured economic growth and led to a significant fall in unemployment, creating more encouraging conditions for collective bargaining (Campos Lima 2017; ILO 2018). The most important initiatives with a direct focus on collective bargaining since the January 2017 tripartite agreement were implemented, too (CES 2017). They included a bipartite agreement between trade union and employer confederations committing their members to suspend temporarily (for 18 months) resort to unilateral requests to terminate agreements and a government decree replacing the extension criteria based on employer association representativeness with new, more inclusive criteria, based on the constitutional principle of ‘equal pay for equal work’.

## Extent of bargaining

The extent of bargaining in Portugal has been characterised by three features that assured high coverage of collective agreements in the private sector over the years (see Table 23.1 and Appendix A1.A). First, the prevalence of multi-employer agreements compensated

for the limited presence of company bargaining. Second, the quasi-automatic extension of high-level agreements compensated for the low employer association rate and union density. Third, the validity and the so-called ‘ultra-activity’ of collective agreements allowed agreements, and extensions, to remain in force until they were replaced by others (Ramalho 2013). For decades, these three features performed a ‘protective role’ with regard to the extent and security of bargaining. Equivalent to the *erga omnes* principle in its consequences, extension depended, however, on a government decision (extension ordinances), when a request was made by one of the signatory parties or both. In the absence of extension, collective agreements would apply only to the members of employer associations and union signatory organisations (requirement of double affiliation). Coverage would be entirely dependent on the organisation rate of employer associations and union density.

The organisation rate of employer associations dropped from 58 per cent in 2002 to 38 per cent in 2011 and union density dropped from 21 per cent in 2002 to 18 per cent in 2012 (see Appendix A1.G). Recent data indicate that in 2014 the employers’ organisation rate was around 39 per cent.<sup>2</sup> While it has been argued that the decline of trade union density might be related to the incentives for free-riding resulting from the extension of collective agreements, there is no conclusive evidence for a causal link between extension and density levels (Addison *et al.* 2015; Vilares 2015; Naumann 2018). Furthermore, because of extensions, the coverage of collective agreements in force has been much higher than membership rates (of unions and employers’ associations), but did not reflect their intensity of variation, although it has been continuously declining since the early 2000s (see Table 23.1 and Appendix A1). While extensions may have played a role, there are more important reasons for the membership decline. Deindustrialisation and the increase in precarious jobs might have played a role, over the years, in particular since the mid-1990s. Between 1995 and 2001 the share of temporary jobs in Portugal increased by around 10 percentage points, reaching around 20 per cent, a proportion that continues, with slight variations, until today. More recently, the spread of firms’ strategies of externalisation, subcontracting and outsourcing might also have influenced the decline of membership rates. On the other hand, poor outcomes of collective bargaining and the cancellation of collective agreements, sometimes replaced by agreements with lower standards signed by minority unions, might have contributed to workers’ disengagement and exit from unions. In the period of Troika intervention, during which the practice of extension was practically suspended, employer associations were afraid that companies would exit associations, once social dumping was established in the absence of extension of agreements to all companies and workers.

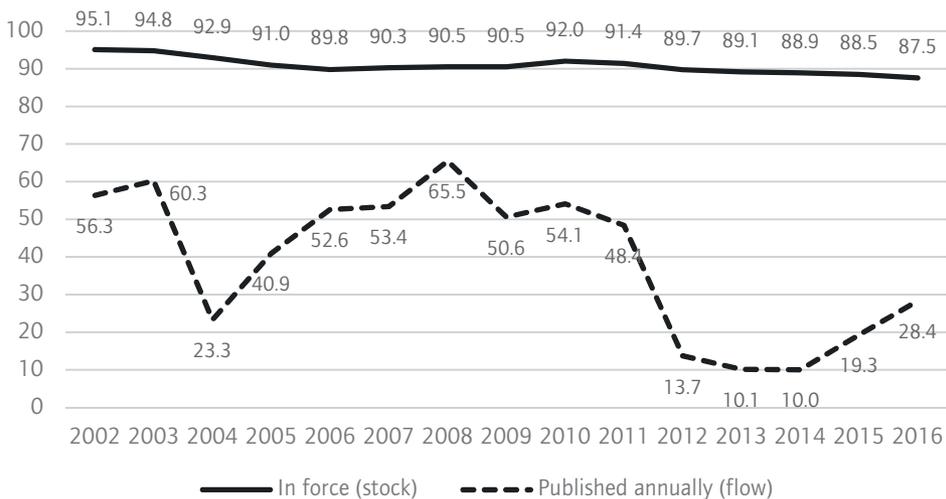
The negative impact of the new conditions and regulations on the extent of bargaining between 2011 and 2014, in particular the drastic reduction of extension ordinances, should be measured not only in terms of the decline of the overall coverage of agreements in force or the ‘stock of agreements’, which is the indicator normally used in international comparisons, but also in terms of the ‘flow’ of agreements, that is, newly concluded and renewed agreements (Addison *et al.* 2015; 2017; OECD 2017; ILO 2018).

2. According to the Green Paper on Labour Relations 2016 (Dray 2016) companies in Portugal claiming to be affiliated to employers’ associations (19 per cent of the total) employed 39 per cent of all workers.

This is because the ‘stock’ of agreements comprises all agreements that have not been updated but remain in force plus the ‘flow’ of agreements concluded or renewed each year. While the stock of agreements gives an idea of the proportion of employees legally protected by collective agreements, it does not reflect bargaining dynamics, which can be captured only by looking separately at the ‘flow’ of agreements. This distinction is very important because annually concluded and published agreements can be new, but more often, in relation to wages and other conditions, are updates or amendments of existing agreements. Also, many agreements can be in force for several years without change, when negotiations fail to update them and their regulatory capacity diminishes (and no action is taken to terminate such agreements).

The implications of this distinction are particularly clear in relation to wage bargaining. In Portugal, wage bargaining is supposed to take place annually, and there is no practice of negotiations covering wage updates for successive years. Consequently, when negotiations fail and agreements remain in force, the nominal agreed wage levels, in absolute terms, remain identical to what was settled in the last agreed update, no matter how many years previously. Often, particularly in times of crisis, employers refuse to sign wage agreements. In effect, this strategy corresponds to wage devaluation (Campos Lima and Jørgensen 2016). This means that analysis of the ‘flow’ of agreements not only provides a picture of who is covered by wage updates or other conditions in that year but also of who were not covered. This is even more important because updates refer mainly to wages. Based on official administrative data,<sup>3</sup> Figure 23.1 compares the

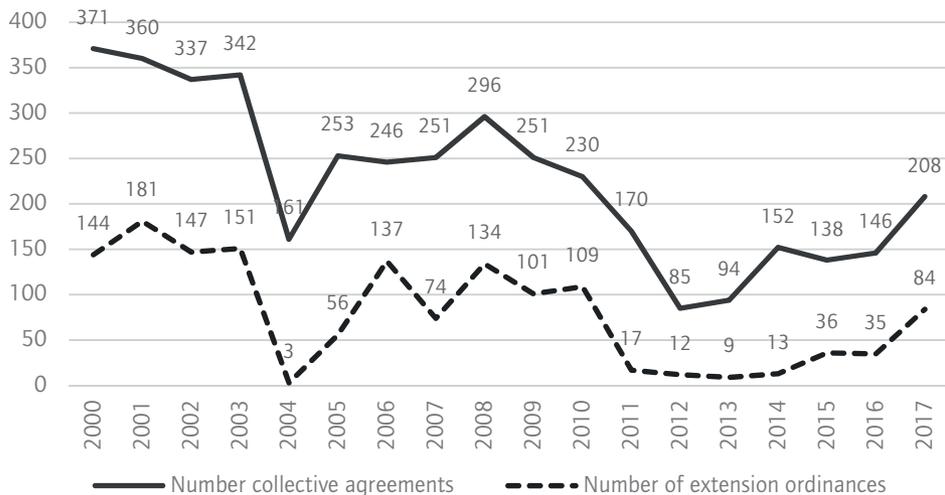
Figure 23.1 Coverage rates of collective agreements in force and those published annually, 2000–2016 (%)



Source: Author’s calculations based on DGERT/MTSS (2002–2016).

3. Author’s calculations based on information (2002–2016) from DGERT/Ministry of Labour, Solidarity and Social Security regarding the agreements in force and the agreements published annually and based on the mandatory questionnaire to all private sector companies (Quadros de Pessoal).

Figure 23.2 Number of collective agreements and extension ordinances annually published, 2000–2017



Source: DGERT/MTSS (2002–2017) ([www.dgert.gov.pt](http://www.dgert.gov.pt)).

development of both indicators: the coverage of agreements in force and the potential coverage of annually published agreements since 2000. Furthermore, the case is even more critical, if the expression ‘potential’ coverage is taken to mean the theoretical coverage of ‘flow’ agreements if they are extended. In the period between 2011 and 2014 this was extremely rare (Figure 23.1 and Figure 23.2).

The variation of the flow, which displayed a sharp decline in 2004 and an unprecedentedly dramatic decline during the Troika period (2011–2014), is profoundly connected to the impact of the economic crisis and, even more, to the ensuing crisis management. This resulted in a reduction of both the number of collective agreements concluded each year and the number of extensions (Figure 23.2). In fact, the most critical challenges to the extent of bargaining occurred in these two distinct periods of the 2000s, marked by economic crisis. In both cases it was the consequence of anti-labour legislation introduced by a centre-right coalition government: the 2003 Labour Code and the 2012 amendments to the 2009 Labour Code.

While in 2004 the centre-right government’s strategy was to block the publication of extension ordinances, since 2011 the same story has been repeated but with three major differences. First, the austerity policies that were implemented, prolonged and amplified the crisis; second, the collapse of negotiations was prolonged; and third, the new regulations introduced stricter criteria for the extension of agreements. Resolution 90/2012 established two central conditions for the extension of collective agreements: first, employers’ associations had to represent at least 50 per cent of the employees in the industry; and second, the implications of extension for the industry’s competitiveness had to be taken into consideration. These more restrictive criteria not only led to a sharp

decline in the number of extensions but also blocked the negotiation of agreements, in particular at industry level. Employers were reluctant to enter into new agreements that would not be extended. Over the years, the critical importance of the extension regime in compensating for the increasing organisational weakness of bargaining actors became apparent (Naumann 2017; ILO 2018). Both employers' associations and unions opposed the restrictive extension regime because it did not prevent unfair competition and did not acknowledge their organisational difficulties in an economy dominated by small and micro companies. In 2014, new criteria were added that allowed extensions also when employers' associations consisted at least of 30 per cent of micro, small and medium-sized enterprises (Resolution 43/2014).

As a consequence, from 2015 the extent of bargaining measured by the flow of collective agreements started to recover, although not yet reaching the pre-crisis level. In the following years, there was a political turn to the left, breaking with austerity and leading to economic recovery and falling unemployment. Other favourable conditions also encouraged the recovery of collective bargaining. Following the January 2017 tripartite agreement (CES 2017), Resolution 82/2017 introduced new and more favourable criteria for the extension of agreements. In particular it removed the representativeness criteria and introduced more inclusive criteria based on the constitutional principle of 'equal pay for equal work', with the explicit aim of promoting social and gender equality.<sup>4</sup> The resumption of extension ordinances went hand in hand with the recovery of the number of collective agreements registered in 2017, although it was still below the level of the pre-crisis years (Campos Lima 2017) (see Figure 23.2).

While in the private sector steps were taken to improve the extent of bargaining, in public administration the blockade of collective bargaining that occurred in response to the 2008 crisis is still in place. The crisis and austerity policies implemented froze bargaining on wages, career development or other statutory matters, as well as, from 2012, the entry into force of the new types of collective agreement focused on working time envisaged by the 2008 legislation<sup>5</sup> (Stoleroff 2007, 2013; Campos Lima and Abrantes 2016; Campos Lima 2017). Furthermore, in the domain of wages and working time the centre-right government's unilateral decision to cut nominal wages and increase weekly working time from 35 to 40 hours led to a social backlash. When the PS government came to power at the end of 2015, the public sector cuts were reversed and the 35-hour week and bargaining on working time were restored. Collective bargaining on wages and career development, subject to statutory regulation, remain blocked, however. The government continues to pursue a restrictive budgetary policy in order to fulfil the requirements of the new European economic governance.

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4. Resolution 82/2017 includes the following, more inclusive criteria: the impact on the wage scale and on the reduction of inequality, the percentage of workers to be covered and the share of women that will benefit.

5. Law 12-A / 2008 and Law 59/2008 extended to all public employees the possibility to be covered by collective agreements. This is very limited in scope, however, as part of a move to align public administration regulations with those in the private sector.

## Security of bargaining

Security of bargaining refers to the factors that determine the bargaining role of trade unions, such as legislation on trade union recognition and strikes or any other forms of support offered to trade unions by employers or the state. Since 1976, the Constitution has recognised workers' freedom of association and trade union rights, including their exclusive right to enter into collective agreements. The 2009 Labour Code introduced the possibility for non-union representative structures to conclude collective agreements at company level on condition they have a union mandate, and only in companies with at least 500 workers. In 2012, in line with the Troika memorandum of understanding, legislation lowered this threshold to 150 workers, but did not follow the requirement for negotiations at company level without a union mandate, because this contradicted the constitutional principle of an exclusive trade union prerogative for collective bargaining.

The Constitution guarantees the right to strike and prohibits lockouts. It establishes that workers can define the scope of the interests that are to be asserted by a strike and that the law may not limit that scope. These constitutional principles survived to the following revisions of the Constitution, including the latest revision in 2005, and to legislative attempts to limit the right to strike.<sup>6</sup> The decision to organise strikes remains the prerogative of unions, with a particular exception at company level: if the majority of workers are not represented by unions, an assembly called by 20 per cent of the workers can decide to resort to strike action, provided the vote is approved by the majority of voters in a secret ballot. This has been a rare occurrence, however. The only restrictions on strikes are the need to provide minimum services during a strike, in certain industries,<sup>7</sup> and a notice period, at present five days in general and ten days for 'public utility services'.

The legal framework integrated, until 2003, two protective principles that provided security of bargaining over the years. First, the favourability principle, according to which collective agreements were forbidden to go lower than legally guaranteed minimums and could only exchange them for better working conditions; that is, changes *in pejus* were prohibited (Leite 2004; Amado 2012). Second, the principle of continuity of collective agreements, according to which collective agreements could expire only by joint decision of all signatory parties or when replaced by another collective agreement between the same signatories (Naumann 2014). These two protective principles, which the neoliberal model perceives as 'labour market rigidities' preventing adaptation to globalisation, were broken by the 2003 Labour Code. It established that collective agreements could contradict unfavourably (*in pejus*) any provisions of labour legislation and allowed unilateral cancellation (*caducidade*) of collective agreements by any of the signatories, after a period of ineffective negotiations. The combination of these provisions enhanced employers' power to press the unions to concession bargaining by threatening to withdraw from, and eliminate, agreements considered outdated,

6. The 2003 Labour Code tried to introduce a 'peace clause' to prevent strike action while collective agreements were in force. This attempt was ruled out by the Constitutional Court; Judgment 306/2003, 18 July.

7. These include postal service and telecommunications; medical services and public health; power supply, mines and fuel; water supply; firefighting; public transport of cattle, public perishable foods and essential goods.

irrespective of the level at which they were concluded. The unilateral cancellation of agreements was furthermore facilitated by ‘collective agreement parallelism’,<sup>8</sup> a unique feature of the Portuguese collective bargaining system (Leitão 2001). This permitted employers to cancel an agreement with one union if they had a parallel agreement with a competing union.

Under the PS government, the 2009 Labour Code re-established the favourability principle in certain domains. They included limits on normal daily and weekly working; the minimum duration of rest periods, including the annual holiday period; the maximum duration of night work; forms of compliance and guarantees of remuneration; prevention and repair of occupational accidents and diseases; and the rights of elected employee representatives. Nevertheless, the favourability principle was not fully re-established as a universal principle. For example, the level of overtime payments and the range of reasons for hiring employees on short-term contracts were not explicitly covered by the favourability principle. Despite introducing some measures to protect the individual rights of workers whose collective agreements had expired, the 2009 Labour Code did not reverse the possibility that collective agreements could be terminated by unilateral decision. Furthermore, it also extended unilateral termination to agreements that included a ‘survival clause’, a measure not foreseen by the 2003 Labour Code. Until the 2009 Labour Code came into force, agreements with a ‘survival clause’ were protected against unilateral termination. The clause stipulated that they could be terminated only by joint decision of the signatory parties and when replaced by a new agreement signed by the same partners. With the 2009 Labour Code, however, they also became subject to the possibility of unilateral cancellation, under certain conditions, after a period of five years (Naumann 2014).

Security of bargaining worsened when, in line with Troika requirements, in addition to the restrictions on extension, the legislation in 2014 reduced the period after which collective agreements could be terminated unilaterally from five to three years and cut their period of validity after expiry from eighteen to twelve months. It also established the possibility of temporarily suspending part of or an entire collective agreement in companies in crisis, although on condition of a written agreement between the employers’ associations and unions. The 2017 Tripartite Commitment to a Medium-term Concertation Agreement included a bipartite agreement between unions and employers’ associations (extended also to the state as an employer) to commit their members not to unilaterally require the expiry of collective agreements for a period of eighteen months. It did not require a change in legislation to introduce a joint decision of the collective agreement signatories as a prerequisite for terminating agreements. A tripartite agreement signed in May 2018 (CES 2018) envisages reinforcing mediation and arbitration procedures but does not break with the possibility of unilateral termination of agreements. That is one of the main reasons CGTP did not sign the agreements.

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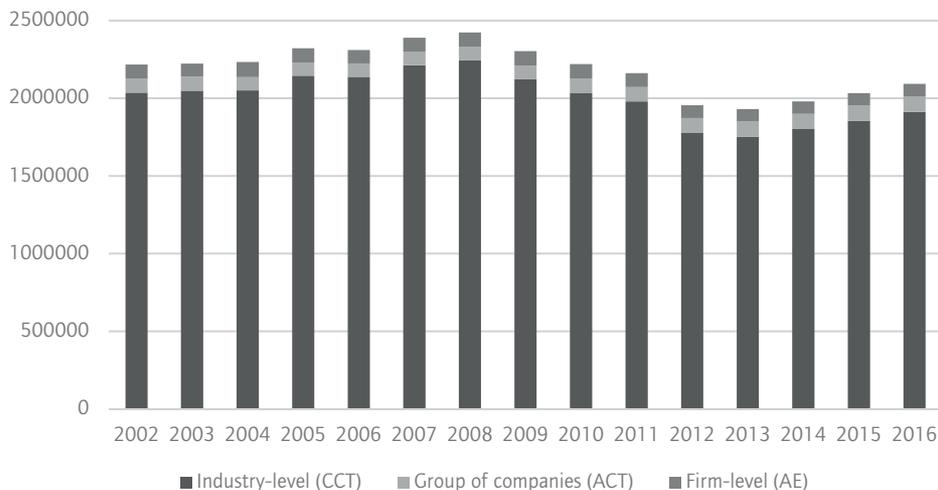
8. ‘Collective agreement parallelism’ refers to a situation in which two or more collective agreements have ‘industry, professional and territorial scopes which are totally or partially coincidental’ (Leitão 2001: 457). In contrast to Spain and France, in Portugal union pluralism translates into ‘parallel agreements’ that mirror trade union divisions, mainly between those affiliated to CGTP and UGT.

## Level of bargaining

Cross-industry collective agreements signed by unions and employers' confederations, covering the whole economy or at least the private sector, do not exist in Portugal. Collective bargaining therefore takes place at industry and firm level. As Figure 23.3 illustrates, the former is far more important in terms of coverage. The legislation concerns two types of multi-employer agreement: the collective labour contract (Contrato coletivo de trabalho, CCT) and the collective labour agreement (Acordo coletivo de trabalho, ACT). Collective labour contracts are signed by one or more employers' associations and unions. This applies to the large majority of industry-level agreements in the private sector. Collective labour agreements are signed by unions and by a group of companies, as in banking. Firm-level agreements (Acordos de Empresa, AE) could be signed only by unions and individual employers until 2009, irrespective of company size. Now firm-level agreements can also be signed by non-union representative structures at company level, provided they have a union mandate, and depending on company size: from 2009 this concerned companies with at least 500 employees and from 2012 companies with at least 150 employees, in line with the memorandum of understanding. Over the years (2002–2016), AEs have accounted only for around 4 to 5 per cent of workers covered by collective agreements. Industry agreements (CCTs) have accounted for around 92 to 93 per cent of workers, and collective labour agreements (ACT) have accounted for around 4 per cent of the workers covered.

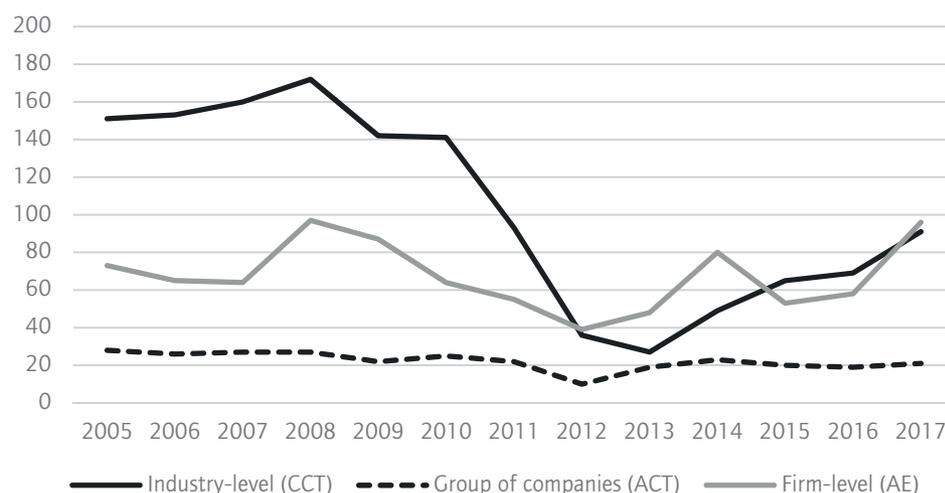
In practice, the reforms introduced since 2012, following the requirements of the memorandum of understanding that limited the extension of agreements and favoured non-union bargaining at firm level, have allegedly been 'aimed at making collective bargaining more decentralised, dynamic and representative' (OECD 2017: 53). These

Figure 23.3 Number of workers covered by type of collective agreement (2002–2016)



Source: DGERT/MTSS (2002–2017).

Figure 23.4 Number of updated collective agreements by type (2005–2017)



Source: DGERT/MTSS (2005–2017).

goals have not been achieved, however. While at the beginning of the crisis, in 2008, the number of updated industry-level agreements was almost double the number of company agreements, in 2017 the number of updated company agreements was almost the same as the number of industry-level agreements (see Figure 23.4). These dynamics were less the result of an increase in the number of company agreements than of the dramatic decline in the number of updated industry-level agreements. This was caused by the crisis and austerity measures and by the blocking of extension procedures.

Furthermore, a number of studies examining collective bargaining trends do not report any cases of company agreements negotiated by non-union actors (CRL 2016, 2017, 2018; Dray 2016). It seems that the crisis context did not favour the emergence of company-level bargaining. The main reason for this is low union density and the extremely low level of employee representation at the workplace. In fact, according to the European Company Survey, Portugal has the lowest level of employee representation in the EU: only 8 per cent of establishments with more than ten employees have official employee representation (Eurofound 2015: 98).

Another difficulty concerning company bargaining by non-union actors results from the dual-channel system of workplace representation in Portugal. Union delegates represent unionised workers and works councils (workers' commissions) represent all workers and are formally independent of unions. While in many countries with dual systems works councils are linked to unions at least informally, in Portugal there is no such tradition. For instance, there are no candidate lists linked, explicitly or implicitly, to unions at elections for workers' commissions. This Portuguese particularity goes back to the 'revolutionary period' (Stoleroff 2016) when the dual system and the distinctive competences or prerogatives of unions and workers' commissions emerged and were enshrined in the Constitution.

## Depth of bargaining

Depth of bargaining, understood as the extent of involvement of local employee representatives or the rank and file in the formulation of claims and the implementation of agreements, varies depending on the level and type of agreement. In practice, although there is no formal articulation between bargaining levels, industry or occupational unions or federations conduct negotiations at both industry and firm level. In that way coordination and input from members are assured. Union members are more deeply involved in the negotiation of firm-level agreements (AE). They are also in a better position to monitor compliance. For instance, the gap between agreed and actual wages is likely to be narrower in companies with firm-level agreements. Union delegates at firm level (*delegados sindicais*) ensure articulation with union officials at the industry level. Often informal cooperation between unions and workers' commissions (*Comissões de Trabalhadores*) helps to improve employees' participation in negotiating and implementing agreements. This practice is most common in large companies.

In general, conditions are not particularly favourable for in-depth bargaining. First, firm-level bargaining is fairly exceptional; second, union density has been declining (Appendix A1.H); and third, union representation at the workplace is not widespread. There are, however, significant differences between industries in relation to union density and local representation and between union strategies to involve local representatives or their rank and file in bargaining.

The rank and file are involved in industry-level negotiations in a number of ways, formulating demands and implementing agreements. Participation varies depending on a number of factors. First, the characteristics of the industry, for instance, the degree to which it is dominated by large or small firms; second, trade union membership and resources; and third, union strategies favouring more or less top-down or bottom-up approaches and organising strategies. Variation is illustrated by the contrast between banking and the metal industry. In banking, bargaining depth has been favoured over the years by high levels of union density, currently above 50 per cent, strong workplace union representation and union resources, largely because of industry-specific health provision run by the unions. On this basis, the negotiation of collective labour agreements (ACTs), directly involving groups of large companies, favours the influence of local union representatives. The implementation of agreements in banking is also favoured by the fact that there are no 'parallel' collective agreements.<sup>9</sup>

In the metal industry, by contrast, bargaining is shallower because its heterogeneity makes it harder to manage. This concerns the size of the companies and technological developments, but also the uneven distribution of union representation at the workplace. Moreover, severe deindustrialisation, escalating from the early 1990s, resulted in the decline of union membership and the dismantling of powerful workplace union structures in some companies. In manufacturing, metalworking has been one of the industries most affected by the combined effects of 'parallelism' and unilateral employer

9. It is one of the few industries in which union pluralism and ideological differences, namely between UGT, here in the majority, and CGTP unions, were not translated into competing 'parallel' collective agreements.

cancellation of collective agreements (Naumann 2014: 11; Távora and Gonzalez 2016). While the collective agreements signed by CGTP unions, the most representative in the metal industry, were cancelled when this option was made available to employers' associations, most parallel agreements signed by minority unions were kept in place. The strategy of CGTP unions in the metal industry to counteract the blockade was to negotiate ad hoc company agreements in companies in which they were stronger. Industry collective agreements signed by minority unions rely very little on the input of members.

Certainly, employers' strategies so far have not favoured the improvement of depth of bargaining through company-level bargaining. The reason is not only the lack of local union structures, as industry-level union officials have repeatedly tried to establish firm-level agreements but without success. In fact, industry bargaining has given more freedom to employers by defining minimal rules. In particular regarding wages, industry-level agreements give them more room for flexibility at company level than the rhetoric of 'industry rigidity' suggests (Naumann 2018).

## **Degree of control of collective agreements**

The degree of control of collective agreements is not very high in Portugal. In general, the agreed terms and conditions do not correspond to the actual terms and conditions. The conditions that undermine depth of bargaining also play a significant role in the degree of control of collective agreements. Low union density and weak workplace representation limit trade unions' capacity to control the implementation of collective agreements. The 'parallelism' of collective agreements, together with individual non-unionised workers' right to choose between competing agreements also contribute to eroding trade union control.

This low degree of control is expressed in two ways. First, industry agreements do not lay down actual conditions but set minimum standards. These industry minimum standards have deteriorated over the years as companies have acquired more discretion, in particular in relation to wage setting and working time flexibility. For instance, the actual wages of highly skilled workers tend to be higher than what is defined in collective agreements. Second, lack of compliance with minimum standards. Detection of illegal practices that circumvent collective agreements has become increasingly difficult because of mounting union weakness at the workplace and, as a result of austerity, cuts in the resources available to the labour inspectorate. Furthermore, the majority of industry-level agreements concluded during the Troika years were not subject to extension. As a result, the gap between agreed minimum and actual conditions has increased and the control of collective agreements has been undermined. This is particularly obvious with regard to wage bargaining, as the few industry agreements that updated wages were not extended to all companies and employees. This also helps to explain why gross wages have fallen substantially, diverging from agreed wages (Cruces *et al.* 2015).

Other legislative developments during the Troika period that reduced the control of collective agreements comprise the inclusion of 'opening' or 'derogation clauses', on issues such as functional and geographical mobility, working time and wages; the possibility of

temporarily suspending collective agreements in companies in financial difficulties; and the reduction of the period of validity of agreements after expiry. Finally, new legislation on working time management in 2009 and, in particular, in 2012 created new challenges regarding the control of collective agreements. Individual agreements between employers and individual employees on the adaptability of working time (2009) and on working time accounts (2012) circumvented collective agreements (Campos Lima and Abrantes 2016; Campos Lima 2017).

## Scope of agreements

In the private sector and state-owned companies alike, collective agreements include detailed provisions on the regulation of employment relations and working conditions. They may include additional social and health benefits, on top of those provided by the welfare system, although that is exceptional. Collective agreements cannot remove mandatory legal provisions, however.<sup>10</sup>

The issues regulated by industry and company agreements are the same. When there is no articulation between bargaining levels, the range of issues regulated applies equally to all levels. This has been common practice. Also, the possibility of ‘opening’ or ‘derogation clauses’ on issues such as working time and wages, introduced in 2012, has been used extremely rarely in practice.

Basically, the tendency over the years has been to enlarge the scope of issues to be regulated by collective agreements. Often a change in legislation triggered the inclusion of new issues, as did the adoption of European directives. Domestic regulations on health and safety in the workplace, employees’ information rights, working time duration and flexibility, parental rights and combating various forms of discrimination were integrated into collective agreements, sometimes just repeating the text of the supervening law, less often integrating some innovation.

The wave of reforms in 2009 and subsequently in 2012 challenged the scope of collective agreements in different ways as regards the relation between the law and collective agreement provisions. One of the most contentious themes has been the management of working time. The 2009 Labour Code defined the limits of the ‘adaptability of working time’ and ‘working time accounts’, establishing that such regimes can be established only through collective agreements. This enlarged the scope of the terms of employment to be defined exclusively by collective bargaining (Campos Lima and Abrantes 2016; Naumann 2018). Nevertheless, it also established the possibility of ‘individual adaptability’, based on individual agreements between employer and employee. Legislation from 2012 introduced the possibility of ‘individual working time accounts’, also based on individual agreements. The assumption was that an employee

10. Such provisions include the following: identification of reasons justifying employees’ absence from work and their consequences in terms of disciplinary procedures unless they refer to worker representatives; almost all the provisions on the termination of employment contracts, with the exception of criteria and amount of severance pay; and some regulations on short-term contracts. In addition, collective agreements cannot regulate the exercise of temporary employment agencies, including temporary contracts of employment and they cannot give retrospective effect to non-pecuniary clauses.

‘accepts’ the employer request if they do not oppose the proposal in writing. In practice this created a mechanism to bypass collective bargaining through a particular form of employer unilateralism (Campos Lima and Abrantes 2016).

The scope of agreements was also challenged by imposing imperative rules in domains in which previously they had not been imperative; this included the amount of severance pay and overtime pay, as required by the MoU. The same legislation, adopted in 2012, also established that the more favourable provisions of collective agreements were null and void in the case of severance pay and suspended for a period of two years in the case of overtime payments (Campos Lima and Abrantes 2016).

The social backlash as regards the Troika memorandum of understanding imposed in the public sector blocked collective bargaining on any issue. Unilateralism prevailed, cutting nominal wages and increasing working time. Moreover, the government blocked the registration and entry into force of the collective agreements signed since 2013 between unions and local administrations re-establishing the 35-hour week. In 2015, however, the Constitutional Court overturned this.<sup>11</sup> The new PS government, however, introduced measures to reverse nominal wage cuts in the public sector (Campos Lima 2017) and to re-establish the 35-hour working week. Wage increases were not on the government agenda, however, and even the promised wage updates related to workers’ wage scales (frozen for a decade) were called into question, allegedly because of the need to meet EU deficit criteria. Tensions with unions have mounted as a consequence.

## Conclusions

In Portugal, collective bargaining institutions were shaped by three major legislative reforms in 2003, 2009 and 2012–2014. The regulations of the 2003 Labour Code, a centre-right initiative, launched the dismantling of the institutional pillars that provided for high levels of bargaining security in the decades following the 1974 democratic revolution. The reversal of the favourability principle and the possibility of unilateral termination of collective agreements represented a paradigmatic shift that would redefine the rules of the game and the balance of power for years to come. The 2009 Labour Code, despite re-introducing the favourability principle in some domains and securing some rights for workers whose agreements expired, did not fundamentally challenge this. The option of unilateral termination even strengthened it. Furthermore, in tripartite concertation employers’ associations showed that they were not willing to give up their newly won prerogatives to withdraw from agreements that they viewed as excessively protective of labour and instead to sign new agreements with other unions, including minority ones, which were more open to concessions. In 2009 therefore the era of collective bargaining under the threat of unilateral termination was in full swing. It coincided with the dramatic economic and social impact of the early years of the international crisis. The retreat of collective bargaining until 2011 manifested a particular conjunction of extremely unfavourable economic conditions and deep

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11. Law 18/2016, second amendment to Law 35/2014.

institutional changes, accumulated over the years, which shifted the balance of power towards the employers.

The worst was yet to come, however. In May 2011, when Troika austerity and neoliberal measures implemented by the centre-right PSD-CDS coalition plunged the country into the most dramatic crisis of collective bargaining in four decades of democracy. The package combined freezing the minimum wage and legislative measures downgrading labour standards, in domains such as overtime pay, severance pay, working time accounts, dismissals and temporary work. The legal framework of collective bargaining was also directly targeted. The later included major challenges to the security and extent of bargaining; legal restrictions on the extension of agreements; the possibility for companies to withdraw from agreements (at any level) on the grounds of economic crisis; and speeding up the termination of agreements by further reducing their period of validity. Structural measures designed to be permanent were added to measures designed to be temporary, all of them 'justified' in the name of financial adjustment, competitiveness, alignment with productivity at firm level and 'internal devaluation'. Instead of the proclaimed 'organised' decentralisation, in the absence of workplace bargaining structures and with the introduction of restrictions on extension based on employers' representativeness, the result was a historical decline in the number of newly signed industrial agreements and in the proportion of workers covered by updated agreements.

In contrast to Greece and Romania, however, where industry-level collective agreements collapsed paving the way to disorganised decentralisation, in Portugal the retreat of industry-level bargaining during the Troika intervention did not entail a significant reduction of industry-level agreements or an increase in company agreements (ILO 2018). Rather there was large-scale erosion of the number of updated industrial agreements and the proportion of workers covered by bargaining updates at industry level. But even in the worst years, the number of workers covered by updated company agreements never equalled the number of those covered by updated industry-level ones. Employers did not massively withdraw from collective agreements, neither was there a sharp increase in companies signing agreements. There were two main reasons for this Portuguese peculiarity. First of all, contrary to the requirements of the memorandum of understanding, the possibility for employers to negotiate with non-union structures at company level was conditional on a trade union mandate. According to the Portuguese Constitution trade unions have the exclusive bargaining prerogative and non-union structures representing workers have to have a trade union mandate. Second, in general, Portuguese employers and employers' associations have never been enthusiastic about company-level negotiations. In general, their preference is to negotiate minimum standards at industry level, giving them enough room to exercise discretion at company level, using unilateral prerogatives. This preference is the most important explanation of the low percentage of company agreements in Portugal, in addition to low union density and lack of trade union resources at the workplace level (Naumann 2018).

After the PS came to power in November 2015, with the support from the far-left parties (BE, PCP and PEV), there was a break with austerity policies, followed by economic recovery and falling unemployment. This established favourable conditions

for the recovery of collective bargaining. Concerning the legal framework of collective bargaining most important was the change in the regulations on extension of collective agreements in 2017. The goal was to increase the extent of bargaining based on inclusiveness and equality principles. Also, a temporary measure included in the tripartite agreement of January 2017 included a recommendation to temporarily suspend any unilateral requests to terminate agreements for a period of 18 months to promote the recovery of collective bargaining. The three years of the socialist mandate also showed the difficulties involved in re-establishing a minimal balance of power between the bargaining actors through modifications in the legal framework. Once again, as in 2009, the PS does not envisage fully restoring the favourability principle, nor reversing unilateral termination. The left-wing parties that support the government and the CGTP demanded the re-establishment of the favourability principle and joint decisions to cancel agreements, which employers' associations firmly oppose. Instead, the PS government's intention, as expressed in the tripartite agreement 2018 (CES 2018) and in proposed legislation under discussion, is to promote incremental changes on the expiry of agreements and favourability (Campos Lima 2018; ILO 2018; Perista *et al.* 2018). These incremental changes refer to the creation of an arbitration court within the framework of the Economic and Social Council (Conselho Económico e Social), as a last instance before the expiry of collective agreements, and a proposal to widen the scope of rights that workers retain when collective agreements expire, adding parental rights and rights to health and safety at work. It also adds overtime payments to the range of matters to which the favourability principle will apply.

The 2018 tripartite agreement also includes new threats to collective bargaining and trade unions in connection with new proposals on working time regulation. On one hand, the proposed measures, aimed at combating the individualisation of labour relations, would eliminate individual working time accounts, created in 2012, which could circumvent the provisions of collective agreements. On the other hand, the proposed measures determine that working time accounts<sup>12</sup> can be decided *either* by collective bargaining *or* by 'group agreements' resulting from the consultation of workers in company votes organised by the employers. The proposed measure lays down that such votes would be supervised by workers' committees (non-union structures), by trade union delegates at company level or by other worker representation structures, in that order. This not only denies real negotiating power to these bodies but gives precedence to non-union structures as regards supervision. This means that if collective agreements do not include any provisions on a given matter a company 'referendum' may in practice substitute for collective bargaining. The proposed regulation may turn out to be a Trojan horse to subvert collective bargaining and trade union prerogatives. Implementation of the 2018 tripartite agreement is currently being debated in parliament (April 2019). Only in the wake of that are we likely to find out what the impact of these proposed changes will be.

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12. A regime that made it possible to increase normal working time by two hours a day, up to a maximum of 50 hours a week, with a maximum of 150 hours a year.

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All links were checked on 14 March 2019.

## Abbreviations

<b>ACT</b>	Acordo coletivo de trabalho (Collective labour agreement)
<b>AE</b>	Acordos de Empresa (firm-level agreements)
<b>BE</b>	Bloco de Esquerda (Left Block)
<b>CCT</b>	Contrato coletivo de trabalho (Collective labour contract)
<b>CGTP-IN</b>	Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional (General Confederation of Portuguese Workers – Inter-Union National)
<b>CDSPP</b>	CDS-Partido Popular (Social and Democratic Centre)
<b>CIP</b>	Confederação Empresarial de Portugal (Confederation of Portuguese Business)
<b>CPCS</b>	Comissão Permanente de Concertação Social (Standing Committee for Social Concertation)
<b>MoU</b>	Memorandum of Understanding on Specific Economic Policy Conditionality
<b>PCP</b>	Partido Comunista Português (Portuguese Communist Party)
<b>PS</b>	Partido Socialista (Socialist Party)
<b>PEV</b>	Partido Ecologista os Verdes (Ecologist Green Party)
<b>PSD</b>	Partido Social Democrata (Social Democratic Party)
<b>UGT</b>	União Geral de Trabalhadores (General Union of Workers)

## Chapter 24

# Romania: from legal support to frontal assault

Aurora Trif and Valentina Paolucci

Post-socialist economic and political developments have produced a special type of neoliberal society in Romania, characterised by weak state institutions, high centralisation and collective bargaining coverage and relatively high trade union mobilisation power (Bohle and Greskovits 2012). Before the 2008 recession, relatively strong unions had the upper hand in influencing Romanian governments to support a protectionist labour legislation. Unlike most countries in Central and Eastern Europe (CEE), Romania kept its pre-1989 Labour Code for quite some time (until 2003), with some minor revisions that removed the unions' political obligations, such as socialist education. Post-1989 legislation entitled the social partners to bargain collectively and gave unions the right to strike (Hayter *et al.* 2013). Collective agreements could be concluded at national, industry (or other sub-divisions) and company levels. Comparable only to Slovenia, the *erga omnes* principle ensured an automatic extension of collective agreements to cover all employees in the bargaining unit at cross-industry, industrial and company levels. The presence of the favourability principle enshrined into law also meant, however, that lower-level collective agreements could only *improve* the provisions for employees set at higher levels (Trif 2016). Thus statutory regulations ensured that all employees were covered, at least by the provisions of cross-industry agreements (Table 24.1).

During the 2008 crisis, Prime Minister's Boc's centre-right government deregulated the labour market, weakening both individual and collective employee rights. Amendments to the Labour Code (Law 40/2011) made it easier for employers to dismiss employees, including shop stewards, as well as to increase workloads unilaterally and use flexible working time arrangements. The adoption of the 'so-called' Social Dialogue Act (Legea dialogului social 62/2011, LDS) diminished fundamental collective rights, such as the right to organise; for example, it is no longer possible to unionise workers in companies with fewer than 15 employees, to strike or to bargain collectively (Trif 2013). By prohibiting cross-industry agreements in tandem with abolishing automatic extension of industry agreements and making it far more difficult for unions to negotiate company level agreements, in particular by raising the representativeness threshold from 33 per cent to more than 50 per cent, the LDS caused a massive decline in bargaining coverage and union density (Table 24.1). This frontal assault on multi-employer bargaining arrangements led to a transformation of the regulatory framework from a statutory system that supported collective bargaining to a so-called 'voluntary' system that made it almost impossible to negotiate new cross-industry and industrial agreements after 2011 (Stoiciu 2016).

Table 24.1 Principal characteristics of collective bargaining in Romania

Key features	2000	2016
Actors who negotiated collective agreements	Trade unions Employers' associations Public and private employers	Trade unions and/or workers' representatives at company level Employers' associations Public and private employers
Importance of bargaining levels	Company bargaining slightly more important than industrial and cross-industry bargaining	Company bargaining the most important Cross-industry bargaining prohibited
Favourability principle/derogation possibilities	Favourability principle No derogations allowed from the minimum standards set by cross-industry and industrial agreements	Favourability principle solely at company level
Collective bargaining coverage (%)	100	35
Extension mechanism (or functional equivalent)	<i>Erga omnes</i> principle at - cross-industry - industrial and - company levels	<i>Erga omnes</i> principle solely at company level Extension possible at industrial level <i>de jure</i> , but <i>de facto</i> no extensions after 2011
Trade union density (%)	35	20
Employers' association rate (%)	80	Circa 60

Source: Trif (2016) and Appendix A1.

This chapter argues that Romania represents an extreme case of disorganised decentralisation of collective bargaining following the 2008 recession. It shows that developments in bargaining were path-dependent prior to 2008, while the path-departure was triggered by shifting statutory rights from supporting to hindering bargaining arrangements in the wake of the post-2008 crisis. It provides examples from two highly unionised industries, namely public education and metal, but also from the barely unionised retail, to illustrate within-country variations. The selected industries have been affected differently by the recession. The increase in international demand for relatively cheap automobiles since 2008 has boosted the labour force and turnover in this industry. In 2016, the value added to GDP by services, including education and retail, was 63.3 per cent, that of industry 32.4 per cent, 13 per cent of which is due to the automobile industry, and that of agriculture 4.3 per cent (World Bank 2018). Government 'austerity' measures included wage cuts and some job losses in education (Guga *et al.* 2018). The decrease in domestic demand in retail led to a 9 per cent decline in the labour force until 2014, after which it increased again because of growing domestic consumption. Apart from decentralisation, the collapse of cross-industry and industrial bargaining almost quadrupled the number of workers on the minimum wage from 2011 to 2016 (Guga *et al.* 2018: 47), as employers were no longer obliged to implement wage rates set at higher levels. Low wages, combined with the opportunity to work in other Member States after joining the European Union (EU) in 2007, have led to massive emigration since 2008 (Stan and Erne 2014). This has kept the unemployment rate fairly low, while leading to labour shortages in most industries, including retail (Guga *et al.* 2018).

## Industrial relations context and principal actors

The path-dependent transition from socialism to a market economy in the 1990s resulted in a large degree of continuity in labour market regulation. Romania had one of the most centralised planned economies and its transition to a market economy started only after the sudden collapse of the communist regime in 1989 (Trif 2008). Consequently, there was neither a credible alternative political elite to steer the country towards democracy nor experienced domestic entrepreneurs and managers to restructure state-owned enterprises. These initial circumstances contributed to a slow transition to a market economy by fairly weak governments that sought the unions' support in exchange for a legal framework relatively favourable to workers (Ban 2016). In order to harmonise Labour Code provisions with the EU social *acquis* during the EU accession process in the mid-2000s, the restrictions on concluding fixed-term employment contracts were relaxed in countries that had protectionist labour legislation, such as Romania and Slovenia (Trif 2008). When foreign investors tried to remove the legal obligation on employers to bargain with unions or employee representatives during the 2005 Labour Code revision, however, Romanian unions managed to preserve collective bargaining institutions with the support of the European Trade Union Confederation (ETUC) and the International Labour Organization (ILO).

The unions' success was short-lived, as foreign investors, who bought a large number of large state-owned companies in the 2000s after the privatisation process was simplified and it became certain that Romania would join the EU, triggered the dismantling of the collective bargaining system during the recent crisis (Trif 2013). Apart from lobbying a sympathetic centre-right government, the foreign investors' quest for a 'flexible' labour market was endorsed by the 'Troika' comprising the European Commission (EC), the International Monetary Fund (IMF) and the European Central Bank (Schulten and Müller 2013), from which Romania borrowed approximately €20 billion in 2010 to deal with the budget deficit. Although labour market regulation was not considered a cause of the crisis in Romania (Ban 2016), the demand for labour market flexibilisation was one of the conditions for getting financial assistance from the Troika. Thus the key actors that affected the legal framework for collective bargaining have been the trade unions and external actors rather than domestic employers.

Most employers' associations were established by managers of state-owned enterprises to protect their interests vis-à-vis the unions and the state in the early 1990s. After privatisation, in the main, domestic owners remained affiliated to employers' associations, which generally continued to be staffed by former senior managers of state-owned enterprises. Nevertheless, as individual employers had sufficient power to negotiate terms and conditions of employment at the company level, they gave a limited mandate to their associations to bargain collectively at higher levels. Furthermore, the fragmentation of employers' associations increased after 2000; the number of nationally representative employers' associations<sup>1</sup> grew from five in 2001 to 11 in 2006 (Trif and Mocanu 2006: 25). Their number increased further to 13 in 2010, but only

1. Their members must employ at least seven per cent of the total labour force to be representative at the national level, while members of federations must employ at least 10 per cent of the industry labour force to be representative at industry level.

six of them were still representative at the national level in 2015 (Stoiciu 2016). These are as follows: the General Union of Romanian Industrialists 1903 (Uniunea Generală a Industriaşilor din România 1903, UGIR 1903), the National Council of Private Small and Medium-sized Enterprises (Consiliul Naţional al Întreprinderilor Private Mici şi Mijlocii din România, CNIPMMR), the National Confederation of Romanian Employers (Confederaţia Naţională a Patronatului Român, CNPR), the Employers' Confederation of Romanian Industry (Confederaţia Patronală din Industria României, CONPIROM), the Romanian National Employers (Patronatul Naţional Român, PNR) and the Concordia Employers' Confederation (Confederaţia Patronală Concordia, Concordia). Members of the first three organisations cover over 300,000 employees and those of the last three 230,000 to 260,000 employees. Despite a relatively high density (60 to 80 per cent), Romanian employers' associations were considered amongst the weakest in the CEE countries (Trif and Mocanu 2006: 25), primarily due to the weak mandate from their members. The inherited legacies, particularly the lack of employers' associations during the communist era and the slow privatisation process, have made the development of the Romanian employers' associations far more difficult than that of the unions.

In contrast, there have been fewer structural changes among the union confederations. Five union confederations have operated in Romania since the 1990s: the National Trade Union Confederation Cartel Alfa (Confederaţia Naţională Sindicală Cartel Alfa, CNS Cartel Alfa), the National Confederation of Free Trade Unions from Romania - Frăţia (Confederaţia Naţională a Sindicatelor Libere din România – Frăţia, CNSRL- Fratia), the National Trade Union Bloc (Blocul Naţional Sindical, BNS), the Confederation of Democratic Trade Unions in Romania (Confederaţia Sindicatelor Democratice din România, CSDR) and the Meridian National Trade Union Confederation (Confederaţia Sindicală Naţională Meridian, CSN Meridian) (Trif 2013). Their size is roughly similar, varying between 250,000 to 320,000 (Stoiciu 2016: 18), which is above the five per cent of the total labour force threshold required to be representative at national level. Union federations need to have at least seven per cent density to be the representative at the industry level. Although the adoption of the LDS radically altered only the representativeness threshold for company level unions, from a third to over 50 per cent in 2011, it reduced the role and influence of both unions and employers' associations in collective bargaining, as will be discussed in the following sections.

## **Extent of bargaining**

The extent of collective bargaining refers to the proportion of workers in a bargaining unit covered by collective agreements. It is contingent primarily on the statutory provisions on extension mechanisms and the voluntary capacity of unions and employers to conclude collective agreements. After 45 years during which the party-state determined virtually all aspects of Romanian employment relations, a pluralist legislative framework was adopted in the 1990s that guaranteed freedom of association, the right to bargain collectively and the right to strike (Trif 2008). Nevertheless, heavy statutory regulation of collective bargaining has persisted in post-1989 Romania to a higher degree than in other CEE countries.

Until 2011, the process of collective bargaining was primarily regulated by the Law on Collective Labour Agreements (*Legea privind contractul colectiv de muncă 130/1996*), which stipulated that social partners can negotiate at national or cross-industry, industrial or other sub-divisions, and company levels. Similar to pre-1989, the law allowed only a single collective agreement to be concluded by representative unions and employers' associations or individual employers at company level, which had to cover all employees, regardless of their union membership in each bargaining unit. This *erga omnes* statutory extension of collective agreements resulted in virtually 100 per cent coverage (Table 24.1). After 2011, the legal framework provided external legitimacy and support for the social partners. As regards employers, it encouraged them to affiliate to representative associations, in order to have a say in the negotiations of the cross-industry and industrial collective agreements. Representative employers' associations, as well as union confederations could also influence procedural aspects of collective bargaining, as all draft laws on labour issues had to be approved by the Economic and Social Council (*Consiliul Economic și Social*), the national tripartite body. Nevertheless, the density of employers' associations declined from 80 per cent in 2001 to 60 per cent in 2007. Considering that foreign investors are more likely than domestic employers to opt out of employers' associations, this decline could be related to the substantial increase in foreign direct investment in the early 2000s (Trif 2008).

Similar to employers' associations, the unions also relied on the external legitimacy provided by a favourable legal framework to ensure high collective bargaining coverage prior to 2011. Apart from the *erga omnes* and favourability statutory provisions, the Law on Trade Unions (*Legea sindicatelor 54/2003*) allowed federations to become representative at the industrial level simply by being affiliated to a representative confederation at the national level. Thus even without meeting the representativeness criteria concerning membership in that particular industry, unions could acquire the capacity to negotiate. For instance, the Federation of Commerce Unions (*Federația Sindicatelor din Comerț, FSC*) concluded an industrial agreement in 2010, covering all employees in retail, although it had less than one per cent union density (Trif and Stoiciu 2017). The FSC gained its representativeness from being affiliated to a representative confederation, namely CNS Cartel Alfa. Similarly, company-level unions affiliated to representative industrial federations were eligible to negotiate a collective agreement for all employees, regardless of their union membership. Union density remained relatively stable between 2000 and 2008 at about 35 per cent and was higher than in most CEE countries. In a context in which company-level unions could be deemed representative by being affiliated to a representative federation, while federations could acquire representativeness by being affiliated to a representative confederation, it was essential for the union movement to ensure that confederations met the representativeness criteria before 2010.

By contrast, union density at industrial and company levels began to play a crucial role in ensuring their eligibility to negotiate after the slashing of collective employment rights by means of the LDS in 2011 (Trif 2013). First, the LDS forbids collective bargaining across industries. Before 2011, the five union confederations and their employer counterparts negotiated a national collective agreement annually, stipulating minimum rights and obligations for the entire labour force. The lack of such cross-

industry agreements led to a substantial decline in collective bargaining coverage from 98 per cent in 2010 to 35 per cent in 2011. Surprisingly, although the provision of the LDS that outlaws cross-industry collective bargaining violates ILO Convention No. 98, it was strongly supported by the EC and the IMF (2012:1). Second, the LDS made it very difficult to negotiate industrial agreements. Previously, social partners that fulfilled the representativeness criteria or were affiliated to a representative confederation could conclude agreements covering all employees and employers in a specific industry. In 2011, the social partners agreed that 32 industries were eligible for collective bargaining, of which 20 had collective agreements. The LDS redefined 29 broader industries, based on the NACE classification, eligible for collective bargaining. Social partners had to re-register with local courts and prove that they were representative for the redefined industries. While most union federations regained their representative status, only seven employers' federations had re-applied by the end of 2012 (Hayter *et al.* 2013: 56–59). Some employers interpreted the LDS as an opportunity to exit their associations, as the new industry agreements apply only to employers that are members of associations that signed the collective agreement, unless they cover more than 50 per cent of the labour force in the industry (Trif 2016). The legal changes led to a major decline in bargaining coverage, with the number of industrial agreements falling from 20 in 2008 to seven in 2014 (Ministry of Labour, Family and Social Protection 2014). Formally, public sector employees, such those working in education, continued to be covered by industrial collective agreements after 2011. In 2009, however, the government had already disregarded the provisions of existing collective agreements by unilaterally changing both procedures for setting wages and substantive provisions (Stoiciu 2016). No new industrial collective agreements were concluded in the private sector between 2011 and 2015.

Summing up, the post-1989 legal framework ensured high collective bargaining coverage until the 2008 recession in Romania. In contrast, the government's frontal attack on collective employment rights after 2008, including the prohibition of cross-industry collective bargaining and the removal of the *erga omnes* extension mechanism at the industrial level, led to a steep decline in the extent of bargaining (Appendix A1.A). The statutory extension mechanism is still in place at the company level, where generally the actual terms and conditions of employment are set (Trif 2016). This means that all employees are covered by company-level collective agreements, regardless of whether they are union members. Nevertheless, the LDS has reduced the capacity of unions to enter into negotiations at the company level, at which new provisions on union recognition and representativeness apply. These provisions will be discussed in the next section.

## Security of bargaining

Security of bargaining is related to union security. This depends both on the statutory provisions on fundamental union rights, as well as on the voluntary support offered by employers to unions in the recruitment and retention of members. Similar to other CEE countries, the voluntary element of bargaining security in Romania has historically been weak. As employers' attitudes towards collective bargaining have always been

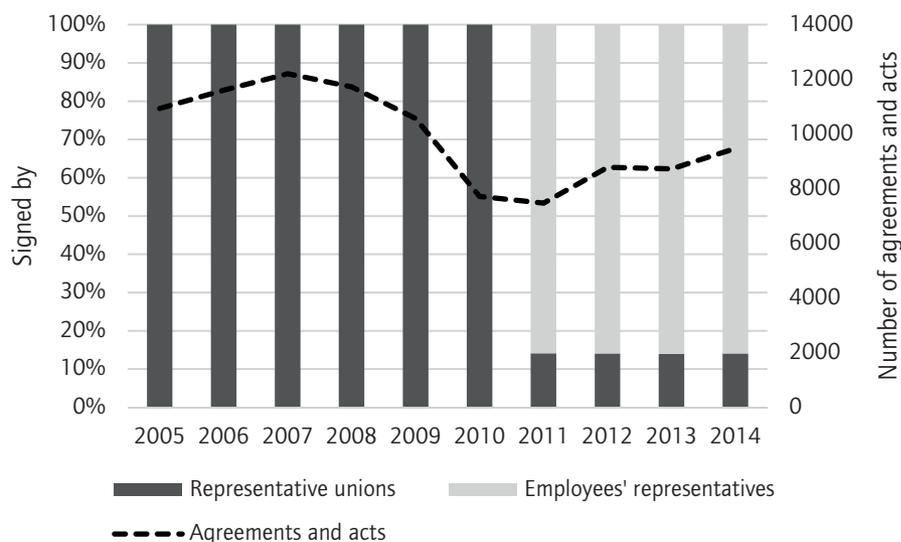
contingent on their own ideology and experience with unions, no drastic changes have occurred since the 2000s. The statutory framework shifted radically, from being rather supportive before 2011 to being obstructive thereafter (Trif 2013). The LDS has undermined basic union rights in relation to the freedom of association, recognition for collective bargaining purposes and the right to strike (Trif 2016).

First, the new regulations make it virtually impossible for unions to conclude any collective agreements that would cover workers in small companies. In a context in which cross-industry agreements are no longer negotiable, and industrial agreements are binding mainly for large employers, which are more likely to join an association, small companies have been automatically excluded from the remit of collective bargaining. This is because the LDS requires a minimum of 15 workers from the same company to form a union, while before 2011 15 employees working in the same profession could form a union. Company-level unions also need over 50 per cent density to be entitled to bargain. Hence, it is no longer possible to unionise workers in companies with fewer than 15 employees, which accounted for over 90 per cent of companies in 2012 (Trif 2016). Although those workers were rarely unionised before 2011, they were nevertheless covered by the provisions of cross-industry and industrial agreements.

Second, the LDS makes it far more difficult for unions to negotiate agreements at company level due to modifications of the representativeness criteria (Trif 2016). Many unions lost their right to bargain, as the new law stipulates that they must represent over half of the labour force, compared with one-third under the previous law. If there are no representative unions, elected employee representatives negotiate collective agreements, subject to the favourability principle. In companies in which union density is below 50 per cent, employees may be represented in collective bargaining by the representative union federation to which the company level union is affiliated (Stoiciu 2016). Before 2015, federations could negotiate at company level alongside elected employee representatives, who were the only ones entitled to sign agreements. Between 2011 and 2015, 86 per cent of company collective agreements were signed by elected employee representatives, with or without representatives of union federations (Figure 24.1), while previously company-level unions had signed all agreements. Unions that lost their representative status continued to have a role by supporting employee representatives. Union officials reported that the negotiation process is more complex, however, because employers have more control over employee representatives.

Third, the laws adopted in 2011 hinder employees' rights to organise strikes in three, interrelated ways (Trif 2013). First, the LDS obliges parties in conflict to seek conciliation before a strike could be called, while before 2011 the use of alternative dispute resolution mechanism was optional. Second, the LDS forbids unions to organise industrial action if their demands require a legal solution to solve the conflict. In addition, the LDS introduced a peace-clause removing the possibility to call a strike on the duration of a collective agreement, even if its provisions are not implemented. Third, workers involved in industrial action lose all their employment rights, except their health-care insurance, while previously they lost only their wages. Furthermore, company-level union officials used to be protected against dismissal for two years after they completed their mandate under the old laws, while under the new laws they are no longer protected when their

Figure 24.1 Company collective agreements (and additional acts), 2005–2014



Source: Guga and Constantin (2015: 131).

mandate ends. The 2011 legal changes, as well as the intimidation of union leaders and the lack of success of the 2009 and 2010 protests against the ‘austerity’ measures, led to a major decline in industrial action in Romania since 2011 (Trif 2013).

Romania had the highest strike activity in the region before 2008. During the 1990s, the number of days not worked per thousand workers per annum was approximately twice the Eastern Europe average, although it represented less than two-thirds of the Western Europe average (Appendix A1.I). Between 2000 and 2008, Romanian unions continued to be among the most militant in the region, but the number of protests decreased considerably. The available data indicate that the number of days not worked per thousand employees per annum more than halved in 2000–2008 compared with 1995–1999 (Vandaele 2011: 11). During the 2000s, more than one-third of the days not worked due to strikes were in education (37 per cent), followed closely by manufacturing. Almost two-thirds of labour disputes between 2003 and 2008 were triggered by wage claims, while a quarter were triggered by claims linked to restructuring, collective bargaining and social rights (Hayter *et al.* 2013: 77).

The European Commission and the IMF (2012) opposed the proposed legal changes by the centre-left government in 2012 concerning strengthening the security of collective bargaining (Trif 2016). Specifically, they resisted changes that, although making industrial action easier, sought a further reduction in unions’ influence, for example, through the restriction of legal protection for shop stewards. By contrast, they welcomed the proposed changes in relation to both the representativeness criteria of local unions, lowering the threshold from over 50 per cent to 35 per cent, and the

number of members required to form a union, reduced from 15 to five. In 2013, ILO representatives held discussions with the centre-left government and Troika officials about the need to amend the current labour laws to comply with the ILO conventions (Hayter *et al.* 2013). No significant changes were made to the LDS until 2017, however.

## Levels of bargaining

The level of collective bargaining refers to whether bargaining takes place at the company or workplace, industrial, subindustrial or cross-industry levels. Before 2011, Romania had a multi-layered collective bargaining system based on the favourability principle, meaning that lower-level agreements could not impose worse employees' terms and conditions than those set at higher levels. Until 2011, the starting point was the national collective agreement negotiated by the representative unions and employers' confederations. The second layer consisted of industrial agreements, negotiated by the representative unions and employers' federations that covered 60 per cent of all employees in industries eligible for collective bargaining (Trif 2013). It was also possible to have other forms of multi-employer bargaining involving regions or groups of companies, but these agreements were binding only for the signatory parties. In contrast, national, industrial and company-level collective agreements concluded by representative parties covered all employers and employees in their respective bargaining unit before 2011. The third layer was the company level, at which the actual terms and conditions of employment were established, as national and industrial agreements set only minimum standards, which local actors were allowed to improve (Trif 2008). There were 11,729 company collective agreements in 2008, covering most large unionised companies (Guga and Constantin 2015: 131–32). Notwithstanding pressures on the government from foreign investors to reduce collective employment rights during the EU accession process, unions managed to preserve multi-layered bargaining arrangements, which ensured both vertical coordination, through the favourability principle, and horizontal coordination, through the *erga omnes* one. Nevertheless, the foreign investors' quest for a flexible labour market came to fruition in 2011.

Despite opposition from the unions and the largest employers' associations, a radical decentralisation of collective bargaining was pursued by the government unilaterally during the recession (Ciutacu 2012). In 2009, the five national union confederations set up a crisis committee to protest against the 'austerity' measures. They filed a complaint with the ILO in 2010, claiming that the government was breaching union rights and freedoms. The unions also suggested over 400 measures to deal with the crisis. Their proposals, however, were largely ignored. As a result, the unions withdrew from most tripartite bodies. Somewhat surprisingly, the four largest employers' organisations, out of 13 confederations, covering almost two-thirds of the active labour force, joined the five union confederations in their protest against the LDS by withdrawing from the national tripartite institutions in 2011. They were against the LDS primarily because its provisions brought an end to their main role as employers' representatives in national collective bargaining (Trif 2016). The cross-industry agreements also maintained social peace and set minimum labour standards to ensure fair competition between their

members. Finally, the unions organised a series of protests in 2010, demanding that the government guarantee implementation of collective agreements and eliminate legal restrictions on free collective bargaining. The protest actions of unions and employers' associations failed to prevent the government dismantling the multi-level collective bargaining system, however.

Although collective bargaining has been decentralised, multi-employer agreements have not ceased to exist (Trif 2016). There were 24 multi-employer collective agreements valid in 2014; out of those, seven were labelled industrial agreements, despite covering only companies belonging to associations that entered into collective agreements. Only four new industrial agreements were concluded between 2011 and 2015, one of which was in education (Stoiciu 2016:7). No new industry-wide agreements were signed between 2011 and 2015 in the private sector. Multi-employer bargaining for groups of companies survived, however, in highly unionised private industries, such as metalworking. In 2012, a small number of employers in the automotive industry negotiated a two-year agreement including less than 10 per cent of the companies covered by the 2010 industrial agreement (Trif 2016). The importance of company-level collective agreements has therefore increased. The key difference, however, is that since 2011 company-level social partners have been able to rely on higher level provisions in only a few exceptional cases.

Summing up, collective bargaining structures in Romania have undergone a dramatic process of disorganised decentralisation across all industries, reducing the levels of bargaining. In the context of outlawing cross-industry bargaining and reducing the support for extension mechanisms at the industrial level in 2011, multi-employer bargaining survived, albeit greatly weakened, only in industries/sub-industries with relatively strong unions, such as metal (Trif and Stoiciu 2017). In industries and companies no longer covered by collective agreements, terms and conditions of employment vary greatly, contingent on the local labour market and employers' attitudes towards employees (Trif 2016). Moreover, in non-unionised companies it is often difficult to enforce even the minimum legal standards.

## **Depth of bargaining**

Depth of bargaining refers to the extent of involvement of local union officials in the formulation of claims and the implementation of collective agreements at company level. It concerns three main dimensions: the level of collective bargaining, the internal organisation of unions and union density. Considerable depth is expected in a multi-level bargaining system, in which relatively strong local unions have an important role in the negotiating process and agreement implementation (Paolucci 2017). In contrast, a lack of depth is a feature of a decentralised bargaining system, with weak vertical links within the union hierarchy and low density. Variations in depth are contingent on both the statutory and voluntary provisions framing the collective bargaining system.

Before 2011, there was significant depth of bargaining in Romania, linked to statutory provisions inherited from the communist era. First, multi-level collective bargaining

was supported by the legal obligation to negotiate annual cross-industry agreements that covered all employees (Trif 2013). The provisions of these agreements could only be improved on by representative social partners at the industrial and company levels due to the favourability principle. Second, this principle also led to relatively strong vertical links within the union hierarchy, as higher level collective agreements provided a reference for lower level bargaining. In addition, the *erga omnes* principle facilitated horizontal cooperation between union organisations, which were required to negotiate a single collective agreement at each bargaining unit. The favourability principle, coupled with the *erga omnes* mechanisms, strengthened links between bargaining levels and the coherence of unions' organisational structure and, at the same time, provided unions with external legitimacy (Trif and Stoiciu 2017). For social partners in Romania it was not as critical as in the United Kingdom or Denmark to develop a strong internal legitimacy, referring to rank-and-file support and trust, because it was the law, and not membership, which guaranteed relatively deep bargaining before 2011.

In a context of low internal legitimacy of social partners, the so-called 'voluntary' collective bargaining system imposed by the state in 2011 (Trif 2016) affected all three dimensions of depth. First, the neoliberal statutory (de)regulation through the LDS caused the dismantling of multi-layer arrangements; this, in turn, reduced the depth of bargaining by outlawing collective agreements at the cross-industry level and removing the *erga omnes* principle at the industrial level. Consequently, company-level bargaining, even when it existed, is no longer supported by higher level provisions. Second, the lack of cross-industry bargaining and the removal of extension mechanisms have weakened the internal organisation of unions by taking away the incentives for vertical and horizontal cooperation. Third, there has been a significant decline in union density from about 33 per cent to approximately 20 per cent (Table 24.1). Finally, the threshold requirement for local unions to bargain has increased from 33 per cent to 50 per cent (Trif 2013), making it more difficult for parties to engage in negotiations. Thus, there was a path departure from relatively significant depth prior to 2011 to a lack of depth between 2011 and 2015.

While empirical evidence shows rather a lack of depth in all industries, a degree of cross-industry variation emerges (Trif 2016). In the case of the highly-unionised metal industry, which could be considered the best-case scenario, multi-employer bargaining has survived. It takes place only at sub-industrial and company levels, however, and covers around 10 per cent of the companies that were under the industrial agreements before 2011. Furthermore, the lack of national and industrial agreements made company collective bargaining more difficult for unions. Company-level union representatives in two metal companies reported that they had to start negotiations from scratch, while before 2011 they began negotiations from the provisions agreed at industrial level. Industry-wide agreements had better provisions regarding minimum wages, pay increases linked to inflation, payment of overtime and so on. Union representatives revealed that they took for granted the provisions of the national and industrial agreements, and realised their importance only when those agreements ceased to exist. Although cross-industry and industrial agreements used to set only minimum employment standards, the company-level unions acknowledged that they were a great help, particularly in securing higher wages. Moreover, on the employers' side, the

Ford Motor Company was one of the first in Romania to use legal experts to negotiate collective agreements on their behalf. They reduced lunch breaks, increased workloads and provided minimum compensation for injuries beside introducing irregular working hours in the 2011–2012 collective agreement. Thus using legal experts to negotiate collective agreements on behalf of employers is a recent trend that has further enhanced employers' influence over employment conditions, even in the highly unionised metal industry.

In the case of weakly unionised (under 1 per cent) retail, the LDS led to the disappearance of cross-industry and industrial agreements, resulting in a massive reduction of bargaining coverage (Trif 2016). Between 2011 and 2015, collective bargaining took place solely at company level in a few large multinational corporations in which unions managed to achieve over 50 per cent density. In 2016, just four companies were covered by collective agreements, namely Carrefour, Selgros, Metro and Real (Trif and Stoiciu 2017: 172). The FSC union changed its organising strategy from targeting all multinationals to focusing only on the most unionised companies. The objective was to reach the new threshold required for unions to conclude collective agreements. Strong leadership and international linkages have facilitated the organising of workers, despite the dire legal framework. This was also the case in information technology when employers used aggressive cost-cutting strategies, including outsourcing. These examples show how the removal of statutory provisions has reduced the institutional resources on which unions can draw. Under the new legal framework, unions can rely only on their internal legitimacy to secure any meaningful collective bargaining. Thus union density has become the most important dimension of depth since 2011.

In a context of reduced institutional support, unions at company level depend entirely on employers' good will, as well as on their ability to organise employees. Despite their increasing efforts at gaining internal legitimacy (Trif and Stoiciu 2017), the number of company-level collective agreements declined from 11,729 in 2008 to 8,726 in 2013 (Figure 24.1). There was a major reduction of approximately 3,000 collective agreements between 2008 and 2010, although their number was increased since 2011. Considerable growth was registered in 2015, reaching a total of over 14,000 agreements (Stoiciu 2016: 7). This could be linked to the 2015 legal change allowing union federations to conclude collective agreements in companies in which union density is below 50 per cent. Overall, however, the empirical findings show that the depth of bargaining under the new voluntary system is significantly lower.

Institutional developments since 2011 thus have weakened each of the three dimensions of depth. This indicates a radical shift, from reliance on statutory provisions to voluntary provisions in achieving depth in collective bargaining. This institutional change is associated with variation in depth, from relatively high to low. The ways in which the recent institutional changes have impacted on the implementation of collective agreements will be addressed in the next section.

## Degree of control of collective agreements

Level of control refers to the extent to which the actual terms and conditions of employment are set by collective agreements. This is contingent primarily on the type of articulation mechanisms governing the relations between different bargaining levels and the dispute resolution mechanisms enforcing collective agreements. A high level of control is achieved when there are stable articulation mechanisms specifying the distinct competencies of the social partners at each level (Crouch 1993). In addition, the level of control relies on mandatory dispute resolution procedures and enforcement mechanisms in order to reduce the incidence of industrial action. In contrast, weak dispute resolution mechanisms and overlapping social partner competencies across levels reduce control, thereby creating uncertainty and conflicts between parties.

Before 2011, the legal framework played a key role in providing control of agreements in Romania. Articulation provided by the favourability principle secured a stable hierarchy between levels of collective bargaining and distinct competencies for the social partners. In addition, the *erga omnes* mechanisms extended the minimum employment standards negotiated at national and industrial levels to all workers within companies, which meant that managers and shop-stewards could negotiate only better provisions. The *erga omnes* principle, together with the favourability principle obliged the social partners to coordinate their efforts both horizontally and vertically to produce a single collective agreement at national, industrial and company levels. Notwithstanding the formal mechanisms empowering social partners to negotiate at different levels, the capacity to enforce collective agreements at the company level was contingent on the balance of power between unions and managers. The fact that there were no specialised labour courts responsible for conflict resolution meant that labour disputes had to be referred to regular courts; according to union officials, this mechanism trapped them in a very lengthy process, ending up sometimes with either employees changing jobs or the company changing ownership.

The LDS destabilised articulation mechanisms in 2011, making control over bargaining dependent almost exclusively on the balance of power between managers and local unions. Although the favourability and the *erga omnes* principles continue to exist, they no longer represent a viable resource for joint regulation at the company level due to the very limited multi-employer arrangements. This weak articulation, combined with an already weak dispute resolution mechanism have worsened control over the enforcement of collective agreements. Furthermore, it has become more difficult to enforce certain court decisions in relation to collective bargaining since 2011. The agreement in the electrical and electronic manufacturing industry negotiated for 2010–2014, for instance, included wage scales and other benefits similar or superior to those stipulated in the cross-industry agreement. The agreement covered all companies in the industry, but after 2011 it could not be enforced. Likewise, an industrial agreement in the food industry was signed in 2010 and, despite its five-year validity, could never be enforced (Trif 2016). In both industries, unions have taken legal action against employers who refused to implement the agreement. Although their action was successful in the food industry, there was no mechanism to force the parties to abide by the judges' decision. There was a similar situation in retail; the 2010 collective agreement was negotiated

for one year, while it was specified that it should be extended until either one of the signatory parties denounced it or until a new collective agreement was signed. Although it satisfied the extension criteria, it has not been implemented since 2011 (Trif 2016). In reality, it was particularly difficult to enforce any industrial collective agreements between 2009 and 2015, in a context in which successive governments have taken a neoliberal view of collective bargaining decentralisation.

## Scope of agreements

The scope of agreements refers to the range of issues subject to negotiation at different levels. It concerns the extent to which terms and conditions of employment are set through joint regulation by the social partners. Scope is wide when employers have restricted prerogatives, but extensive when social partners negotiate over a wide spectrum of issues. Therefore it is affected by both the extent and depth of bargaining. Before 2011, there was wide scope of bargaining at the cross-industry, industrial and company levels. The law imposed no restrictions on bargaining items at different levels, except for the public sector, in which the government set wages, as long as collective agreements improved on minimum legal provisions and were in line with the favourability principle. There was, however, a provision indicating that wages, working hours and working conditions had to be covered by company agreements (Law 130/96). In addition, the Labour Code obliged employers to negotiate with unions on a number of aspects, such as workload (*norma de lucru*) and changes in job classifications and working time. The cross-industry and industry agreements covered a wide range of issues, from wage scales to procedural rules. The 2010 agreement in retail covered procedural rules defining the applicability and validity of agreements, for instance, as well as substantive rules concerning work organisation, such as working time, wages and training. This agreement also included detailed provisions on health and safety, management or employers' prerogatives, union consultation rights, regulation of individual contracts and dispute resolution mechanisms. At the company level, social partners could both improve the provisions negotiated at the industrial level and cover additional aspects, as long as they were in favour of the employees. Nevertheless, very few large retailers were unionised or concluded company-level agreements. This case shows that even in a context of low unionisation, such as in retail, the scope of bargaining was wide before 2011.

The 2011 legal changes reduced the scope of bargaining by increasing employers' prerogatives to set the terms and conditions of employment at company level (Trif 2016). The disappearance of cross-industry, as well as the majority of industrial agreements automatically decreased the number of items that are subject to joint regulation at these levels. In this context, the scope of bargaining is decided primarily by the social partners at the company level. Furthermore, the 2011 legal provisions narrowed the bargaining agenda at company level. Apart from abolishing the requirement to negotiate on specific items, the obligation of employers to involve unions in decisions on workload and job classifications was removed. This increase in managerial prerogatives has resulted in work intensification and made it more difficult for unions to negotiate bread-and-butter issues, such as wages and working time. Nevertheless, the degree of the reduction in the scope of bargaining has varied across industries and companies since 2011.

Public sector collective bargaining has registered the fewest changes, as legal restrictions concerning joint regulation of wages and working time existed prior to 2011. In contrast to the private sector, highly unionised education continues to have an industrial collective agreement covering similar issues to those negotiated prior to 2011. Nevertheless, the law plays a more important role in setting all aspects of remuneration, as the social partners are no longer entitled to negotiate variable pay (*Contractul colectiv de munca la nivel de ramura invatamant 2017*). In addition, the 2009 public wage law significantly reduced public wage funds in order to satisfy the Troika's preconditions for financial assistance (Hayter *et al.* 2013). Apart from changing the wage grids by tying all public-sector employees to a wage scale defined in terms of multiples of a base wage of 600 New Leu (around €150), this law obliged managers to reduce personnel costs by 15 per cent in 2009 (Trif 2016). In addition, the government imposed a 25 per cent wage cut for all public-sector employees (Trif 2013). Despite talks between government and unions, as well as mass protests against 'austerity' measures, the labour strife had no tangible result for employees. The 2009 public wage law remained in place until 2017, while the 25 per cent wage cuts were gradually restored by 2015 (Trif 2016). Although there was limited reduction of the number of items subject to joint regulations in the public sector, as there was limited scope before 2011, the capacity of collective bargaining to improve working conditions has been drastically reduced. This shows that not only the quantity of issues negotiated matters for the scope of bargaining, as Clegg's framework (1976) suggests, but also the quality of the agreements reached. Thus both qualitative and quantitative aspects need to be considered when examining the scope of bargaining.

The case of the metal industry illustrates an average degree of change in the scope of bargaining. The reduction of joint regulation in this highly unionised industry is linked to the absence of both cross-industry and industrial agreements after 2011. The majority of employees work in large unionised companies covered by collective agreements. The evidence in four large unionised metal companies exhibited great variation in the impact of the reforms on the actual terms and conditions of employment (Trif 2016). The degree of change in the scope of joint regulation varied from major alterations in the case of an employer who sought to avoid collective bargaining after 2011 to a large degree of continuity in a company at which the relations between the union and management have been fairly cooperative, following industrial action in 2010; the other two cases fall between those two extremes. In companies at which demand decreased during the recession, employers used the new provisions of the Labour Code to achieve more flexible working time and introduce atypical employment contracts. While working time arrangements have been changed unilaterally by employers, wages and other terms and conditions of employment have been negotiated through collective bargaining in all four metal companies. In companies with strong unions that were not severely affected by the crisis, such as Dacia, the scope of bargaining has not been reduced.

Finally, empirical evidence from retail reveals a drastic reduction in the scope of bargaining. Apart from a lack of multi-employer bargaining, the majority of workers are no longer covered by collective agreements in a context of very low union density in this industry (Trif and Stoiciu 2017). Furthermore, the scope for negotiating working time and workload has been reduced even in the four large multinationals covered

by collective agreements, due to the legal provisions entitling employers to set them unilaterally (Trif and Stoiciu 2017). Additionally, the company-level bargaining agenda began with a blank canvas after 2011. In contrast, the 2010 industrial agreement set several provisions that could only be improved at the company level, including wages. The minimum industry-wide wage negotiated by the social partners was 50 RON above the national minimum wage and represented the basic coefficient for indexation; the unskilled workers' wage index equalled one, that of skilled workers and experienced workers without formal qualifications equalled 1.2 and that of graduates equalled 1.5 or higher, depending on their qualifications (Contractul colectiv de munca la nivelul ramurii de comert pe anul 2010). According to a senior union official, the wage indexes were generally preserved after 2011 in the four company-level agreements, while the large majority of workers in retail no longer benefit from joint regulations, since 2011.

Overall, in a context of disorganised decentralisation of collective bargaining associated with a major increase in employers' prerogatives, it is not surprising that there is great variation across industries and companies. Empirical studies reveal that unions' capacity to push certain items onto the bargaining agenda is contingent on their power resources, particularly their capacity to mobilise, as well as employers' power resources, such as the availability of qualified workers in a context of high emigration and their willingness to become involved in collective bargaining (Trif and Stoiciu 2017). Thus the statutory support for a wide scope of bargaining was radically changed by the 2011 laws by making the bargaining agenda entirely dependent on the power relations between parties. As workers' voice and working conditions have deteriorated since 2008, many of them have 'exited' the Romanian labour market (Trif 2016). It is estimated that around three million people have emigrated over the past 25 years, more than half since 2008 (Guga *et al.* 2018).

## Conclusions

Developments in collective bargaining in Romania since 2000 reveal two stories. The first refers to 'path-dependent' institutional changes until the 2008 recession, when the legal changes introduced by the 2003 Labour Code, as well as those associated with EU accession in 2007 generally sought to strengthen the role of collective bargaining in regulating terms and conditions of employment. In contrast, the second refers to 'path departure' in the form of a frontal attack on collective bargaining institutions, primarily through major legal changes in 2011 aimed at weakening the role of collective bargaining (Marginson 2015). The undermining of statutory rights in relation to security of bargaining resulted in the dismantling of the multi-layered bargaining system, which, in turn, led to its decentralisation and a massive decline in its coverage. Nevertheless, the 'path departure' period began in 2009, when the Romanian government started imposing procedural and substantive austerity measures, such as the 25 per cent wage cuts for all public-sector employees. This chapter argues that Romania illustrates an extreme case of disorganised decentralisation of collective bargaining following the 2008 recession, particularly due to unilateral statutory changes in relation to the security, level and the extent of bargaining.

The shift of the statutory provisions from supporting to hindering collective bargaining revealed the limited internal legitimacy of the social partners. In this new institutional context, the capacity of unions to organise and mobilise workers for collective bargaining purposes relies primarily on their internal power resources in both the public and private sectors. Apart from affecting the security of bargaining, the absence of external support has had a negative impact on all dimensions of collective bargaining. Unsurprisingly, the lack of cross-industry bargaining and the reduction of industrial coverage increased the variation in the social partners' ability to jointly regulate terms and conditions of employment. Many employers have taken advantage of deregulation to undermine multi-employer arrangements and to reduce joint regulation at company level. Nevertheless, their capacity to do so is also contingent on unions' bargaining power. Consequently, joint regulations vary from multi-employer agreements in highly unionised industries, such as metalworking, to single-employer or no collective bargaining in the low unionised industries, such as retail.

The path-dependent statutory institutions were disrupted in 2011 and rarely replaced by voluntary collective bargaining institutions. There are isolated cases in which unions with strong leadership and international linkages have managed to deploy voluntary arrangements to improve labour standards for both low and highly skilled employees, despite the grim legal framework (Trif and Stoiciu 2017). This allows one to be cautiously optimistic about the future of collective bargaining in Romania. Major uncertainty remains, however, concerning the trade unions' capacity to (re)build the trust and support necessary to enact a new collective bargaining system. This requires extreme dedication and commitment on the part of leaders who face the enormous challenge of breaking with the legacies of the past and turning public discourse around; they have to gain security by involving their rank-and-file members, who are not used to participating, without being able to rely on institutional resources, which historically have been their main lever of power.

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All links were checked on 23 August 2018.

## Abbreviations

<b>BNS</b>	Blocul Național Sindical (National Trade Union Bloc)
<b>CNIPMMR</b>	Consiliul Național al Întreprinderilor Private Mici și Mijlocii din România (National Council of Private Small and Medium-sized Enterprises)
<b>CNPR</b>	Confederația Națională a Patronatului Român (National Confederation of Romanian Employers)
<b>CNSRL- Frația</b>	Confederația Națională a Sindicatelor Libere din România - Frația (National Confederation of Free Trade Unions from Romania - Frația)
<b>CNS Cartel Alfa</b>	Confederația Națională Sindicală Cartel Alfa (National Trade Union Confederation Cartel Alfa)
<b>CSN Meridian</b>	Confederația Sindicală Națională Meridian (Meridian National Trade Union Confederation)
<b>Concordia</b>	Confederația Patronală Concordia (Concordia Employers' Confederation)
<b>CONPIROM</b>	Confederația Patronală din Industria României (Employers' Confederation of Romanian Industry)
<b>CSDR</b>	Confederația Sindicatelor Democratice din România (Confederation of Democratic Trade Unions of Romania)
<b>FSC</b>	Federația Sindicatelor din Comerț (Federation of Commerce Unions)
<b>LDS</b>	Legea dialogului social (Social Dialogue Act)
<b>PNR</b>	Patronatul Național Român (Romanian National Employers)
<b>RON</b>	Romanian New Leu (Romanian currency)
<b>UGIR 1903</b>	Uniunea Generală a Industriașilor din România 1903 (General Union of Romanian Industrialists 1903)



## Chapter 25

# Slovakia: between coordination and fragmentation

Marta Kahancová, Monika Martišková and Mária Sedláková

Slovakia emerged as an independent republic in 1993 when Czechoslovakia was divided into Slovakia and the Czech Republic. Since its transition to democracy and a market economy during the 1990s, the country has evolved into an open, export-led economy with a high share of foreign direct investment (FDI). With the inflow of FDI, particularly into the automotive and electronics industries, economic growth peaked in 2007 with a real GDP growth rate of 10.5 per cent (Eurostat 2018). Real wage increases reached an average of 3.8 per cent in 2007–2008 (Štatistický úrad Slovenskej republiky, ŠÚ SR, Statistical Office of Slovak Republic). After the financial and economic crisis, unemployment peaked at 14.5 per cent in 2010, but declined to 8.1 per cent in 2017 after the country's fairly rapid recovery (Appendix A1.F). The current collective bargaining system is characterised by a transparent structure of bargaining actors, legislative support for bargaining and extension of collective agreements, but little vertical coordination between national, industry/multi-employer and company-level bargaining (see Table 25.1). At the same time, the country has experienced a decline in trade union density, accompanied by diminishing collective bargaining coverage. This is the result of developments broadly linked to three periods of recent Slovak history.

The first period is that of state socialism in Czechoslovakia, when unionisation rates were high, but industrial democracy, independent collective bargaining and tacit knowledge essential for the emerging market economy were lacking (Fabo *et al.* 2013; Myant 2010; Drahokoupil and Kahancová 2019). The second period is that of the formation of the Slovak market economy between 1990 and 2008. In this period, collective bargaining was affected by the privatisation of state-owned enterprises and the inclusion of labour interests in policy-making in exchange for labour acquiescence in economic reforms, but also Slovakia's accession to the European Union (EU) and the inflow of FDI (Bohle and Greskovits 2012; Drahokoupil and Myant 2015). The third period is that of post-crisis developments after 2008, which have intensified bargaining decentralisation, but also legislative changes related to the extension of bargaining coverage.

Within Slovak bargaining structures and hierarchies of bargaining actors, national tripartite social dialogue since 2000 has been disconnected from other levels of bargaining; it has been merely advisory and has had little impact on policy. Union density declined from 32 per cent in 2000 to 13 per cent in 2015, while employers' association rate has remained relatively stable at above 30 per cent over the past two decades. While multi-employer and industry-level bargaining are still important in Slovakia, the importance of company-level bargaining is increasing. Bargaining coverage halved between 2000 and 2015 (see Tables 25.1 and Appendix A1.A).

Table 25.1 Principal characteristics of collective bargaining in Slovakia

Key features	2000	2016
Actors entitled to collective bargaining	Trade unions (no other employee representatives), employers or employers' associations are entitled to engage in collective bargaining. This is also the case for the confederation level of unions and employers' associations.	
Importance of bargaining levels	Collective bargaining alternates between company, multi-employer and sectoral bargaining. The latter two are still dominant but the company level is increasingly important. Currently the role of tripartism is mostly consultative, discussing legislative proposals and evaluating their economic and social impact.	
Favourability principle / derogation possibilities	Yes: no downward derogation from industry-level agreements is possible.	
Collective bargaining coverage (%)	51	24.9 (2013)
Extension mechanism (or functional equivalent)	Extending collective agreements has been subject to the relevant employer's consent. Since 2007 the consent of the affected employer is no longer required. Since 2009 erga omnes sector-wide extensions apply, although with exceptions during 2010–2012.	
Trade union density (%)	32.3	13.3 (2015)
Employers' association rate (%)	33	30.5 (2015)

Source: Czírta (2017), Kahancová (2013), Zachar (2011) and Appendix A1.

Two important developments of the past decade are particularly important if one wishes to understand collective bargaining trends in Slovakia. The first concerns changes in the union landscape. Although union membership has declined substantially since the early 1990s (see Appendix A1.H), the transition from state socialism did not undermine the unions' industrial and confederative hierarchy. The past decade, however, has seen a split between 'old' unions focusing on traditional modes of action, such as collective bargaining and social pacts with the government, and 'new', more radical unions that seek other forms of influence besides collective agreements. The new unions use the public domain for their actions and seek policy influence and public support through protests, demonstrations and petitions. These new unions, which are mainly in the public sector, including health care and education, emerged in response to dissatisfaction with the results of bargaining within established union structures.

The second development, which challenges collective bargaining, is the increasing focus of unions and employers on legislative solutions for issues that previously were subject, or potentially subject, to bargaining (Kahancová 2015; Kahancová and Martišková 2016). Trade unions and employers' associations in general believe that legislative solutions are more likely to be enforced than regulations implemented via collective bargaining, despite the binding character of collective agreements.<sup>1</sup>

1. Source: interviews with employers' associations and trade union federations within the following research projects in which the authors were involved: BARSOP – Bargaining and social dialogue in the public sector, EC Grant No. VS/2016/107, PRECARIR: The rise of the dual labour market: fighting precarious employment in the new member states through industrial relations, EC Grant No. VP/2014/0534, NEWIN: Negotiating wage (in)equality, EC Grant No. VS/2014/0538, New Challenges for Public Services Social Dialogue: Integrating Service User and Worker Involvement to Support the Adaptation of Social Dialogue, EC Grant No. VS/2013/0362, BARSORIS: Bargaining for Social Rights at Sectoral Level, EC Grant No. VS/2013/0403.

## Industrial relations context and principal actors

During state socialism in Czechoslovakia prior to 1989, independent interest representation organisations and collective bargaining did not exist. All unions were highly unified and centralised in the Revolutionary Trade Union Movement (Revolučné odborové hnutie, ROH), which was fully subordinated to the ruling Communist Party of Slovakia (Komunistická strana Slovenska), which was a territorial unit of the Communist Party of Czechoslovakia (Komunistická strana Československa) (Drahokoupil and Kahancová 2019; Myant 2010; Pokorný 2015). Union membership was expected from all employees and the unionisation rate was over 80 per cent (Myant 2010; Pokorný 2015). Although unions enjoyed formal powers over legal compliance and health and safety issues in the workplace there was no collective bargaining. Nevertheless, to encourage higher productivity in return for individual benefits, unions often signed agreements with management at the enterprise level (Myant 2010; Drahokoupil and Kahancová 2019).

The role of unions and employers changed during the 1990s in the course of Slovakia's triple transformation to capitalism, democracy and a reformed nation-state (Offe 1991). Privatisation of state-owned enterprises and labour market reforms, including deregulation and flexibilisation, produced bankruptcies and a sharp rise in unemployment. The initially democratic transition evolved into a form of autocratic nationalism by the mid-1990s, followed by market liberalisation and the inflow of FDI in the late 1990s (Fabo *et al.* 2013). In this economic context, conditions for establishing market economy-style interest representation and collective bargaining institutions have been favourable since the early 1990s because Slovakia's economic policy has supported domestic heavy industry and the formation of domestic capitalist elites (Fabo *et al.* 2013; Roháč 2012: 6). The formation of employers' associations has been marked, on one hand, by a lack of interest among many new private firms in organising themselves and bargaining with unions, and on the other hand by the emergence of influential business associations in key economic sectors. One of the strongest employers' associations, the Federation of Mechanical Engineering (Zväz strojárskoho priemyslu, ZSP), which today also bargains on behalf of the highly important automotive producers in Slovakia, was formed in 1990, among the first industry-level employers' associations. In general, the employers have developed an industrial and confederal structure of associations organised by the peak-level Association of Employers' Federations (Asociácia zamestnávateľských zväzov a združení, AZZZ), later joined by the peak-level employers' federation Employers' Union of the Republic (Republiková únia zamestnávateľov, RÚZ).

On the trade union side, the former Czechoslovak ROH was transformed into two successor organisations: the Slovak Confederation of Trade Unions (Konfederácia odborových zväzov Slovenskej republiky, KOZ SR) and the Czech–Moravian Confederation of Trade Unions (Českomoravská konfederace odborových svazů, ČMKOS) (see also Chapter 7). KOZ SR inherited ROH's Slovak material and personnel resources. The ROH's former role partially formed the future union strategy vis-à-vis members, employers and the government under the new democratic regime (Uhlerová 2012). Within the unions' industrial and confederal structure, company and industry-level unions enjoy a high degree of independence from KOZ SR.

Besides KOZ SR as the largest national-level trade union organisation, other encompassing trade unions have emerged outside it. Among them, the most important is the Independent Christian Trade Unions of Slovakia (Nezávislé kresťanské odbory Slovenska, NKOS), re-established in 1993 after the forced cessation of its activities in 1948. Recently some trade unions have opted out of established union structures – for example, Moderné odbory Volkswagen, the Modern Trade Union at Volkswagen – while new unions have emerged that seek involvement in collective bargaining also at industrial and tripartite levels – for example, Odborové združenie sestier a pôrodných asistentiek, the Trade Union Federation of Nurses and Midwives.

Alongside the emergence of bargaining actors, two developments played a key role in laying the foundations of modern collective bargaining. First, the tripartite Council of Economic and Social Accord (Rada hospodárskej a sociálnej dohody, RHSD) was founded in 1990. Second, the Act on Collective Bargaining (Zákon o kolektívnom vyjednávaní, Act No. 2/1991 Coll.), which remains the most important legislation enabling collective bargaining, was adopted in 1991. This act stipulates that only industry-level trade unions and employers' associations, at industry-level, or recognised company-level trade unions and employers, at company level, are entitled to bargain and conclude a collective agreement. Although the establishment of works councils in 2002 challenged union status in the workplace, works councils or shop stewards (work trustees)<sup>2</sup> do not have the right to conclude collective agreements. Provisions of collective agreements are legally binding and apply to all employees in companies, regardless of union membership. Conditions agreed in multi-employer and industry-level collective agreements can be altered only in favour of employees in company-level agreements; no downward derogation from industry-level collective agreements is possible at the company level (Czírta 2017). Multi-employer agreements may not contravene the general legislation and set minimum standards for company bargaining.

Although it established a legal foundation for bargaining, collective interest representation in the post-socialist era has suffered from political dependence, dwindling associational power, lack of bargaining experience and a lack of influence over working conditions (Avdagic 2005; Bohle and Greskovits 2006). Similar to other central and eastern European (CEE) countries, national tripartism was illusory, while industry-level and company bargaining actors struggled to establish a respected role among turbulent interactions of the government, new elites, privatisers and increasingly influential organisations representing business interests (Ost 2002). With a political change in the late 1990s, economic policies shifted from favouring domestic political elites and prioritised the attraction of FDI (Drahokoupil and Myant 2015). Pressure for labour market deregulation intensified, yielding many amendments to the Labour Code (Zákonník práce), which introduced temporary employment, working time accounts (flexikonto) and new forms of employment, such as job sharing and temporary agency work (Bulla *et al.* 2014). Labour market deregulation coincided with the period of high GDP growth, which peaked at 10.8 per cent in 2007 and a fall in unemployment to a historical minimum of 9.6 per cent in 2008 (see Appendix A1.F), mainly as a result of EU accession, combined with the inflow of foreign investors. Some multinational

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2. Work councils and trustees possess only information and consultation rights at the establishment level.

companies, especially those with a bargaining tradition in their home country, have helped to stabilise industry-level bargaining through their commitment to coordinated bargaining (Kahancová 2013), while others have sought to escape high labour standards in their home countries (Jürgens and Krzywdzinski 2009). The post-crisis period since 2008 further intensified pressures to reassess the role of bargaining because of employers' demands for flexibility, increasing unemployment after the crisis and union fragmentation. These developments suggest that Slovakia is increasingly facing the same trend as the rest of the EU: bargaining decentralisation and the erosion of coordinated bargaining.

## Extent of bargaining

The erosion of collective bargaining is vividly illustrated by the decline in bargaining coverage. Bargaining coverage has halved in the past two decades, from over 50 per cent in 2000 to 24.9 per cent in 2013 (see Appendix A1.A). The Wage Dynamics Survey (WDS) estimated a bargaining coverage of 37.5 per cent in 2014, down from 57.4 per cent in 2009 (Karšay and Mičúch 2014).<sup>3</sup> Eurofound data estimated a bargaining coverage of 30 per cent in 2013 (Eurofound 2017) compared with 51 per cent in 2000 (Eurofound 2002). Finally, data provided by the Ministry of Labour, Social Affairs and Family (Ministerstvo práce, sociálnych vecí a rodiny, MPSVR) confirmed the trend of declining coverage with a fall from 42.2 per cent in 2006 to 32.4 per cent in 2013 (ISTP 2013). Bargaining coverage data from the ICTWSS database are even lower than those reported above (see Appendix A1.A).

Bargaining coverage refers to company-level, multi-employer and industry-level agreements. The latter two are referred to as higher-level collective agreements (Kolektívne zmluvy vyššieho stupňa, KZVS). Despite Slovakia's extension mechanism for KZVS, the estimated coverage of industry-level collective agreements is low. In 2016, 11.5 per cent of medium-sized and large enterprises were covered by an industry-level agreement (Klokner 2017). There is, however, variation between industries: in the electricity, construction and financial industries 40 to 60 per cent of companies are covered by an industry-level agreement, while in manufacturing, retail or transportation only 10 per cent of companies are covered. Data on bargaining coverage per industry are not available, but Table 25.2 lists the number of companies covered by a higher-level agreement by industry. Only a small proportion of companies are covered by industry-level or multi-employer agreements. In industry, for example only 7.1 per cent and in commerce only 9.8 per cent of all companies were covered in 2016 (ePraca 2017). The majority of those covered by higher-level agreements are large companies. The number of companies that sign a company-level agreement is higher: 32 per cent of companies had a valid collective agreement in 2016 (ibid.). Coverage of company-level agreements is *erga omnes*, thus automatically extended to all employees of the respective company.

There are several reasons why, despite institutional support for bargaining extension, coverage rates remain low: declining union membership, decreasing interest on the part

3. The Wage Dynamics Survey by the National Bank of Slovakia (2014).

Table 25.2 Companies with a collective agreement by industry and size (2016)

Industry	Number of companies in industry*		Number of companies covered by higher-level agreements
	Large and medium-sized companies	Total number of companies in industry	
Agriculture, forestry, fisheries	163	7,312	15
Extraction, mining, quarrying	16	195	0
Manufacturing	1,294	19,886	92
Electricity, gas, steam and air conditioning supply	38	510	23
Water supply, sewerage, waste management and remediation	53	1,002	16
Construction	175	18,807	74
Wholesale and retail	480	48,621	47
Transportation and storage	234	10,200	24
Accommodation and food service activities	82	7,786	1
Information and communication	123	11,387	5
Financial and insurance activities	65	703	25
Real estate activities	47	12,714	10
Professional, scientific and technical activities	155	36,108	26
Administrative and support service activities	274	21,851	2
Public administration and defence	6	11	0
Education	11	2,801	1
Human health and social work activities	102	6,611	25
Arts, entertainment and recreation	44	2,692	0
Other services	21	3,049	2
Total (whole economy)	3,383	212,246	388

Note: \* RO: Data taken from Registry of Organisations.

Source: ŠÚSR, MPSVR, published in ePraca (2017).

of employers in multi-employer and industry-level bargaining and a lack of innovation regarding the content of agreements. Since 2000, trade unions have not expanded in any of the industries they operate in. Declining membership has affected unions' countervailing power and their ability to act during the economic transformation and the inflow of multinationals (Uhlerová 2012). The unions' position and the practice of collective bargaining is therefore often at the mercy of employers' interest in being part of bargaining structures. Furthermore, many employers have decided to opt out from industry-level bargaining structures because they no longer acknowledge any benefits. The legally recognised and simple way for an employers' association to opt out from industrial bargaining structures is to change their legal status. Act 2/1991 Coll. on collective bargaining lays down that higher-level collective agreements (KZVS) can

be concluded only between unions and employers' organisations. Once an employer's association changes its legal status from an organisation entitled to bargain collectively to, for instance, a non-profit organisation of independent entities it is formally no longer eligible to sign a collective agreement. This was the case with the Federation of the Automotive Industry (*Zväz automobilového priemyslu, ZAP*), and recently also in the banking and commerce sectors, in which industry-level bargaining collapsed in 2016 (Kahancová *et al.* 2017). In other industries, in order to preserve industry-level bargaining, the unions accept a low degree of regulation via KZVS, thus undermining the role of industry-level collective agreements. This is the case with collective agreements for the commerce and construction industries, for instance, which stipulate only a minimum of very general provisions, often not regulating industry-specific wage levels at all. Other industry-level collective agreements may regulate working conditions by defining exact wage scales and pay rises, for example in the metal industry, or specify a minimum wage above the statutory minimum for the given sector. Nevertheless, even agreements with more detailed regulation do not target higher employee protection. Detailed wage tariffs coupled to annual increases negotiated by unions, often above the growth rate of the national average wage, however, are not sufficient to reverse declining union membership (Uhlerová 2012).

The trend of opting out from industrial bargaining structures on the side of employers or hostility to company-level bargaining in some companies, or both, is accompanied by a shift in actors' strategies to legislative solutions (Kahancová 2016). Trade unions and a number of relevant employers and their associations are convinced that legislative regulation is more easily implemented and monitored than collective agreements, facilitate greater commitment on the side of employers and lower the chance of evasion or free riding. On the side of the unions, a focus on legislative solutions helps them to develop a new politically based power resource, as unions have increasingly relied on the support of the strongest political party, SMER – Social Democracy (SMER – sociálna demokracia, SMER-SD), which has been the strongest party and part of the government since 2006 – with the exception of 2010–2012. Unions' and employers' increasing focus on legislative solutions may further intensify the erosion of bargaining structures (Kahancová and Martišková 2016; Kahancová and Sedláková 2018). Under the governance of SMER-SD, Slovakia has experienced the extension of industry-level collective agreements since 2008, which is a unique development in CEE countries, which are characterised mainly by decentralised bargaining structures (European Commission 2013). While government coalitions led by SMER-SD since 2006 have introduced industry-wide extensions to bargaining coverage, the right-wing government coalition ruling in 2010–2012 replaced industry-wide extensions with voluntary extensions dependent on the consent of the employers concerned. An industry-wide extension mechanism was reintroduced after the 2012 elections when SMER-SD returned to office.

In 2016, the fate of extensions changed again when the Constitutional court of the Slovak Republic (*Ústavný súd Slovenskej republiky*) ruled that industry-wide extensions were against the Slovak Constitution because they violate basic human rights and liberties in entrepreneurship and in the right to own property. The main reasons were the following: the extension mechanism applied to entire industries

as specified in the Statistical Classification of Economic Activities in the European Communities (NACE); the procedure of extension was launched only at the request of one or several of the parties involved, that is, trade unions or employers; and extensions were subject to approval by the Ministry of Labour, Social Affairs and Family. The claim of unconstitutionality which was submitted to the court was politically motivated because the economic impact of extensions in terms of labour costs would amount to a 3.2 per cent increase (Karšay and Mičúch 2014). The new extension mechanism approved in September 2017 in the form of an amendment to the Act on Collective Bargaining (Zákon o kolektívnom vyjednávaní) No. 2/1991 allows for the automatic extension of bargaining coverage of higher-level collective agreements above the company level (KZVS). The amendment for the first time introduced *representative* multi-employer agreements; and only these are subject to extension (Eurofound 2017). A representative agreement, according to the new legislation, is one signed on behalf of an industry in which trade unions are established in at least 30 per cent of employers that are members of the employers' association that signed the industry-level collective agreement. If more than one industry-level agreement is signed, the agreement that covers more employees may be extended. If both parties, employers and unions, agree to extension to the whole industry, the decisive indicator is the NACE code classification of the activity of particular companies. If a KZVS is concluded for a specific industry, and at the same time is representative for this industry, it may be extended. Despite this regulation, no extension was implemented in 2017 (Eurofound 2017).

## Level of bargaining

Collective bargaining in Slovakia takes place at the industry and company levels. At the national level, social dialogue takes place in the tripartite Economic and Social Council (Hospodárska a sociálna rada, HSR). Although national tripartism is an important aspect of bargaining security (see below), it does not yield binding collective agreements. The last general framework agreement, as a result of bargaining at the national level, was concluded in 2000. In this section therefore we focus on industry and company level collective bargaining.

According to the ICTWSS database, Slovakia's bargaining system oscillates between industry-level and company bargaining. The main trend in terms of level of bargaining is the strengthening of company-level bargaining, putting industry-level bargaining structures in some industries under pressure and hollowing out the content of some industry-level agreements (Drahokoupil and Myant 2015). Mechanical engineering, for example, still conducts wage bargaining at the industry level, while in retail industry bargaining exists, but no longer provides for wage regulation, which is fully decentralised to the company level (Kahancová *et al.* 2017). At the industry level, 37 agreements were in force in 2000, declining to 29 agreements in 2017 (see Table 25.3). In the private sector, the number of agreements decreased by twelve, in the public sector it has increased by four.

In the public sector, wage bargaining at industry level is very important. Bargaining on behalf of employees in state services and public services, including education,

Table 25.3 Number of industry-level collective agreements in Slovakia (selected years)

	2000	2006	2012	2017
Private sector	35	32	20	23*
Public sector	2	5	5	6*
Total	37	37	25	29

Note: Only selected years are available. \* Author's computation based on the registry of MPSVR.  
Source: ISPP based on Barošová (2013).

central and local government and, partly, health care is conducted with government representatives as employers and results in binding wage regulation. This explains the rising number of industry-level agreements in the public sector since 2000 (ISTP 2013). In contrast, bargaining in the private sector is concentrated at the company level in terms of both coverage and impact on working conditions (see degree of control of collective agreements). Despite the decreasing coverage rates, issues including wage setting and actual working conditions are bargained at this level and thus contribute to the rise of employment quality in particular companies. Sixty per cent of company-level bargaining occurs in companies with more than 200 employees. The average length of validity of an agreement is 1.8 years, but wage increases are usually renegotiated every year (ISPP 2013). Besides the increasing importance of company-level bargaining, the social partners are increasingly targeting their regulatory efforts at the national level. Many issues that emerge in company bargaining are articulated upwards and addressed at the national level via Labour Code amendments. Between 2001 and 2017, the Labour Code was subject to 48 amendments. The majority of amendments favoured labour, especially in precarious jobs such as fixed-term and part-time workers and agency workers.<sup>4</sup> The OECD index of employment protection indicates that employment protection of temporary workers in Slovakia increased from 0.6 per cent in 2004 to 1.7 per cent in 2013.

## Security of bargaining

Security of bargaining refers to institutional possibilities of unions and employers to participate in the regulation of the employment relationship. The institutionalised access of trade unions and employers to collective bargaining developed in the course of their transformation in the 1990s and 2000s. The most important statutory provisions on the fundamental rights of unions and employers in collective bargaining are elaborated in Act No. 2/1991 Coll. on collective bargaining, the Labour Code (Act No. 311/2001 Coll. and its later amendments) and Act No. 103/2007 Coll. on tripartite consultations. The most important levels from the perspective of bargaining security are the national and the company level, which we address in more detail below.

According to the Act on Tripartite Consultations, unions with at least 200,000 members and employers' associations representing at least 200,000 employees working in

4. Source: <http://www.zakonypreludi.sk/zz/2001-311> (accessed 30 December 2017).

member companies are representative and thus entitled to participate in national tripartite social dialogue (Barošová 2013). Each side of the social dialogue, including unions, employers and the government, may be represented by seven representatives. For different issues, different nominees may be present at discussions, thus the overall number of participants in the tripartite committee is around 80. Besides formal access by meeting representativeness criteria, unions and employers often seek political alliances in order to gain influence in policy-making, as tripartite social dialogue has only an advisory character for the government (Myant 2010; Uhlerová 2012). On the union side, KOZ SR participates in tripartism, while on the employers' side AZZZ and RÚZ SR are the only peak-level associations involved in tripartism.

During the 1990s, tripartite consultations resulted in general agreements with wage stipulations, which often lacked government commitment (Uhlerová 2012). Tripartism in Slovakia was subject to several changes in terms of the competences and responsibilities of the partners involved and their representativeness and political affirmation. In particular, trade union attitudes towards liberal and social-democratic governments have caused some turbulences in the tripartite committee since the 1990s. In 1998, trade unions joined the coalition of social democrats and liberals in their battle against the government of prime minister Vladimír Mečiar. After this coalition won the 1998 elections, Act No. 106/1999 Coll. on Economic and Social Partnership (Zákon o hospodárskom a sociálnom partnerstve), also referred to as the Tripartism Act (Zákon o tripartite), redefined the issues subject to tripartite consultation, the representativeness criteria of relevant parties and the financial operation of the Council.

Nevertheless, after the 2002 elections, when the winning liberal parties left the Social Democrats in opposition, tensions between the government and trade unions escalated due to differing perspectives on labour market deregulation. As a result, the government unilaterally recalled Act on No. 106/1999 Coll. on Economic and Social Partnership (Zákon o hospodárskom a sociálnom partnerstve) and introduced a new Act on Tripartism that granted the parties, including employers' representatives and trade unions, only a consultative role. Weakening the institution of tripartism was part of the (economic) liberal government's programme to 'eliminate the corporatist model that granted access to the government only to selected groups of employees and employers' representatives' (Uhlerová 2012: 130). The tripartite body was not abolished, however, but transformed into a governmental council with limited legal competencies. As a result, between 2002 and 2007 tripartite consultations had only a consultative character and the partners complained about incomplete or untimely delivery of background materials, suggesting that tripartism had only very limited authority (Uhlerová 2012).

After the 2006 change of government, when the Social Democratic Party SMER formed the government, a new Act No. 103/2007 Coll. on Tripartism (Zákon o tripartite) was adopted. Besides changing the name from Council of Economic and Social Accord (Rada hospodárskej a sociálnej dohody, RHSD) to Economic and Social Council of the Slovak Republic (Hospodárska a sociálna rada Slovenskej Republiky, HSR), the last Act stipulates a clearly consultative role for the tripartite council, respect for the plurality of the actors involved and their competences in legislative procedures and defines topics that the HSR is obliged to discuss. In light of these developments, national-level

consultations thus remained at the centre of trade unions' and employers' federations' strategies despite different attitudes of successive governments towards tripartism as an institution granting access to the social partners to policy-making (Kahancová *et al.* 2017; Uhlerová 2012).

In addition to tripartism, security of bargaining for unions is facilitated by articulation between grassroots union organisations at the company level and the relevant industry-level union federation. The decentralisation of union structures and the high autonomy granted to company-level union organisations after the 1989 regime change has had several consequences (see above; Myant 2010). First, vertical bargaining coordination was, and remains, increasingly difficult, as national or industry-level union organisations are no longer able to coordinate bargaining outcomes in companies because of the grassroots organisations' strong autonomy. Higher-level organisations thus must rely on the willingness of the lower-level organisation to cooperate to have a significant impact on bargaining. A common practice in vertical articulation in bargaining is that company-level unions invite legal specialists working at industry-level unions to consult on their bargaining claims. Second, wage increases but also other employees' benefits and recruitment activities are dependent on the strength of particular company-level union organisations and their leaders. Representatives of company unions might possess very diverse qualities and strengths in leading collective bargaining. Third, security of bargaining is assured through valid strike regulation. Slovakia does not have separate strike legislation and workers' right to strike is assured through several international regulations, the Slovak Constitution, the Act on Collective Bargaining and the Labour Code (Zachar 2012). The most specific strike regulation is in Act 2/1991 Coll. on collective bargaining: however, this piece of legislation only regulates strikes directly connected to collective bargaining and the conclusion of collective agreements. Strikes are supposed to be approved in a secret ballot by an absolute majority of the employees present at the ballot. Participation in the ballot must exceed 50 per cent of all workers covered by a particular company agreement. Unions should inform the employer about the date, reasons and objectives of the strike, and provide a list of union representatives participating in the strike committee. Unions also need to reach agreement with the employer on how essential activities and services will be ensured during the strike.

As a consequence of this regulation, strikes are rare in Slovakia and the majority of them are not related to collective bargaining. In 2006, there was a 14-day strike of about 1,330 health care workers;<sup>5</sup> in 2007 a six-day strike of about 100 air traffic controllers;<sup>6</sup> and in 2008 a 30-hour strike of about 1,600 workers at the Kromberg & Schubert Company, a cable producer for the automotive industry. The strike of primary school teachers in January 2016 caught the public's attention when more than 14,500 teachers from over 950 schools went on strike (ETUI 2016). In June 2017 the first strike in the automotive industry occurred when more than 5,000 employees joined the six-day strike at Volkswagen Bratislava to finally achieve wage increases and non-wage benefits (Krajanová 2017). More common than actual strikes are so-called strike alerts, which do not end up as real strikes, but increase union pressure in bargaining. Such strike alerts

5. According to Slovak Statistical Office.

6. According to information from trade unions.

occurred in 2016 and 2017 during bargaining in public transportation, at the machinery producer Podpolianske strojárne, in education and in the energy sector.<sup>7</sup> Besides such events, unions are increasingly voicing their discontent through activities beyond the scope of strike legislation, including public protests and media campaigns. In 2011 there was a massive and successful resignation campaign on the part of medical doctors led by the Doctors' Trade Union Federation (Lekárske odborové združenie, LOZ), followed by a successful resignation campaign involving nurses and midwives led by the Trade Union Federation of Nurses and Midwives (Odborové združenie sestier a pôrodných asistentiek, OZSaPA) in late 2015 (Kahancová 2016).

## Depth of bargaining

Slovak legislation recognises two types of employee representation at the workplace: trade unions and works councils or work trustees. Trade unions can be established at any workplace by at least three employees. Works councils may be established through a workplace ballot in companies with more than 50 employees, while a work trustee may represent workers' interests in companies employing between three and 50 employees. The rights and duties of works councils and work trustees are the same and centre on the right to information, compliance activity and some co-decision making and negotiation. Current legislation bestows little influence on works councils or work trustees; in contrast, trade union organisations are entitled to collective bargaining (Kahancová and Sedláková 2018).

According to Act No. 2/1991 on collective bargaining, collective agreements can be negotiated and concluded by employers and union representatives whose authorisation is implied in union statutes or in internal union provisions. In cases in which more than one union operates at a workplace, they need to agree on the provisions among one another. For higher-level collective agreements, employers may conclude an agreement with unions representing the largest number of employees of member companies. Information on negotiations and approval procedures within employers' organisations is limited and not publically accessible. These procedures are stipulated in internal regulations accessible only to members. At the company level, a union representative serves mainly as a negotiator in collective bargaining and is also involved in the implementation of the agreement. Union representatives, after a secret ballot majority vote, also have the right to call a strike. Neither works councils nor work trustees can call a strike in Slovakia.

At the industry level, unions usually appoint a chief negotiator via one of their bodies. For instance, OZ KOVO, the metal sector union, approves a chief negotiator and the overall strategy in collective bargaining through its Presidency of the council of the trade union federation (Predsedníctvo rady odborového zväzu). The internal mechanisms of appointments in many cases are specific to the union's constitution and

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7. Source: OZ KOVO, [www.eduworld.sk](http://www.eduworld.sk) (accessed 3 January 2018), SME 19. October 2017 Energetici vstúpili do štrajkovej pohotovosti (Energy sector workers launched a strike alert), available online at [ekonomika.sme.sk](http://ekonomika.sme.sk) (accessed 3 January 2018).

studies accurately characterising the appointment procedure, for example by voting or only by formal approval, are almost non-existent. The depth of collective bargaining is thus less pronounced at the industry level compared with the company level. Union representatives who conclude collective agreements with an industrial or higher-level employer organisation may be, and in most cases are, professionals that work solely for the union at the industry level and are not employed in any company. There are, however, some cases in which a representative of the higher-level union also serves as a representative of a company-level union; one example is banking (Kahancová *et al.* 2017).

## Degree of control of collective agreements

The degree of control of collective agreements refers to the extent to which the actual terms and conditions of employment correspond to the terms and conditions originally agreed by negotiators. The bargaining system does not allow downward derogations from the law and from higher-level collective agreements: wages stipulated in company agreements cannot derogate from wage stipulations in industry-level agreements. The actual impact of collective agreements on improving working conditions and wages is modest. First, industry-level agreements set minimum standards and often do not include specific wage grades. In banking, the industry-level agreement sets the minimum wage at €500, but data show that the median wage in the industry was €1,236 in 2014, whereas the average wage reached €1,673 in the same year (Kahancová *et al.* 2017). In the metal industry, the industry-level collective agreement stipulates wage rates for different categories of workers, but they only set minimum standards for the industry and actual wages differ across particular employers. Retail in its industry-level collective agreement does not stipulate wage levels for its employees and wage-setting is thus a matter of company-level collective agreements, which are in most cases private and not accessible. In compulsory education, wage rates are set by the government for the whole public sector and are part of a higher-level collective agreement. Wage drift in education and the public sector as a whole in Slovakia is therefore smaller than that in the private sector.

The second reason why collective agreements play only a modest role in defining and actually setting working conditions is related to company-level bargaining. Company-level bargaining is mainly uncoordinated, and outcomes differ between employers within and across industries. Employers tend to opt for individual rather than collective solutions. Czírja (2012) showed that the average wage increase agreed in company-level collective agreements has been declining: it was 6.4 per cent in 2007, 6.3 per cent in 2008, 5.4 per cent in 2009 and only 3.5 per cent in 2010. It has increased in recent years, however, as trade union demands have been supported by the thriving economy and associated labour shortage. Individual wages in banking are influenced by performance and thus allow for greater flexibility, with variable parts of wages accounting for a great part of the salary (Eurofound 2009; Kahancová *et al.* 2017). A substantial difference in wage scales is visible also in the company agreement of Volkswagen Slovakia, which sets its own wage rates, with notably higher wages than in the industry-level agreement. The differences range from 283 to 692 euros (Kahancová *et al.* 2017).

The two most important bodies for monitoring implementation of collective agreements are company-level unions and the Labour Inspectorate (Inšpektorát práce). Both bodies are regulated in the Labour Code. If a union is established in a company, it has a right to monitor compliance with an agreement's provisions. Unions are aware of the importance of their role (Kahancová 2016). If unlawful practices are discovered, however, unions do not have a wide variety of measures available to correct employer behaviour. Based on mutual trust and established relations, the union can formally or informally discuss and request better compliance with collectively agreed regulation. If an agreement cannot be reached, unions, but also any other organisation or an individual – for example an employee – may file a case with the Labour Inspectorate. The Inspectorate does not possess the authority to enforce implementation or corrective measures on the part of the employer. Its activities are rather pro-active and aimed at monitoring compliance in order to prevent cases of misconduct. The Inspectorate is not entitled to take a binding decision or to bargain about employee rights with the employer. As an enforcement measure, the Inspectorate is entitled to assign a fine to the employer if a practice is found to be unlawful. Only the court can take a legally binding decision and enforce implementation of employee rights deriving from a collective agreement.

An interesting exception to the generally limited union rights to enforce a collective agreement is the unions' monitoring competence on health and safety issues, as stipulated by Article 149 of the Labour Code. Company-level unions thus have a right to ensure that the employer follows all relevant health and safety procedures, and adopts corrective measures if misconduct is uncovered. Unions have the right to ensure that employers correctly investigate workplace injuries, for example, or even directly participate in such examination. The union is obliged to elaborate a written statement on cases of misconduct. The Labour Code also entitles unions to request a temporary halt to work at the company; they are also obliged to inform the Labour Inspectorate of their request.

Collective disputes are governed by Article 10 of Act 2/1991 Coll. on collective bargaining, which defines two types of disputes: disputes on concluding a collective agreement and disputes addressing fulfilment of obligations arising from a valid collective agreement. To resolve collective disputes, parties may agree to go before a mediator. The parties can choose the mediator, or can let the Ministry of Labour, Social Affairs and Family appoint one from its list of certified mediators. The law states that the contracting parties are obliged to provide mutual cooperation with an intermediary. If the dispute is not resolved within 30 days, however, the parties have a right to request an arbitrator to take a binding decision. If the parties decide not to bring their case to arbitration, employees have a right to call a strike in a dispute on conclusion of a collective agreement (§17 of Act No. 2/1991 Coll.). At the same time, employers have the right to announce a lockout (§27 of Act No. 2/1991 Coll.).

The Ministry of Labour, Social Affairs and Family reported twenty registered cases of mediation in 2006 and seventeen cases in 2007.<sup>8</sup> In the past decade, the health-care

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8. Source: MPSVR SR - Správy o sociálnej situácii obyvateľstva Slovenskej republiky 2006 -2010 (Report on the social situation of population of the Slovak Republic 2006–2010).

sector has frequently resorted to mediation and arbitration. Every multi-employer agreement between trade unions and the Association of Hospitals of Slovakia (Asociácia nemocníc Slovenska, ANS), representing smaller regional public hospitals, has ended up in the hands of an arbitrator. This shows that bargaining not only takes longer in health care, but also that it is increasingly difficult to reach an agreement and without the decision of an arbitrator a collective agreement would not be achieved. In the large state hospitals, represented by the Association of State Hospitals of the Slovak Republic (Asociácia štátnych nemocníc SR, AŠN SR), collective agreements by an arbitrator's decision were also common, but alternated with agreements concluded by the consensus of the social partners (Kahancová 2016).

## Scope of agreements

The range of issues covered in collective agreements differs according to the level of bargaining. At the industry level, collective agreements set minimum standards, are more general and serve a declarative role to support the existence of social dialogue at the sectoral level (Kahancová *et al.* 2017). At the company level, agreements are more specific and their scope differs across industries and particular companies. Evidence from content analysis of industry-level collective agreements in four industries in Slovakia – metal, retail, banking and education – supports the assertion that industry-level collective agreements cover only minimum issues beyond the level of Labour Code provisions. All four industry-level collective agreements define a relationship between employers and union representatives, the employment relationship and work conditions, have a section on wages and wage increases and also refer to various qualitative issues, such as health and safety in the workplace and early retirement.

Out of the abovementioned agreements, only the metalworkers' industry-level agreement specifically defines wage rates for different categories of workers. The metalworkers' collective agreement, which is also applicable to the highly important automotive industry, is the most elaborated and by far the longest industry agreement of the four examined industries. The range of issues covered in this agreement reflects the fact that it covers one of the most important industries in the Slovak economy and is organised by the biggest and most important union in Slovakia, the metalworkers' union OZ KOVO. In banking, the industry-level agreement sets only minimum standards (Kahancová *et al.* 2017). The Slovak Banking Association (Slovenská banková asociácia, SBA) argues that the heterogeneity of banking sector employees is increasing and therefore industry-level regulation is losing importance, while company-level bargaining is increasing in importance. Company agreements often remain confidential and not accessible to researchers, however, as banks argue that they need to secure their competitive advantage over each other. A similar situation can be found in retail, where collective agreements at the company level play a crucial role. Employers in retail prefer to avoid erga omnes extensions of collective agreements. The collective agreement for public services, covering also compulsory education, is more specific compared with industry-level agreements in the private sector. Though the range of issues covered is almost the same, in terms of wage stipulations the industry agreement specifically defines wage rates for various categories of workers.

With the exception of the metalworkers' agreement, all substantive agreements defining terms and conditions for individual workers are at the company level. Similarly, at industry level, we rarely find any procedural agreements specifying disciplinary, grievance and dispute procedures beyond the scope of the Slovak Labour Code. Again, exceptions can be found in the metalworkers' industry agreement, which, for instance, specifically defines cases of violation of work discipline. Nevertheless, most commonly, industry-level collective agreements define qualitative issues related to the context of work. As a consequence, the broad scope of industry-level agreements offers employers more options to exercise unilateral decision-making in firms, especially where unions are not established, as in some important retail companies.

## Conclusions

This chapter presents the main characteristics and recent developments in collective bargaining in Slovakia. In general, the Slovak bargaining system consists of a transparent structure of bargaining actors, legislative support for bargaining and the extension of collective agreements. Bargaining occurs at the industry and company levels. Since 2000, national tripartism has no longer produced tripartite agreements and instead serves as an advisory body to the government. Next to declining union and employer density and bargaining coverage, a change in union structure, together with changing union strategies, pose new challenges to the future of collective bargaining. Unions increasingly seek influence through other mechanisms than collective bargaining, such as political alliances and public protests, demonstrations and media campaigns to gain influence over policy-making. Moreover, both unions and employers increasingly concentrate their efforts on adopting legislative solutions to employment and working-conditions issues instead of collective bargaining. This trend grew out of increasing lack of trust on the part of employers and unions in industry-level and multi-employer bargaining and the lack of enforcement of collective agreements. Wage regulations for health-care staff and the regulation of agencies that provide temporary workers for Slovakia's most important industries, automotive and electronics, are the most important recent examples of legislative solutions applied where collective bargaining would also be a feasible mode to regulate working conditions and wages. Social partners in general believe that legislative solutions enjoy greater enforcement than collective agreements.

Although collective bargaining is still considered an important mechanism of regulation in Slovakia, especially at the company and partially at the industry level, a strong focus on legal regulation leaves the future of collective bargaining contested. In particular, changes in legal regulation directly and indirectly related to collective bargaining foster bargaining decentralisation to the company level. For example, recent years have seen turbulent legislative changes to the extension of multi-employer collective agreements, to the representativeness criteria of unions and employer federations, and to union codetermination rights, for example in anti-crisis measures. These changes have occurred despite the stabilisation of trade unions' and employers' organisations' structures in industry bargaining and tripartite consultations.

Other important developments in the past ten years with implications for collective bargaining include innovation in trade union structures and actions, such as the emergence of new union organisations (Bernaciak and Kahancová 2017). New unions emerged mainly in response to the growing dualisation of the labour market and related deterioration of working conditions, including wage freezes and employment insecurity since the 2008 crisis. One example of innovative trade union practices was the effort to increase protection for temporary agency workers; unions and employers signed a memorandum of cooperation that had the potential to launch industry-wide collective bargaining in a previously unorganised industry. Later unions and employers shifted their focus away from bargaining to legal solutions; as a result, the regulation of working conditions for agency workers has improved significantly. Other examples of innovative union practices with consequences for bargaining include mobilisation campaigns by doctors and nurses in health care, efforts to establish new trade unions in education, but also union fragmentation, with unions withdrawing from existing structures and bargaining coverage (for example, Moderné odbory Volkswagen opting out of membership of OZ KOVO and thus from industry-level bargaining conducted by OZ KOVO on behalf of the automotive industry). Current economic growth is empowering trade unions, giving them even better prospects of increasing wages especially because of a tight labour market and shortages of skilled workers in a high number of sectors. At the same time, the gradually increasing inflow of migrant workers will probably push trade unions and employers to reconsider their bargaining strategies in the near future. The possible direction of unions' strategy reorientation could be twofold. First, in contrast to their past strategies, Slovak unions may pay more attention to the inclusion of foreign workers into union structures and representation activities. This could facilitate the inclusion of marginalised labour market groups into collective bargaining coverage. Second, unions could develop more intensive cooperation with other stakeholders, such as NGOs, in a bid to strengthen employees' protection at the workplace. The latter is also an approach that unions have been reluctant to pursue in the past two decades.

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All links were checked on 23 October 2018.

## Abbreviations

ANS	Asociácia nemocníc Slovenska (Slovak Hospitals Association)
AŠN SR	Asociácia štátnych nemocníc Slovenskej republiky (Association of State Hospitals of the Slovak Republic)
AZZZ	Asociácia zamestnávateľských zväzov a združení (Association of Employers' Federations)
ČMKOS	Českomoravská konfederace odborových svazů (Czech–Moravian Confederation of Trade Unions)
HSR	Hospodárska a sociálna rada (Economic and Social Council)
Inšpektorát práce	Labour Inspectorate
KOZ SR	Konfederácia odborových zväzov Slovenskej republiky (Confederation of Trade Unions of Slovak Republic)
KZVS	Kolektívne zmluvy vyššieho stupňa (Higher-level collective agreements above the company level)
LOZ	Lekárske odborové združenie (Doctors' trade union federation)
MOV	Moderné odbory Volkswagen (Modern Trade Union Volkswagen)
MPSVR	Ministerstvo práce, sociálnych vecí a rodiny (Ministry of Labour, Social Affairs and the Family)
NKOS	Nezávislé kresťanské odbory Slovenska (Independent Christian Unions of Slovakia)
OZPPaP	Odborový zväz pracovníkov peňažníctva a poisťovníctva (Trade Union Federation of Banking and Insurance Workers)
OZSaPA	Odborový zväz sestier a pôrodných asistentiek (Trade Union Federation of Nurses and Midwives)
RHSD	Rada hospodárskej a sociálnej dohody (Council of Economic and Social Accord)
ROH	Revolučné odborové hnutie (Revolutionary Trade Union Movement)
RÚZ	Republiková únia zamestnávateľov (Employers' Union of the Republic)
SBA	Slovenská banková asociácia (Slovak Banking Association)
ŠÚ SR	Štatistický úrad Slovenskej republiky (Statistical Office of Slovak Republic)
SMER-SD	SMER – Sociálna demokracia (SMER – social democracy)
ZAP	Zväz automobilového priemyslu (Federation of the Automotive Industry)
ZSP	Zväz strojárskoho priemyslu (Federation of Mechanical Engineering)

## Chapter 26

# Slovenia: organised decentralisation in the private sector and centralisation in the public sector

Miroslav Stanojević and Andreja Poje

Slovenia is a small country, with 2.1 million inhabitants, belonging to the group of ‘post-communist’ countries. The key segments of its relatively strongly export-oriented economy are machinery and transport equipment, manufactured goods and chemicals and related products (OECD 2015:7). The development of its current collective bargaining system can be traced over two distinct time periods. The first ranges from 1991, when Slovenia became an independent country, until 2004. Traditionally, the Slovenian bargaining system, as it emerged during the 1990s, was characterised by a high degree of centralisation, with the national and the industry level as the two most important levels at which negotiations took place. The high degree of bargaining centralisation was an integral part of a corporatist arrangement that was based on a political exchange between the social partners, trade unions and employers, and successive governments. Two other key features of the Slovenian system during this first period were the existence of strong unions with a well-developed capacity to mobilise and an exceptionally high bargaining coverage of almost 100 per cent.

The second period starts in 2004 with Slovenia’s accession to the European Union (EU) and continues today. In addition to Slovenia’s EU entry, this second period includes

Table 26.1 Principal characteristics of collective bargaining in Slovenia

Key features	2000	2016/2017
Actors entitled to collective bargaining	Unions, Chamber of Commerce (based on obligatory membership) and other employers’ organisations	Unions, Chamber of Commerce (based on voluntary membership) and other employers’ organisations
Importance of bargaining levels	General agreements for private and public sector	Industry level in private sector, general agreements and centralisation through unified payment system in the public sector
Favourability principle / derogation possibilities	Limited possibility	Increasing possibility
Collective bargaining coverage (%)	100	78.8
Extension mechanism (or functional equivalent)	Yes	
Trade union density (%)	40	20
Employers’ association rate (%)	100	n.a.

Source: ZKolP (2006), Broder (2016: 41), CRANET (2004; 2014), authors’ calculations.

two other milestones that heavily influenced the development of collective bargaining: the country's joining the euro zone in 2007 and, one year later, the start of the global economic and financial crisis, which hit the Slovenian economy hard. After 2004, the interplay of a range of exogenous and endogenous factors made it more difficult to uphold the system of political exchange, which eventually broke down. This second period therefore saw a gradual transformation of the bargaining system – see Table 26.1. The key developments in collective bargaining were marked by different trends within the private and the public sector, which drifted apart. While in the public sector bargaining remained centralised, in the private sector it shifted to the industrial level. Further closely related features of the transformation are the fall in bargaining coverage to 79 per cent and the falling membership of both unions and employers' associations.

## **Industrial relations context and principal actors**

To understand the nature of the gradual changes of Slovenia's collective bargaining system, it is important to look at its broader historical and political context, even more so because the Slovenian system of industrial relations, which stabilised in the mid-1990s, was strongly affected by the heritage of Yugoslav socialism. As early as the 1950s this variant of 'real socialism' was based on dismantling the centrally planned economy and transforming it into a more market-oriented socialist system. Compared with other socialist countries at the time, the entire Yugoslav system was relatively open and involved in systematic exchanges with Western markets. Of all the federal units, Slovenia, which was Yugoslavia's most economically developed and western-most republic, was involved in such exchanges most intensively. One result of the Yugoslav heritage is the powerful position of unions and their exceptional mobilizing capacity. The unions' position in the transition period can be traced to the fact that in Yugoslav socialism workers' councils exerted a strong influence on decisions in companies, which enjoyed a comparatively high degree of market autonomy and were self-managed. Workers' councils existed alongside the official union structures and constituted a relatively autonomous mechanism for articulating workers' interests at the micro-level; as the voice of the employees within the official economy, they had no counterpart in such a developed form in other systems of 'real socialism'. They basically functioned as a sort of company unions within the former Yugoslav system. When, towards the end of the 1980s, their formal rights were significantly reduced, they started, in the context of the growing strike wave that occurred at that time, to form a micro-structure of the emerging union movement.

The unions' power and mobilizing capacity manifested themselves, for instance, in a successful general strike in 1992, which not only blocked an announced general wage freeze, but also contributed to the fall of the centre-right government that had declared the freeze. In the following years, union power, the resumption of economic growth since the mid-1990s and a succession of centre-left governments, in power between 1992 and 2004, created favourable political and economic framework conditions for the establishment of a corporatist regime. This regime was essentially based on a system of political exchange, in which the unions agreed to a policy of wage restraint as a tool to

curb inflation in return for being granted access to political decision-making processes. This corporatist arrangement was also supported by the employers, as wage restraint, together with the incremental devaluation of the national currency helped them to ensure their competitive advantage in international markets. The two institutional foundations of this system of political exchange were, on one hand, the Economic and Social Council (Ekonomsko-socialni svet, ESS), which was established at the macro-political level in 1994 and, on the other hand, a highly centralised system of collective bargaining, which after 1995, in the context of economic growth and relatively high inflation, ensured the successful implementation of moderate wage policies (Mišič 2002: 31). The highly centralised bargaining system was in turn based on two general collective agreements: one for the private sector, concluded in 1990, and one for the public sector, concluded in 1991. Both agreements were affected by the basic rights stemming from the Employment Act (Zakon o temeljnih pravicah iz delovnega razmerja, ZTPDR 1989), and by the Employment Relationships Act (Zakon o delovnih razmerjih, ZDR 1990), which were in force until 2002 when the new Employment Relationships Act (ZDR 2002) and the Collective Agreements Act (Zakon o kolektivnih pogodbah, ZKOlP 2006) were adopted. The general provisions of the ZKOlP also apply to collective bargaining in the public sector. The exception is the normative, substantive part of public sector collective agreements that refers to pay, which is regulated by the Public Sector Salary System Act (Zakon o sistemu plač v javnem sektorju, ZSPJS 2009) (see below). The ZDR was amended several times and defines the absolute minimum of rights. The ZKOlP defines which actors are eligible for collective bargaining, the procedure for entering into a collective agreement and its contents, as well as the hierarchy of bargaining levels.

In Slovenia, the favourability principle is fundamental to labour law. This principle entails the general rule that laws and higher agreements determine minimum standards that can be elaborated or determined more favourably for the worker by a contract at a lower (collective and individual) level (Kresal Šoltes 2011: 173–75). A collective agreement can only establish rights that are more favourable to the worker than the rights contained in the law (*in favorem*); exceptions to this rule are possible if stipulated by law.<sup>1</sup> The principle applies to the relationship between a collective agreement and a law, an agreement at a higher level and one at a lower level, between an agreement and an employment contract, and an agreement and an employer's general act. Furthermore, collective agreements at the company level play an important role in Slovenia. The ZKOlP stipulates that the employers covered by the collective agreement at the industry level must respect all rights defined by law and by the industry agreement. The same applies to general acts of the employer or employment contract. If the employer is not bound by the industry agreement, the company collective agreement, employer's act or employment contracts must regulate the rights of workers more favorably, without deviations from the ZDR-1. Company agreements may only regulate rights more favorably for workers.

1. The ZDR-1 of 2013 defines the cases in which collective agreements can define rights differently; in these cases, derogation is also possible. Similarly, the ZDR -1 also lays down that the industrial collective agreement can stipulate rights that are more favourable for the members of the trade union that is the signatory of the collective agreement.

Some industrial agreements do not enable downward derogations, and others in which derogation is possible stipulate permissible cases, pose time limitations and make it conditional on the existence of a representative union. According to the Representativeness of Trade Unions Act (Zakon o reprezentativnosti sindikatov, ZRS in 1993), representativeness can be acquired by unions in an industry that are part of union confederations if their members make up 10 per cent of all employees in the industry; if a union operates independently, then it is considered representative if its members make up 15 per cent of all employees. The Ministry of Labour decides on representativeness: based on the declared share of members, which the unions submit to the Ministry, the latter determines their representative status. Once the status is granted, the membership data are no longer checked.

The most important interest organisation on the employer side is the Chamber of Commerce and Industry of Slovenia (Gospodarska zbornica Slovenije, GZS). It was based on compulsory membership until 2006, when voluntary membership was introduced. Early voluntary employers' organisations were established in Slovenia already in the mid-1990s, due mainly to the contemporary international organisations' criticism of compulsory membership in the GZS. At that time, those voluntary organisations did not play a major role in collective bargaining. Later, their autonomy and role in bargaining have increased, but the GZS remains the main negotiator on the employer side. Considering the union confederations, the largest are the Slovenian Association of Free Trade Unions (Zveza svobodnih sindikatov Slovenije, ZSSS), the Confederation of Public Sector Trade Unions (Konfederacija sindikatov javnega sektorja Slovenije, KSJS) and the Confederation of Trade Unions of Slovenia Pergam (Konfederacija sindikatov Slovenije Pergam, Pergam). Of these three, ZSSS, which is anchored mainly in the private sector, is the largest confederation, covering around 40 per cent of all unionised workers (Broder 2016). Within ZSSS, the largest affiliated union is the Trade Union of Metal and Electrical Workers of Slovenia (Sindikat kovinske in elektroindustrije Slovenije, SKEI), which has its strongest presence in export-oriented companies in the metalworking industry. KSJS is the largest confederation in the public sector, with the Education, Science and Culture Trade Union of Slovenia (Sindikat vzgoje, izobraževanja, znanosti in kulture Slovenije, SVIZ) as its largest affiliate.

## **Level of collective bargaining**

In the mid-1990s, a highly centralised collective bargaining system was established in Slovenia as a central tool for implementing a policy of wage restraint. After the country joined the European Union in 2004, however, developments in the private and the public sector started to diverge from one another. While in the private sector bargaining became decentralised, with industry as the dominant level of negotiation, in the public sector steps were taken to maintain and complement the centralised bargaining system over wages and other terms and conditions of employment. After entering the euro zone in 2007, the changed political and economic framework conditions undermined the political consensus on which the system of political exchange had been based. Eventually this involved the end of the policy of wage moderation and a reorganisation of collective bargaining, shifting to a relative decentralisation of

negotiations towards the industry level in the private sector. This change in the system can be traced to three factors.

First, the transfer of monetary policy competences to the EU meant that Slovenia lost the possibility of improving competitiveness by devaluation. Consequently, the pressure for so-called 'internal devaluation' (Streeck 2014) increased, leading to calls for flexibilisation of the labour market and reduction of public sector costs. Against this background, the existing system of centrally agreed wage moderation lost the support of the employers because they believed that bargaining at lower levels would ensure greater competitive advantages. At the same time, the new policy of 'internal devaluation' reduced the unions' prospects in the political exchange of maintaining social security for supporting wage moderation. The previous incomes policy was thus basically abandoned and bargaining turned increasingly into concession bargaining.

Second, a less supportive political environment endorsed neoliberal reform policies pursued by the new centre-right government in 2004, which announced the introduction of a flat-rate income tax and initiated a new round of privatisations, which combined with a strong inflow of cheap money from the rest of Europe led to massive management buyouts. The following centre-left government, faced with the global financial and economic crisis, increasingly turned to unilateral measures, thereby losing support not only from the social partners but also from the broader public. The government raised the minimum wage by 23 per cent in an effort to obtain the unions' support for further structural reforms of the labour market and the pension system in 2010. Because the unions refused to support the reforms and, at the same time, the employers had already withdrawn from the social dialogue because of the unilateral increase of the minimum wage, the conflict caused a political crisis, with the fall of the government and several years of political instability.

Finally, the crisis and the crisis management based on severe austerity measures plunged Slovenia into a double-dip recession. The high unemployment prompted further reforms aimed at labour market flexibilisation. In 2013 the government therefore adopted a new Employment Relationships Act (*Zakon o delovnih razmerjih, ZDR-1 2013*) and Labour Market Regulation Act (*Zakon o urejanju trga dela, ZUTD-A 2013*). The crucial results of the labour market reform, adopted with the cooperation and agreement of all social partners, were the liberalisation of the regime for dismissals and somewhat improved regulation of some types of non-standard employment, such as fixed-term employment. The later was almost immediately substituted by a strong increase in new forms of precarious work, such as bogus self-employment and agency work. The entire trend gradually shifted the power balance in favour of the employers.

All these factors changed the parameters on which the entire collective bargaining system had been based since the early 1990s. These incremental changes potentially undermined the regulatory capacity of collective bargaining in Slovenia. Nevertheless, decentralisation in the private sector was relatively organised because it was basically directed by legislative changes based on the consensus of the social partners within the ESS. The key driving force of the shift in collective bargaining to the individual industry levels in the private sector was GZS, which refused to enter into a general

collective agreement for the private sector in 2005. The underlying motivation was the potential threat in light of the changed economic and political framework conditions after Slovenia's access to the EU and the European Monetary Union. GZS claimed that the earlier single payment policy would not be flexible enough to allow for industry- and company-specific responses to the new competitive pressures.

Another factor that contributed to the employers' increased interest in more flexible bargaining arrangements is the structural change in the private sector during the transition period, which altered the interest structure of the employers' side. Key developments in this respect are the significant drop in the number of large companies in the private sector, which fostered the trend of de-unionisation, and, the growing importance of multinational corporations, especially in the export-oriented industries. Together with employers in the trade sector, especially retail, the employers in the export industry are the key initiators of further labour market flexibilisation, such as the liberalisation of the dismissal regime, and influential proponents of lowering taxes on companies.<sup>2</sup> Ironically, the abandoning of the general agreement for the private sector in 2005 was followed by the temporary reinforcement of the previous restrictive wage policy. In the context of the massive inflow of cheap money and growing inflation, a new Social Agreement (2007–2009) was concluded, indicating an attempt to return to the practice of political exchange between the social partners and the government. In line with this turn, and due to the high inflation in 2007, just before the global economic crisis started, the general collective agreement for the private sector (KPPI 2008) was again concluded in 2008, primarily regulating work remuneration. Since then, it has no longer been possible to conclude a new one for the private sector, with the same content and extent as collective agreements before 2006.

The industry as the dominant level of collective bargaining in the private sector was confirmed by the most recent social agreement for 2015–2016. Examples of important industry-level agreements in the private sector are the Collective Agreement for Slovenia's Trade Sector (Kolektivna pogodba dejavnosti trgovine Slovenije) and the three collective agreements for the metallurgical and electrical industry. The existing Collective Agreement for Slovenia's Trade Sector<sup>3</sup> was concluded by the ZSSS-affiliated Trade Union of Workers in Slovenia's Trade Sector as the only representative union in this sector, the Slovenian Chamber of Commerce (Trgovinska zbornica Slovenije, TZS), the Association of Employers of Slovenia (Združenje delodajalcev Slovenije, ZDS) and GZS in 2014. Subsequently, other non-representative unions with members in this industry have acceded to the agreement. Furthermore, in 2005 the Collective Agreement for Iron and Non-Ferrous Industries, Foundries and Electrical Industry of Slovenia was divided into three separate collective agreements: the Collective Agreement for the Slovenian Metal Industry (Kolektivna pogodba za kovinsko industrijo Slovenije),

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2. In 2016, in the framework of a mini tax reform, the tax burden on labour was lowered, while the tax burden on capital, the rate of tax on the income of legal persons, was raised. The demands of ZSSS were an even more progressive tax system, reduced taxation of wages and the 'thirteenth salary' and increased taxation of profit, which is the least taxed in Europe. It effectively amounted to only 11.4 per cent. The government increased the rate of tax on profit from 17 per cent to 19 per cent, and introduced a more progressive tax system, raised net wages and reduced taxation on Christmas bonuses and 'thirteenth salaries'.
  3. All abovementioned collective agreements can be found in the Official Gazette of the Republic of Slovenia.

the Collective Agreement for Slovenia's Electrical Industry (Kolektivna pogodba za dejavnost elektroindustrije) and the Collective Agreement for the Metal Products and Foundry Industry (Kolektivna pogodba za dejavnost kovinskih materialov in livarn Slovenije). A special feature of all three agreements is the unified union representation: for all three narrower industries they were concluded by SKEI. It is precisely such unified representation of workers that ensures a high level of coordination among these three industries. The situation was as follows in 2017: there was no national general agreement for the private sector and the key bargaining processes took place at the industry level, at which 26 collective agreements were concluded.

In the public sector, the system of centralised collective bargaining has endured, with a 'central platform' or framework for collective bargaining, labelled the Public Sector Salary System Act (Zakon o sistemu plač v javnem sektorju, ZSPJS), which ensures a high degree of coordination. The collective agreement for the public sector was concluded in 1991 and then amended several times. In 2002, the ZSPJS was adopted, providing a single payment scale, composed of 65 grades, for all public sector employees; it specifies that salaries shall be composed of a basic wage, additional payments and a part related to workers' performance. The ZSPJS covers the civil service, the military, the police and the entire school and health care systems. Nevertheless, the ZSPJS was still unclear due to the many narrower regulations and collective bargaining; it enabled industrial or professional unions to independently bargain with the corresponding ministers about individual additional payments. This created great disparities in the wages of individual occupational groups. In 2008, before the crisis reached Slovenia, a new ZSPJS was therefore adopted, intended to increase its transparency and to enable the long-term stable management of public finances. In line with the new ZSPJS, a new collective agreement for the public sector was signed, complementing the first one of 1991, in 2008. The new agreement defines nine broader wage groups, including 65 payment grades for typical positions in sub-sectors, considering personal and job-related criteria, such as level of education, the complexity of the position and responsibility for the work performed. A further 16 collective agreements exist for various industries in the public sector. In addition to these higher-level national and industry-level agreements, there is a range of company-level agreements in the public and private sectors.<sup>4</sup>

After the global economic crisis started and austerity measures began to be enforced, pressures on public sector employees began to intensify. In 2010, the government decided to terminate the collective agreements in the public sector. The Minister of Public Administration demanded that the public sector unions agree to the proposed austerity measures regarding wages for 2011 and 2012; otherwise the collective agreements were to be terminated because failure to do so would endanger the passing of the budget. No agreement was reached, so the government rescinded the terminations and adopted the Intervention Measures Act that extended non-payment of the performance-related bonus for public employees, froze payments for promotion, set the holiday allowance at a lower level and limited the funds for increased workloads for two years. The pressure on public sector employees culminated in spring 2012 when the government announced

4. Those are not included in the register of collective agreements at the Ministry of Labour, Family, Social Affairs and Equal Opportunities, so it is not possible to determine their exact number.

a 15 per cent pay cut in the public sector. A general strike of public sector employees ensued, after which the Fiscal Balance Act was adopted. After this Act was passed, there were no large-scale dismissals of public sector employees, but it did enforce a general 8 per cent pay cut across the entire public sector.

## Extent of bargaining

In the 1990s, a consequence of the corporatist arrangement with highly centralised collective bargaining as a tool to implement a policy of wage moderation was an unusually high bargaining coverage of almost 100 per cent. After Slovenia's accession to the EU in 2004, the changing political and economic framework conditions led to a significant drop in bargaining coverage to 79 per cent in 2016. This overall figure masks different developments in the public and private sectors – see Table 26.2. While due to the single payment system coverage in the public sector is still 100 per cent, the rate in the private sector decreased to 73 per cent.<sup>5</sup> One important factor contributing to the fall in coverage was the decision of the centre-right government in 2006 to adopt legislation that transformed the GZS into an organisation with voluntary membership. A key consequence of this changed status has been a substantial drop in membership. Recruiting and retaining members became a more important issue for the GZS, which began to adhere more closely to the interests of the immediate membership; this is known as a 'logic of membership' (Streeck and Kenworthy 2003). This automatically radicalised the bargaining positions of the employers. For instance, in the transition to voluntary membership, the TZS, with members in commerce, including retail and similar services, dissociated from the GZS; the TZS is also based on voluntary membership and is a key negotiator in commerce. Due to these changes, collective bargaining started to be exposed to occasional blockades, especially during the crisis when cutting costs became the employers' key priority (Glassner et al. 2011). To cut costs, employers massively terminated collective agreements, thereby reducing workers' rights. In the period after 2014, as economic growth picked up again, the social partners began to renew terminated collective agreements. In 2017, the only collective agreement that remained terminated is the one for the chemical and rubber industry.

At the same time, union density fell. It had stabilised at around 40 per cent in the 1990s, but started to decrease around 2005: union density then almost halved from 37 per cent in 2005 to 20 per cent in 2015 (Broder 2016: 41). In 2004, density exceeding 51 per cent of employees was found in two-thirds of companies with 100 or more employees, in manufacturing (64 per cent) and retail (60 per cent), and in half of the organisations in the public services sector (55 per cent). Ten years later the share of companies with a density rate of more than 51 per cent halved in manufacturing industry (32 per cent) and public services (26 per cent). In retail/trade services, the

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5. The assessment of collective bargaining coverage in the private sector was based on a survey of the number of employees in industries with existing collective agreements. All persons with employment contracts (permanent, full-time or part-time, and fixed-term) are included. The coverage of this population in the private sector is around 80 per cent. Among the self-employed, excluding farmers, who make up 8.6 per cent of all employees and are not covered by collective agreements, the coverage of the entire employed population in the private sector is estimated at around 70–75 per cent.

Table 26.2 Share of workers covered by collective agreements, 2016

	Number of employees covered	Persons in employment	Share of employees covered
Public sector: general government	165,258	165,258	100%
Private sector and public companies	478,297	651,951	73%
All employees	643,555	817,209	79%

Note: The collective agreements apply to public companies as well - in line with the scope of the collective agreements.  
Sources: SURS (2016), collective agreements and authors' calculations.

decline was the most drastic, to 17 per cent. In this industry, the share of non-unionised companies was 10 per cent in 2004 and tripled ten years later to 31 per cent, which is the greatest change and the highest share among all industries (CRANET 2004, 2014). The data illustrate that the biggest decline in density took place in industries with high shares of precarious employment, such as retail/trade services and has been less intensive in manufacturing industry and the public sector. Nevertheless, the decline in bargaining coverage is not strongly linked to the decrease in union density, as the contraction of coverage has been substantially less intensive due to the extension of collective agreements. The interplay of the high coverage and decline in union density, however, has gradually changed the dynamics and the quality of collective bargaining. The systematic fall in density is related to the shrinking mobilisation power of the unions, which has brought about substantive changes in collective agreements and even the conclusion of extra 'slim' agreements, for instance in private security in 2016. There are also cases in which, after a collective agreement expires, a new one is not concluded because the employers are not interested. This is what happened with the collective agreement for the chemical and rubber industry, in which, currently, company collective agreements for large and medium sized companies remain in force. Because companies in this industry generally perform above average, the standards the employers seek to enforce for the entire industry are too low and unacceptable for the unions. Because no party is willing to yield in the bargaining, a collective agreement has not been concluded.

Even before the adoption of the ZKoliP, the collective agreements at industrial and national level were regulated, so that they applied to all employers in the sector. In 2006, with the implementation of the ZKoliP, extension of collective agreements was introduced. This was the key mechanism used in light of the changed framework conditions after 2004 in order to retain a high level of bargaining coverage. Furthermore, collective agreements at the industry level are valid for the signatory parties of the collective agreement and their members. If a collective agreement is concluded by representative unions and associations of employers that employ more than half the workers in the industry they represent, then the Ministry of Labour can, on the initiative of one of the contracting parties, decide whether the collective agreement should be extended to all employers in one or several industries (Kresal Šoltes 2011: 261). If an individual employer is bound by several agreements of the same kind and level, then those provisions that are more favourable to the worker apply (Konjar and Poje 2008).

The extension of a collective agreement ends when the agreement is terminated but it can also be terminated on the proposal of one of the parties.

Of the 26 industry-level collective agreements that existed in 2016 in the Slovenian private sector 14 have been extended. Extended validity applies also to all agreements in the public sector, due to the ZSPJS and based upon the definitions in industry-level collective agreements. In the private sector, extended collective agreements include, for instance, the three already mentioned collective agreements for the metallurgy and electrical industry and an agreement for Slovenia's trade sector. In the first case, where union density is above average, and the union is well organised, the industry-level agreement is regularly renewed and, as a rule, maintains or improves the standards of the agreement, or both. In the trade sector, density is relatively low due to the high share of precarious employment. Despite this, in view of the current state of representativeness, the bargaining actors can conclude, and regularly renew, collective agreements, which are then extended to the whole industry.

According to the ZKoliP, a collective agreement can be valid for a fixed or an undefined period. Thus, for example, the Collective Agreement for Slovenia's Trade Sector of 2014 had a fixed end date of 31 December 2016. At the end of 2016, it was prolonged until December 2018. The Collective Agreement for the Metal Products and Foundry Industry of 2006 and the Collective Agreement for the Slovenian Metal Industry of 2015, however, are both open-ended. In both cases, the parties meet annually to check the adequacy of the agreements' provisions. The Collective Agreement for the Education Sector, which was concluded back in 1994, also has unlimited validity. Furthermore, to prevent adverse consequences and ensure the predictability and security of employment relationships, the ZKoliP also ensures that a collective agreement remains effective for a maximum of one year after it expires until a new one is concluded, unless otherwise agreed by the bargaining parties (Kresal Šoltes 2011: 240–41). The normative, substantive part of an agreement also continues to apply when a signatory disaffiliates from the association, but only for one year at most. During this period, the standards established by the normative part of the old agreement are used as a minimum that is enforced in all employment contracts, including new ones concluded in that period. Thus, for example, the Collective Agreement for Slovenia's Trade Sector specifies that, during such an interim period, but for one year at most, the standards of the old collective agreement shall apply. Similarly, the Collective Agreement for the Metal Products and Foundry Industry, as well as the Collective Agreement for the Slovenian Metal Industry specify that, after expiration, the standards (provisions of the normative part) shall be used for six months. If a collective agreement at the industry level is terminated, the agreements at the company level remain valid and provide the key elements for the calculation of wages and other forms of remuneration.

## **Security of bargaining**

In Slovenia, security of bargaining, in the sense of support for unions to participate in the regulation of the employment relationship, depends on two main factors: their involvement in the tripartite ESS at the macro-political level and the legal provisions on

fundamental union rights that support their role in collective bargaining, such as the right to strike. Thus before laws are discussed and adopted in the National Assembly, they are dealt with by the social partners in the ESS. The ESS provides the institutional framework for the unions' involvement in the legislative process related to workers' social and economic rights. In the ESS workers are represented by the union confederations, the employers by the GZS and other employers' associations. Examples of important pieces of legislation based on direct tripartite negotiations in the ESS include the ZDR-1, the ZKolP, and the law on pension and disability insurance (Zakon o pokojninskem in invalidskem zavarovanju, ZPIZ). New procedural rules defining the functioning of the ESS were adopted in 2017, with the aim of further improving its functioning.

The second important source of bargaining security is the right to strike enshrined in the Constitution; it can be restricted by law in especially justified cases, but only if the public interest so requires (Kresal Šoltes 2011: 152). According to this constitutional guarantee, the possibility of restricting the right to strike is settled by collective agreements. As the ZKolP stipulates that collective bargaining negotiations are voluntary, the Constitution also provides unions with the right to freedom of association and with the right to strike, which is a precondition for the power to urge the employers to mutually define a set of issues that are relevant for workers' economic and social situation. More specific regulations on strike action and similar collective actions are laid down in the Strike Act (Zakon o stavki, ZStk), which was adopted by the federal parliament in the late 1980s and which is therefore the only law stemming from the former Yugoslavia that is still in force in Slovenia. The Act requires unions, or other groups of workers acting on behalf of the workers' interest, to announce a strike at least five days in advance by submitting a written strike decision, stating the demands, the starting date, the place of the strike and information on the formation of the strike committee. This obligation is regulated slightly differently for public sector employees, who must inform the employer ten days before the start of the strike. In organisations that perform activities of special public importance and are highly significant for military defence, the right to strike is restricted by conditions regulated by law or decree; a legal ban on strikes applies to the army. Thus, a minimum level of operation must be respected with the aim of ensuring the security of people and property, people's lives should not be endangered or the state's operation jeopardised. The strike decision and a statement on how the minimum level of work will be ensured must be prepared and submitted.

Labour law sources in the Slovenian legislation also include one-sided general acts of an employer, which cannot infringe on the constitutionally recognised autonomy of collective bargaining (Kresal Šoltes 2011). The ZDR-1 states that, prior to adopting proposals for general acts in which the employer seeks to prescribe the organisation of work or workers' responsibilities the employer must submit the proposals to the unions to obtain their opinion. If no union is organised at the employer, the employer's general act may prescribe rights that, pursuant to ZDR-1, may be regulated in collective agreements. Finally, another important element adding to union security is the minimum wage, which was introduced in 1995. The minimum wage is defined as monthly pay for full-time work and applies to all employees; part-time workers receive a proportionate share. The minimum wage is adjusted each January at least for the inflation of the previous year and determined by the Minister for Labour after

prior consultation with the social partners. The Labour Inspectorate supervises its implementation in practice.

## **Depth of bargaining**

The processes and practices of collective bargaining are affected by the findings of analyses that show how the existing agreements are being implemented, where deviations from what was agreed occur, what are the impacts on the rights of employees and what new problems are being encountered. For instance, within ZSSS, the formulation of requests concerning content that should be included in industry-level collective agreements are based on the findings of ZSSS professional services. The demands regarding wages are based on comparative analysis and calculations concerning wage increases in line with inflation and the productivity growth of individual industries. The findings and proposals are discussed with the authorised representatives of its affiliated unions, namely with officials and union representatives from companies involved in negotiations. Based on this discussion, positions and demands are prepared for the negotiations.

To illustrate this, before negotiating the changes in the collective agreement for the commerce (retail) sector in 2017, the professional services in cooperation with the union representatives and regional organisations monitored and analysed the problems that occurred with individual employers. Prior to the negotiations, also the economic data on business performance, employment, wages and data on working time violations were analysed. Case law important for the collective agreement was also studied. Based on this information, a meeting of the union representatives, a narrower group, was convened, at which problems were discussed and proposals for amending the collective agreement were formulated. On this basis, the unions' legal and economic experts prepared a proposal for amendments to the collective agreement and wage increase. This proposal was approved by members of the national committee and forwarded to the employers. The employers' organisations discussed the proposal and within 30 days gave a response and named authorised negotiators. There were several bargaining rounds and after six months the wage increase, as well as a new higher payment for unfavourable working time, such as Sundays and public holidays, were agreed. Individual phases of the negotiating process are similar in other union organisations, as well in the employers' associations. After the negotiations, the industry-level agreement is signed by both parties, sent to the Ministry of Labour to be entered into the register and published in the Official Gazette of the Republic of Slovenia. The negotiations for concluding a collective agreement at any level are one of the permanent and repeated activities of the social partners in Slovenia.

## **Degree of control**

Degree of control refers, first, to the extent to which collective agreements set the actual terms and conditions of employment and, second, to the different mechanisms of controlling and monitoring the implementation of collective agreements. In Slovenia, the favourability principle ensures a high degree of control, as collective agreements

at the industry level define minimum rights and standards for the whole industry and these standards, in principle, cannot be worse than the standards defined by law. The degree of control differs between sectors and industries. In certain industries, the social partners regularly discuss problems and analyse the implementation of the collective agreement. There is no 'systematic checking' of the implementation of agreements, apart from court proceedings. In addition, their implementation is enforced through legal proceedings, through individual and collective labour disputes. Exceptions to the favourability principle are possible only in very limited circumstances defined by law. Previous ZDRs, for instance, only allowed for limited derogations of collective agreements from legal standards in specific areas, such as the notice period for small employers. However, the new ZDR-1 of 2013 has broadened such possibilities. For example, an analysis of collective agreements regarding work–life balance showed that, in most agreements, overtime work and the redistribution of working time are regulated as laid down by the law or worse (Kresal Šoltes and Kresal 2015). Hence, passage of the ZDR-1 meant that agreements provide fewer rights than before, or in the words of a union representative: 'Everything the law allows as an exception is used as a rule' (cited in Bembič and Stanojević 2016).

The increased possibility for downward derogations of collective agreements from statutory rights has decreased the degree of control, as more and more agreements make use of this possibility. Still, according to the ZDR-1, the use of this possibility is limited and made conditional on the existence of a representative union within the company. Thus, without a representative union, derogating from the minimum standards is not possible. The Collective Agreement for the Metal Products and Foundry Industry, for instance, defines the conditions under which derogations are allowed and specifies the duration of such measures. The agreement enables representative unions and employers to conclude a written agreement on derogating from the minimum standards stipulated by the collective agreement in the case of substantially poorer performance of the company or a recession in the industry, or both. The term of this agreement may not exceed six months.

Furthermore, the fulfilment of rights provided by law or collective agreement may be ensured through mediation, arbitration or judicial proceedings. Most collective agreements define the process of peaceful settlement of disputes, individual and collective labour disputes and arbitration proceedings. Disputes are typically settled before the courts, which are overburdened, and court proceedings are long. There are only occasional cases of disputes being mediated before court proceedings are initiated. Usually, the court procedure associated with mediation is encountered, meaning that the court first offers a peaceful solution to the clients. If this is not accepted the court proceeds. Mediation in disputes or disagreement before the commencement of court proceedings is still rare, not because they are limited, but because they are difficult to implement due to mistrust between the parties before the opening of court proceedings. Finally, the labour inspectorate supervises the implementation of laws, other regulations, collective agreements, general acts, wage and other elements of pay, the minimum wage, strikes and safety at work. The trade unions warn of irregularities and are focused on improving the effectiveness of the labour inspectorate.

## Scope of agreements

According to Slovenian legislation, collective agreements are uniform: they contain an obligational or procedural and a normative or substantive part (ZKolP 2006). The first part regulates the rights and obligations of the contracting parties. The normative or substantive part of the agreement regulates remuneration for work and all other personal remuneration and the reimbursement of costs related to work; it includes provisions on the rights and obligations of workers and employers when concluding employment contracts, for the duration of the employment relationship and concerning termination of the employment contract; on health and safety at work or other rights or obligations arising from relationships between employers and workers; and on ensuring the conditions for union activities.

A special subject of collective bargaining is the coordination of professional and family life. Very often, collective agreements provide measures to make it easier to balance work and family obligations: they provide the possibility of working from home, a restriction on posting workers to another town, additional days of annual leave and absence from work due to family obligations and the like. All these measures are traditionally regulated by collective agreements. They lack measures that would facilitate care for elderly family members, measures for gender balance, for example, measures encouraging the appointment of women to managerial positions and so on. A new trend in the scope of agreements in the private sector in the past decade is a marked increase in wage flexibility and differentiation. In 2006, a new payment system was implemented in the private sector. In this model, the fixed component of payment or the basic wage was low, as before, while the higher, variable component of the wage was, due to the indeterminate reward systems, often non-transparent and exposed to excessively arbitrary decision-making by company management. Within this basic trend, with its emphasis on the variable component of the wage, collective agreements at the industry level started to provide different definitions of the minimum basic wage, worker performance and adjustment of the lowest, basic wages (Poje 2016: 476, 480–81). Not only are there different payment systems in different industries, but they also differ among companies operating in the same industry.

Further complications in the way this differentiated payment model functioned emerged after the new Minimum Wage Act (*Zakon o minimalni plači, ZMinP*) was adopted in 2010. The act raised the minimum wage by 23 per cent, from €597 to €734 gross, to approximately 60 per cent of the median wage. Regarding the levels of the lowest basic wages, however, which are supposed to represent the lowest price of labour in individual groups on the payment scale, it occurs that in six out of the nine tariff groups on this scale the payments are set at a level below the statutory minimum wage (Poje 2016).<sup>6</sup> While paid wages show a different picture, it is precisely the level of the lowest price of labour, which for two-thirds of the tariffs is less than the minimum wage, that makes the system non-transparent and also fosters its abuses.

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6. A minimum wage is set for full-time work and does not include allowances for night work, Sunday work, work on public holidays and overtime work.

## Conclusions

In the period before entering the EU, highly centralised collective bargaining was the key instrument for enforcing a wage-restraint policy in Slovenia. In the 1990s, this policy was the main subject of the macro-political exchanges between the social partners within the then system of 'competitive neo-corporatism' (Rhodes 1997). Once Slovenia became a member of the EU and the euro zone, the gradual transformation of its collective bargaining system was marked by diverging trends in the private and public sectors. Bargaining in the private sector began to gradually decentralise: it generally takes place at industry level. In the public sector, the high level of centralisation was maintained and additionally protected by law. In 2008, right before the outbreak of the crisis, a single payment system was established in that sector. Collective bargaining for the entire public sector can only occur within the parameters of this system.

After joining the EU and the euro zone, the bargaining coverage rate decreased from almost 100 per cent to 79 per cent because of two diverging processes. On one hand, the change in the status of the GZS and the corresponding declining in chamber membership entailed a contraction of the coverage rate. In addition to that, in the same period, the unions also began to lose members. Due to these changes, a decline of the coverage rate was almost unavoidable. On the other hand, the introduction of the extension mechanism had a countervailing impact. When introduced, it started to operate as a functional substitute of the previous system. Accordingly, the big contextual changes, combined with the decreasing membership of the employers' and employees' organisations, have had a largely moderate effect on the collective agreement coverage rate.

Before the 2008 crisis, the legal regulation of collective bargaining allowed the possibility of limited derogation from the favourability principle. After the crisis, the legislation broadened these possibilities. In a system that is formally precisely regulated and chiefly based on the favourability principle, this has resulted in cracks enabling the increasing flexibilisation of wages, working time and employment regimes. Slovenian companies are using the delineated flexibility of the bargaining system, with its possibility of lowering standards, to help them compete in the market. Within the formally well set-up and uniform system, and considering unions' declining power, they can achieve more flexible labour and employment relationships. The problem is that, in doing so, they are thus also deconstructing the principle of the uniform regulation of employment relationships.

The relatively steep de-unionisation and the decline in the unions' power has been an important factor in 'loosening' the regulative capacity of the collective bargaining system in Slovenia. In other words, in the conditions of the union's falling bargaining power, the possibility of derogating from the favourability principle is tending to change into the ever-stronger practice of concession bargaining. Therefore, the continuing trend of de-unionisation could at some point cause a qualitative transformation of the fundamental functions of collective bargaining. If the weakening of unions continues and if the current conditions for obtaining the status of representativeness remain in force, a decline in the collective agreement coverage rate is also inevitable. Consequently,

the area of concession bargaining and the establishment of collective bargaining as a mechanism for legitimizing the systematic lowering of labour standards will expand. If union decline develops further, a change in the regime of representativeness cannot essentially affect this result. Lowering the conditions of representativeness can only influence the formal preservation of a high degree of coverage of collective bargaining within which weak unions will play a subordinate, marginal role; the tightening of the conditions of representativeness would limit collective agreement coverage only to narrow groups of employees. In both cases, the regulatory capacity of collective bargaining seen thus far would disappear.

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Zakon o urejanju trga dela (ZUTD), Uradni list RS, št. 80/10.

All links were checked on 5 April 2018.

## Abbreviations

ESS	Ekonomsko-socialni svet (Economic and Social Council)
GZS	Gospodarska zbornica Slovenije (Chamber of Commerce and Industry of Slovenia)
KSJS	Konfederacija sindikatov javnega sektorja Slovenije (Confederation of Public Sector Trade Unions of Slovenia)
KSS Pergam	Konfederacija sindikatov Slovenije Pergam (Confederation of Trade Unions of Slovenia, Pergam)
SKEI	Sindikat kovinske in elektroindustrije Slovenije (Trade Union of Metal and Electrical Workers of Slovenia)
SVIZ	Sindikat vzgoje, izobraževanja, znanosti in kulture Slovenije (Education, Science and Culture Trade Union of Slovenia)
TZS	Trgovinska zbornica Slovenije (Slovenian Chamber of Commerce)
ZDR	Zakon o delovnih razmerjih (Employment Relationship Act)
ZDS	Združenje delodajalcev Slovenije (Association of Employers of Slovenia)
ZKoLP	Zakon o kolektivnih pogodbah (Collective Agreements Act)
ZMinP	Zakon o minimalni plači (Minimum Wage Act)
ZPIZ	Zakon o pokojninskem in invalidskem zavarovanju (Pension and Disability Insurance Act)
ZRSin	Zakon o reprezentativnosti sindikatov (Representativeness of Trade Unions Act)
ZSPJS	Zakon o sistemu plač v javnem sektorju (Public Sector Salary System Act)
ZSSS	Zveza svobodnih sindikatov Slovenije (Association of Free Trade Unions of Slovenia)
ZStk	Zakon o stavki (Strike Act)
ZTPDR	Zakon o temeljnih pravicah iz delovnega razmerja (Basic Rights Stemming from Employment Act)
ZUTD	Zakon o urejanju trga dela (Labour Market Regulation Act)

## Chapter 27

# Spain: challenges to legitimacy and representation in a context of fragmentation and neoliberal reform

Carlos J. Fernández Rodríguez, Rafael Ibáñez Rojo and Miguel Martínez Lucio

Somewhat idiosyncratically the Spanish system of industrial relations, after the transition to democracy in the 1970s, began to develop a series of features that, while not quite at the level of organisation of the Nordic countries, did provide a stable framework for negotiations and mediation processes. Collective bargaining coverage has been high in relative terms even if trade union membership has been fairly low (see Table 27.1). Before the financial and economic crisis of 2008, Spain had experienced a long period of economic growth and the development of an intense process of social dialogue backed by state institutions. The extent of social dialogue, while not fully institutionalised, was significantly developed in some areas and there were robust informal relations between the leaderships of the main social partners. Although the implementation of social dialogue was not without its problems and tensions, it helped to expand the coverage of collective bargaining to the extent that during the 2000s it was among the highest in Europe, in terms of number of workers covered (Fernández Rodríguez *et al.* 2016a).

The industrial relations model has experienced significant changes in recent years, however. The severe economic crisis that hit Spain in 2008, a fatal combination of the international financial crisis, the collapse of a national housing market bubble and the development of austerity policies monitored by the European Union (EU), which were deployed before and after an EU loan to bail out the financial system, has had an enduring impact on society. Bankruptcies, high unemployment rates, social security cuts and rising household and business debt have led to a new scenario of growing inequalities and widespread poverty (Alonso 2014) that the tepid recovery of the past few years has been unable to reverse. These problems have further consequences that affect industrial relations as, since 2010, various governments have implemented legal reforms that have had a substantial effect on the patterns of social dialogue and collective bargaining.

Our argument in this chapter echoes those made elsewhere in these volumes in that, while the system of collective bargaining remains largely intact, there are issues of coverage and cohesiveness, as well as declining labour standards and social progress (see Rocha 2014). We also argue that these changes have created a more problematic and uneven system that, while in some cases also problematic for employers (see Fernández Rodríguez *et al.* 2016b), is beginning to undermine the unions' ability to pursue participatory labour relations through collective bargaining in such an increasingly fragmented context. First, a growing number of workers are beyond the effective remit of collective regulation even in areas in which there appears to be

Table 27.1 Principal characteristics of collective bargaining in Spain

Key features	2000	2016
Actors entitled to collective bargaining	Representative unions and employers' associations and works councils and firm representatives, as determined by the union elections, are entitled to engage in collective bargaining at the national or sectoral level and at the company level, respectively.	
Importance of bargaining levels	Collective bargaining occurs at all levels (company, provincial, industry or national), but company level agreements are favoured by the latest legislation (since 2012).	
Favourability principle/derogation possibilities	The favourability principle is applied in terms of national over industry, industry over company agreements. While there were no possibilities to derogate from agreements before the economic crisis, today there is the option of derogations ( <i>inaplicaciones</i> ) in certain circumstances.	
Collective bargaining coverage (%)	83	77
Extension mechanism (or functional equivalent)	Legal support for compulsory extension. There is the new possibility of derogations ( <i>inaplicaciones</i> ) in companies, however.	
Trade union density (%)	17	13.9 (2015)
Employers' association rate (%)	No data available	Estimated at 75% and stable, although data not confirmed by any reliable source

Sources: Ministry of Employment of Spain, OECD statistics, Fernández Rodríguez *et al.* (2016a and 2016b).

a collective agreement. Second, trade unions face an uphill struggle in terms of their coordination efforts, being already stretched by servicing workers' needs and collective negotiations, especially in smaller and medium-sized firms. Third, right-wing and centre forces initiated an ideological shift that, while not complete, is in fact degrading the language and practice of social dialogue. This has led to a new set of interests working against collective bargaining. There has also been more politicisation and juridification of labour relations. First, the courts and inspection services increasingly intervene in company activities; second, broader social mobilisation gives rise to new forms of conflict, both collective and individual. The extent to which such mobilisation can be sustained is another matter.

## Industrial relations context and principal actors

Spain's recent history has been deeply influenced by the long dictatorship of Francisco Franco and the transition to democracy in the late 1970s. The economic model was historically based on protectionism, lack of innovation and a deskilled workforce: a country of 'bad firms but good business' (Sevilla 1985: 65). The dictatorship reinforced this approach, despite its obsolescence (Sola *et al.* 2013; Fernández Rodríguez and Martínez Lucio 2013). In this sense, the political exchanges and agreements during the transition to democracy in the 1970s played a key part in developing an employment relations framework. In April 1977, a year and a half after Franco's death, unions and employers' associations were legalised. The General Union of Workers (Union General de Trabajadores, UGT), the historical union linked to Spanish Socialist Workers

Party (Partido Socialista Obrero Español, PSOE), and the relatively new Workers Commissions (Comisiones Obreras, CCOO), with a mixed background but with links to the Communist Party of Spain (Partido Comunista de España), soon emerged as the main union confederations (Martínez Lucio 1990; Miguélez and Prieto 1999). Another landmark that same year was the Moncloa Pacts, involving most political parties, employers' associations and some unions. The Pacts provided a framework for the future of the Spanish economy, agreeing that a free market economy with social aspects would be established, and introducing some policies to limit inflation and achieve macroeconomic stability (Fishman 1996).

While the first governments of democratic Spain were centrist, led by the Union of the Democratic Centre (Unión de Centro Democrático), the framework was strongly influenced by 'Keynesian' and social democratic views. This led to the passing of the Workers' Statute (Estatuto de los Trabajadores) in 1980 and other progressive laws that reinforced the social nature of social dialogue and political economy (Alonso 2007). The core of the legislation related to collective bargaining was established back then, building a system in which so-called 'social agents' would represent the forces of capital and labour and negotiate anything related to industrial relations, with the cooperation and backing of the state. This was due to the weak civil society Spain inherited from the Franco period, which found expression in low levels of union membership, despite a brief boom in the late 1970s, and authoritarian management policies at the company level, especially in small and medium-sized firms (SMEs) (see Beneyto 2004, 2016). Over the coming years a model of unionism emerged in which industrial relations were dominated by two main left-leaning unions, the socialist UGT and CCOO, whose identity shifted over time within that spectrum. Other relatively progressive unions, such as the Workers' Union (Union Sindical Obrera) remained significant but received fewer union election votes. The anarcho-syndicalist National Confederation of Labour (Confederación Nacional de Trabajadores, CNT) and General Confederation of Labour (Confederación General de Trabajadores, CGT) continued to be a force in various sectors and maintained a critical stance on various employment and social issues. In some parts of Spain, such as the Basque country, a range of radical and Basque nationalist unions were also prominent, maintaining fairly high profiles and workplace presence. In some industries such as the civil service and airlines a range of unions represent various professional groups alongside the majority unions.

Collective bargaining emerged formally during the late 1970s, although some form of subjugated bargaining had existed in the late years of the regime, with the approval of specific legislation and ratification of ILO conventions. After the legalisation of the social actors, the system was organised around several levels of negotiation: national, regional, sector or industry, and company or organisation. The legitimisation of social dialogue is enshrined in the Spanish Constitution (Article 7) and confers the right on unions and employers' associations to negotiate and make agreements that may be statutorily extended; that is, any collective agreement made at higher than company level must be applied to all companies and to all workers at that level. The law prescribes how negotiations are to be conducted and the composition of the two sides. The negotiations are driven by employers and works councils but, at the higher levels beyond the local organisation, the agreement can be signed only by representatives of

the ‘most representative unions’ at the national or regional level, namely those that have achieved the strongest support in the works council elections (Hamann 2012).

Since the 1980s, CCOO and UGT have taken part in social dialogue as the ‘most representative unions’, accompanied in some regions by some Basque and Galician unions and by other unions in specific industries. While union density is not high (Gómez 2016), and UGT and CCOO do not disclose the number of their members, these unions remain influential, having consistently won works council elections, achieving more than two-thirds of the vote, and exerting influence on workers’ conditions through collective bargaining. At the national level, the representatives of the employers’ associations are the Spanish Confederation of Employers’ Organisations (Confederación Española de Organizaciones Empresariales, CEOE) and the Spanish Confederation of Small and Medium-Sized Employers (Confederación Española de la Pequeña y Mediana Empresa, CEPYME). At the industry level, a large number of federations are integrated in CEOE and it is estimated that employer association density is about 75 per cent (Nonell and Medina 2015). Having said that, employers’ association representatives seem to enjoy considerable autonomy and congresses are sporadic.

Paradoxically, it was PSOE, the social democratic party in government from 1982 to the mid-1990s, that adopted a technocratic, more neoliberal approach after its electoral success in 1982. Their aim was not only to overcome the various economic problems but also to meet the European authorities’ criteria for Spain’s full membership of the then European Economic Community. Therefore the PSOE cabinet, led by Felipe González from 1982 to 1996, undertook an ambitious agenda of reforms that led to the restructuring of the industrial sector, with the closure of workplaces in many public industries, mines and shipyards, as well as a new approach to the labour market and industrial relations (Koch 2006; Sola *et al.* 2013). Since then, a wide array of labour market reforms has been justified by the need for flexibility, a key factor in this economic structure. Moreover, unemployment has remained surprisingly high throughout the democratic period, rarely falling below 10 per cent. Finally, employers’ associations and a diverse group of economists and think tanks have been very successful in demanding a shift in industrial relations towards establishment of a neoliberal model. Part and parcel of this have been constant calls for ‘reform’, focusing on a supposed need to dismantle the ‘rigidities’ of the system (Fernández Rodríguez and Martínez Lucio 2013). The PSOE lost the elections in 1996, but its social variant of neoliberalism survived. The subsequent governments of the Popular Party (Partido Popular, PP) from 1996 to 2004, PSOE from 2004 to 2011 and finally PP again from 2011 to 2018 have followed a very similar policy of slow deregulatory creep in the labour market, particularly during periods of economic crisis. Reforms have been very much in line with European Commission recommendations and agendas, with their focus on flexicurity (see Keune and Serrano Pascual 2015). Consequently, labour market deregulation over the years has helped to introduce many types of contract and in general more instability for workers, spreading precarious conditions and creating a dysfunctional model that is neither socially fair nor economically productive (Sola *et al.* 2013).

The new economic model, which relied on low-productivity sectors, collapsed in 2008, leading to a huge recession and high unemployment, which was not reversed by brief

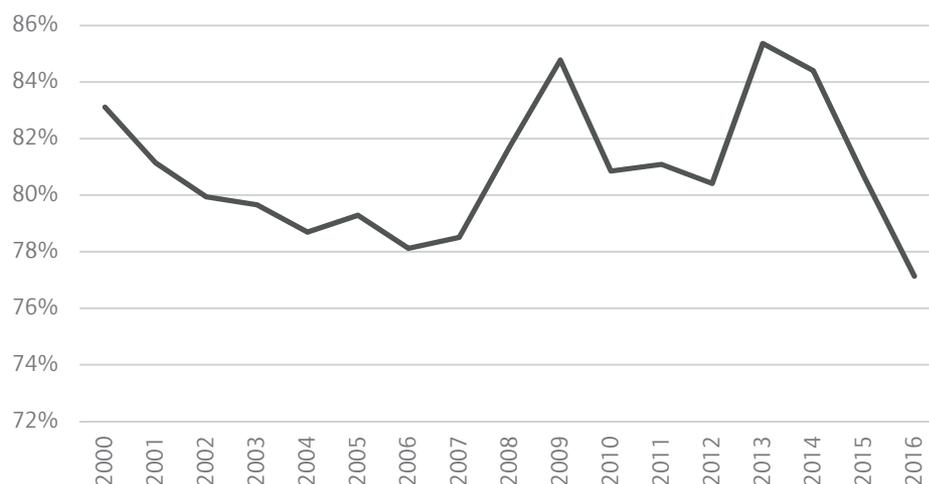
experiments with ‘Keynesian’ policies. The conservative PP won the November 2011 election with an absolute majority and developed even tougher austerity policies, together with welfare and labour market reforms (Molina and Miguélez 2013; Fernández Rodríguez *et al.* 2016b; Guillén Rodríguez *et al.* 2016). Despite all these efforts, unemployment has remained well over 20 per cent for most of this decade. The result is that Spanish society has become more unequal, particularly since the crisis started, and vulnerability has spread widely. The share of wages in the economy has been decreasing since 2000, but this tendency sped up with the crisis. It is important to highlight that the Gini coefficient has increased by 5 points, with real wages falling, whereas in most European countries the coefficient has remained stable or even fallen (see Chapter 1). Some forms of national-level social dialogue have been used at key times, however, and have played a role, albeit limited, on a range of wage issues and training agendas (González Begega and Luque Balbona 2014).

## Extent of bargaining

Collective bargaining in Spain is based on the extension principle. Nevertheless this takes place only occasionally in national agreements that the government considers especially important or that concern the implementation of certain policies. There have been almost no agreements of this type since 2006. Besides, statutory extension may, paradoxically, have sometimes discouraged workers from joining unions given that they could benefit from agreements anyway. The unions considered this collective bargaining system to be very successful, however. During the boom years of 1997–2007, GDP growth was high and the employment level at a historical peak of 20 million, unemployment was historically low and collective bargaining had expanded substantially. By 2008 the Collective Agreements Statistics (Estadística de Convenios Colectivos) reported 5,987 collective agreements covering 1,605,195 companies and 11,968,148 workers (Aragón *et al.* 2009). Employers were less satisfied, however, claiming that this inhibited deeper reforms to deregulate the economy and the labour market. Agreements have tended to last two years or more, almost invariably starting from the beginning of the year, although negotiations can begin at any time. While negotiations usually take place between unions and employers’ associations, in specific cases they are also sometimes signed by the government to provide a further element of legitimacy. It is also important to note that lower-level agreements used to include a clause providing additional payments if inflation exceeded an agreed level. The latest data on collective bargaining coverage are presented in Figure 27.1.

New legislation established a new paradigm, accompanied by a new economic landscape. The rise of new managerial structures, with the extension of multi-service corporations, which cover various types of work and sectors, in some cases within the same workplace, has made it much more difficult for unions to negotiate. Moreover, in many companies there have been renegotiations with the threat of employers opting out (*descuelgue*) of an agreement. In later years, agreements continued to be reached and the number of agreements not implemented has fallen since 2013 (see Figure 27.2). The role of industry- and provincial-level bargaining emerged as a point of contention for some on the right of the political spectrum, who claimed it leads to ‘rigidities and

Figure 27.1 Collective bargaining coverage in Spain, 2000–2016

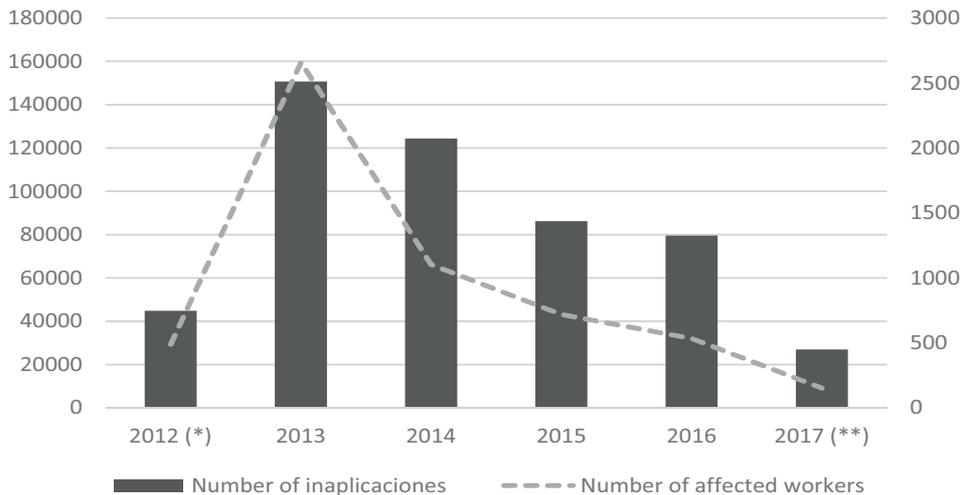


Note: Data from 2016 are provisional.

Source: Ministry of Employment, Spanish Social Security.

inflexibilities'. Another major point of contention was the failure to revise collective agreements and the effects of agreements remaining in force after expiry if no new agreement has been reached (so-called 'ultra-activity') (Fernández Rodríguez *et al.* 2016a). One outcome of the crisis is that many agreements were not renegotiated and re-signed, but instead renewed automatically (Fulton 2013). Automatic renewals in the absence of a new agreement fuelled the right-wing critique of growing bureaucratic inertia in labour relations and their alleged failure as a vehicle for workplace dialogue. This anti-industrial relations narrative predates the crisis but was accelerated by it (Fernández Rodríguez and Martínez Lucio 2013), and several reforms were pushed through in 2010, 2011 and 2012, the latter being particularly important.

In response to criticisms of so-called 'ultra-activity' the new regulations of 2012 envisage one year's automatic extension of collective agreements while a new agreement is negotiated. If there is no new agreement after one year, the current agreement ceases to exist and instead a higher-level agreement or the Statute itself become the framework for labour relations. This would mean the end of 'ultra-activity'. Recent judicial decisions have emphasised, however, that conditions 'gained' by workers who were already in the company when the agreement was signed cannot be taken away because they are part of their 'contract'. That is, the end of the agreement would apply only to new workers (see Todolí 2015). In any case, to avoid further disputes, when an agreement is signed nowadays, the parties often agree to include a clause stating that the agreement will be extended for three years or more (there are no limits in the law) while the new agreement is being negotiated.

Figure 27.2 Derogations from collective agreements (*inaplicaciones*), Spain, 2012–2017

Note: \* From March to December. The 2012 reform was passed in February 2012. \*\* Provisional data April 2017.  
Source: Ministry of Employment, Spain.

## Security of bargaining

Security of bargaining refers to all the factors that determine the unions' bargaining role, such as regulations on strikes, union recognition and representativeness. The Spanish industrial relations system is based on competitive union elections in workplaces and companies that determine their representativeness in terms of the union and works council presence within the company. These elections determine the actors' legitimacy in terms of collective bargaining at the local, company, industry and national levels, based on a series of thresholds. Collective bargaining has also been critical for various social benefits provided by the firm, wage increases, wage-scale issues and a number of other things. The calculation of pensions and employment benefits derives from agreements reached in the collective bargaining process. One criticism of collective bargaining is that, in contrast to larger firms, SMEs have tended to rely on agreements at other levels, such as the industry or the province, for their wage increases and working hours, rarely engaging with broader issues.

Since the 1970s Spain has had some of the highest levels of collective action in Europe, although its breadth has varied (Rigby and Marco Aledo 2001). In fact, over the past five years the level of strike activity has remained somewhat below the levels registered in the past (Duran *et al.* 2017). A number of the union members that we interviewed were very open about the new pressures in negotiations. Recently, some employers have been emphasising a desire to reach collective agreements, claiming that it is important to keep social dialogue going and that CCOO and UGT are responsible partners, unlike some more radical unions that are starting to emerge. The prevailing perception among union representatives in recent years, however, both at grassroots level and in positions

of responsibility in their organisations is that legal changes since 2010, but particularly the reform of 2012, have strengthened the bargaining position of employers and their representatives, weakening trade union bargaining power. With legal pressure on strikes and picketing, as well as lawsuits initiated at the request of public authorities, an element of intimidation has crept in, together with opposition to recent reforms. The focus of some of these more challenging elements has been on the conduct of strikes and related activities, but the legislation, which is part of the Organic Law on Trade Union Freedoms, has not been fundamentally altered in recent years, characterised by austerity policies, in terms of how strikes are called and ballots held, which are in keeping with some of the better labour rights practices in the EU. The level of strikes has indeed altered in recent years: in terms of days lost there has been a steady decline from approximately 1,300,000 days lost in 2009 to around 400,000 in 2016 (ILO 2017); the increase in 2017 should be attributed to the general strike in Catalonia.

## Level of bargaining

The Spanish system could be called ‘mixed’ in that bargaining occurs at national, industrial, provincial and company levels. In theory, until recently all agreements had to defer to and not go beyond standards set at a higher level, although there may be exceptional circumstances. The way negotiations evolve depends on the industry: for instance, in the chemical industry or financial services agreements are reached at the national level, and then further arrangements may be made at the company level. Meanwhile in construction most of the discussions take place at the provincial level, although there are other levels. They all share a similar organisational form, however: discussion of the contents of the collective agreement, after which the other levels are informed of the outcomes to develop the bargaining process, with, finally, an assessment of the best way to implement them. Table 27.2 presents a breakdown by number of agreements, companies and workers covered, as well as levels.

In some instances, there are national agreements between employers and representative unions to establish a framework of basic conditions, especially on wage increases (see Guillén Rodríguez *et al.* 2016; Guillén Rodríguez and Gutiérrez Palacios 2008). Certain aspects of this framework have remained in place in the current context of austerity policy, but some constraints apply to elements of collective bargaining. In various sectors there is a national sector-level agreement that sets minimum pay and working conditions. The best coordinated industry-level bargaining can be seen in chemicals, with peak-level bargaining between the main confederations, covering 3,000 companies or so. The industry-level affiliates of CCOO and UGT tend to play a pivotal role in this collective bargaining and social dialogue, although some pressures are emerging. For example, the main unions at the industry and national levels oppose a breakaway agreement for the plastics sector as the conditions of the main chemical agreements were considered to be better. In the industry-level agreement for the construction industry various employment conditions are also implemented in local provincial construction agreements. This is beginning to create much more of a patchwork of agreements. In the metals sector, this problem of coordination has become much more acute. Coordination is also becoming an issue in industries such as food, where there

Table 27.2 Collective agreements in Spain, 2000–2017

	Total number of collective agreements (known and registered)			Collective agreements - company level		Collective agreements - national/provincial level	
	Collective agreements	Number of companies	Number of workers	Collective agreements	Number of workers	Collective agreements	Number of workers
2000	5,252	1,198,270.0	9,230,366.0	3,849	1,083,274.0	1,403	8,147,092.0
2001	5,421	1,293,185.0	9,495,978.0	4,021	1,039,456.0	1,400	8,456,522.0
2002	5,462	1,302,302.0	9,696,530.0	4,086	1,025,929.0	1,376	8,670,601.0
2003	5,522	1,281,388.0	9,995,049.0	4,147	1,074,151.0	1,375	8,920,898.0
2004	5,474	1,282,400.0	10,193,500.0	4,093	1,014,700.0	1,381	9,178,900.0
2005	5,776	1,314,000.0	10,755,700.0	4,353	1,159,700.0	1,423	9,596,000.0
2006	5,887	1,457,000.0	11,119,300.0	4,459	1,224,400.0	1,428	9,894,900.0
2007	6,016	1,413.7	11,606.5	4,598	1,261.1	1,418	10,345.4
2008	5,987	1,605.2	11,968.1	4,539	1,215.3	1,448	10,752.9
2009	5,689	1,520.5	11,557.8	4,323	1,114.6	1,366	10,443.2
2010	5,067	1,481.1	10,794.3	3,802	923.2	1,265	9,871.1
2011	4,585	1,170.9	10,662.8	3,422	929.0	1,163	9,733.8
2012	4,376	1,162.0	10,099.0	3,234	925.7	1,142	9,173.3
2013	4,589	1,312.9	10,265.4	3,395	932.7	1,194	9,332.7
2014	5,185	1,436.9	10,304.7	4,004	867.2	1,181	9,437.5
2015	5,642	1,201.9	10,227.3	4,493	846.9	1,149	9,380.3
2016 (*)	3,594	1,068.0	8,577.0	2,759	546.3	835	8,030.7
2017 (*)	1,848	597.9	4,146.8	1,378	252.8	470	3,894.0

Note: Known and registered collective agreements. \* Provisional data April 2017.

Source: Ministry of Employment, Spain.

may be national industry-level agreements for specific parts of the industry, creating complex structures and challenging union coordination. In some cases, provincial industry-level collective agreements, in which an industry is covered by a regional local agreement, may become a reference point for the industry as a whole, representing almost a macro-level framework agreement. In many cases collective agreements at the firm level are meant to exceed the conditions laid down at higher levels. In some cases, as in the chemicals sector, there are so-called *pactos de aplicación*, agreements that, in the main, apply to higher levels, as opposed to traditional collective agreements that can extend the main content of a higher agreement. In the case of chemicals there may be no desire to push for a specific company agreement to avoid conflict between management and the unions: it may be in the interests of management and in some cases even the union as this ‘stabilises’ or even closes discussion in such contexts. To some extent this can depoliticise collective bargaining, although decentralisation can change this (Fernández Rodríguez *et al.* 2016b).

The recent collective bargaining reforms introduced not only lower dismissal costs and new prerogatives for employers, but two key changes in particular (Meardi 2012). First,

company-level agreements were given absolute precedence over multi-employer ones, including employers' prerogatives to reduce wages without union consent, subject to arbitration. Second, the period of so-called 'ultra-activity' was reduced. Whereas in the past, after expiry, collective agreements continued in force indefinitely in the absence of a new agreement, this has been restricted to a maximum of two years, after which all established rights from previous agreements terminate until a new agreement is signed. As a result, company agreements have precedence in key areas; in addition, companies in financial difficulties are able to suspend many agreed terms and conditions (Fernández Rodríguez *et al.* 2016b). This reform represents a fundamental about-turn in the traditional arrangements of collective bargaining in Spain and has encountered opposition from unions. Despite two general strikes in 2012 and conversations between several political parties seeking to repeal it, the law remains on the statute book.

In terms of difficulties of coordination between levels of collective bargaining, a major challenge to the traditions of labour relations and regulation is being posed by deindustrialisation, outsourcing and offshoring. The car industry is a classic case of outsourcing and complex supply chains, within the framework of which the reach of unions beyond minimal conditions established at higher levels is uncertain (Las Heras 2017). One could argue that this is a 'mixed system', with various levels interacting and various approaches to collective agreements. These gaps mean that the so-called articulation or coordination of bargaining (Molina 2007) has come under further challenge. This has been accelerated by recent statutory reforms, especially those of 2012, which, at least in theory, have privileged the firm as the main space for collective bargaining in the sense that the specific and 'exceptional' conditions and problems of the firm can be used to supersede agreements established elsewhere. These reforms may lead to new tensions in and between unions.

The emergence of multi-service companies has been a major source of disruption. They have created a new type of bargaining space, in the form of hybrids that do not necessarily respect national or provincial-level agreements in specific industries, but rather constitute a cross-industry company space. Subcontracting has been used in some cases to establish agreements below framework standards negotiated at industry level. These companies also play on legislative ambivalence. This is a curious redefining of the regulatory space (see MacKenzie and Martínez Lucio 2005 for a discussion of the concept of regulatory space) whereby local corporate spaces see agreements signed that straddle industrial boundaries. In such cases workers may be moved by a firm from a specific national agreement to a local 'multi-industry' or 'service' agreement which does not match the standards outlined above. For the unions, this creates a problem because these new activities somehow evade the established structures of trade union governance and activism, conducted as they are in spaces with uneven worker representation and in overlapping sectors given the multi-service nature of the firms (UGT 2016).

Finally, it is worth mentioning the complexities that these levels attain in the public sector, due to the decentralised nature of the Spanish state. While the state still controls certain areas, such as national defence, the diplomatic corps and ministries, many public workers in health care or education, who constitute the largest body of workers, are employees of the autonomous regions and their institutional bodies,

such as hospitals or universities. While centralised forms of bargaining do exist at a national level, due mainly to the civil servant status of many of these workers, in various autonomous regions there are also additional regional collective bargaining processes that can improve agreements. This can create regional disparities.

## Depth of bargaining

In the context of Spanish collective agreements, we understand ratification as either the acceptance by the workers' assembly of a pre-agreement signed by the committee, when it is a company-level agreement, or as acceptance by the union bodies in the case of a higher-level agreement. That is, it is an internal union procedure regulated by the union's rules and the dynamics of the negotiations. Therefore there is no settled procedure, rather it depends on the particular circumstances. In terms of national union governance at the beginning of collective bargaining cycles,<sup>1</sup> unions hold various multi-level meetings to discuss the basic demands to be presented in the following round. Each collective agreement is distinct and there are no fixed terms of negotiation or fixed expiry dates. Currently, the period of a year seems to have become a typical bargaining cycle because it is the minimum extension guaranteed by the current legislation. This does not mean, however, that negotiations can take up to several years. In any case, to start negotiations and therefore begin the cycle, one of the parties, whether the unions or employers' associations, 'renounces' the current collective agreement.

At the national level, this involves representatives of the industry-level federations. Some unions allow for more discussion and reflection than others but in general, and in theory, there is input from below and this cascades to the industry federations or their bargaining sphere. There are various approaches to legitimising collective bargaining strategies, such as votes among union representatives. Much may depend on the union in question, however, including the strength of its branch traditions and the role of assemblies and other forms of democracy. The majority unions tend to coordinate their rounds of discussions using established processes so that some congruence emerges, although this varies, depending on relations between the larger confederations. In recent years, in the face of the economic crisis and deregulation, inter-confederal coordination has increased. Smaller, albeit significant unions such as CNT or CGT have on occasion found themselves unable to influence discussions and agreements because the 'representative unions' emerge on the basis of workplace union elections: the two main confederations tend to win the majority of votes at most levels, apart from in some autonomous states such as the Basque country.

Mergers within the industry trade union federations have led to more inter-sectoral coordination, even though mergers within confederations are not always driven by bargaining and organising logic, but sometimes by internal financial considerations (see Waddington 2006 for a discussion of mergers generally within unions). Within

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1. Note that these cycles in themselves are relatively less coordinated than previously given the changes we outline below.

the union movement key federations, as in the metal and chemical industries, have a strong general influence on proceedings, affecting the way demands and overarching policies are framed in relation to collective bargaining and employment policy. The outcomes of such internal discussions may vary from specific or flexible guidelines on pay, to recommendations on working hours and specific working conditions through to the establishment of national policies and frameworks on prevalent themes, such as industrial development in general and in specific industries. In view of the austerity policies of recent years, for example, sustaining employment has become a key factor in informal mediation.

## **Degree of control of collective agreements**

Control of collective bargaining operates at various levels. One could argue that at the higher levels concertation and coordination have been extensive, although this has been challenged in recent years (Molina and Miguélez 2013). There has been a shift from a relatively consistent tripartite set of relations to more specific and less frequent agreements between employers and major union confederations (Molina and Rhodes 2011): processes of political exchange may provide a supportive framework for a coordinated collective bargaining system (Molina 2005). National-level relations between employers and majority union confederations may be one form of control that provides an overarching political narrative and a set of commitments on aspects of bargaining. At the company and higher levels, the relevant committees (*comisiones paritarias* and *comisiones mixtas*) oversee the implementation of agreements and are underpinned by legislation. Overall there are few variations in core content but on occasions anomalies are referred to the courts by committees. Some of the more regulated industries, such as chemicals, have centralised mediation processes as well, although this may simply reflect the nature of embedded social dialogue in that industry. With the increasing emphasis on productivity-related pay variables some unions are sensing an emerging disconnect in these structures. Unions themselves tend towards regulating collective issues and conditions and, increasingly, individualised employment conditions are much harder to engage with.

In some cases, there may be less variation in content, especially where there is a strong tradition of collective bargaining and strong informal and formal relations between employers' federations and industry-level union structures, as in the chemicals sector. There may also be strong overarching bipartite structures that monitor questions of implementation with relevant monitoring mechanisms. In some sectors there are also national commitments to training, with firms being asked to develop training-related committees for employee development. The state plays a key role in supporting these, although effectiveness very much depends on the industry in question and the extent of social dialogue culture. How collective bargaining is sustained and enhanced within the firm will also depend on the strengths and abilities of local union branches and works councils. SMEs are not always able to monitor and challenge failures by employers and management to comply with an agreement's content. So, while there is a general tendency to sustain the content of agreements, the primary instability arises from how that content is changed and shifted during negotiations in larger firms.

But employers' strategies are not always the main challenge to traditional forms of collective bargaining. The very nature of union compromises and the more 'realistic' exchanges that take place between the more representative unions and management can create challenges. There are differences even between the main union confederations on the use of representative opinion or even open assemblies to reach final decisions on collective agreements. With broader political exchanges taking place between management and unions on a range of issues, and in a context in which sacrifices are being made in various areas, such as working hours and pay, we have seen an emerging challenge to the relative consensus with regard to collective bargaining. There are signs of greater resistance among independent unions or the more critical factions in the majority confederations, especially the CCOO. The anarcho-sindicalist tradition in Spain, represented by CNT and CGT, has been able to exploit these inconsistencies or compromises, especially with regard to increasing health and safety problems and precariousness in workplaces. Changes to shift patterns and working-time systems, and increases in working hours, have been a major rallying point for many minority unions. The role of the open worker assembly meeting in Spanish industrial relations is important: it remains a space in which workers can challenge decisions in and problems related to the process and content of collective bargaining. The failure to regulate or effectively control internal flexibility and mobility, part of the trade-off with stability in terms of external mobility and flexibility, is a major point of contention. Some observers detect a generational shift among other things because the working conditions in which younger workers are growing up are quite different from those experienced by older workers. Even the tradition of social dialogue is generally perceived to be fracturing as a consequence of such developments (Fernández Rodríguez *et al.* 2016a). The telecommunications industry, for example, especially Telefonica, but also agriculture have seen demonstrations against restructuring involving a range of independent voices and networks, especially in the context of new social movements (De Guzmán *et al.* 2016). Even with this fracturing, however, and with a more radical form of labour representation in some autonomous states, such as the Basque country, the general panorama of representation has been maintained, as union elections show.

Collective agreements are revised by public officials before being published in state bulletins in order to certify that the contents of the agreements comply with the law. Furthermore, while there are state mechanisms for resolving differences related to the implementation of agreements and general differences between management and unions, regional autonomous governments have developed or inherited from the central state forms of state intervention to assist them in the stable and consistent application of agreements. Regulatory roles can vary depending on the competences, roles and capabilities of specific local government mechanisms across Spain. Another important development is the increasing juridification of the industrial relations system. Unions' use of labour courts in response to the undermining of collective bargaining systems and failures to implement certain features of them has been growing. Conflict levels remain fairly high in relation to the application and, occasionally, suspension of agreements. Systematic wage cuts and increasing precariousness of employment have contributed to this growing resort to the courts as a new space of conflict, one that was once seen largely as a fail-safe mechanism and means of state intervention to address anomalies

in collective bargaining. The state is now a more active agent in many respects, which is curious given that deregulation is premised on the so-called rolling back of the state (see Fernández Rodríguez *et al.* 2016b) and the courts have been increasingly challenging firms' increasingly unilateral actions. Within CCOO, while previous debates saw the early phases of juridification prior to the 2008 austerity crisis as representing a depoliticising and individualising of industrial relations, more recently, according to some observers, that debate has shifted:

In turn this space is being increasingly used by unions to collectivise and 'collect' cases to avoid multiple complex individual cases ... yet the problem is that the labour reforms have led to a monetising of individual labour decisions on issues such as unfair dismissal and in turn there are problems of people having to wait for these decisions due to delays and then, on occasion, not getting management decisions reversed. (Interview, senior CCOO unionist)

This process of individualisation in some respects runs parallel with the way the state in the United Kingdom used Employment Tribunals to resolve and monetise collective problems in labour relations and employment practice (Howell 2005). What is more, the more restrictive aspects of legislation on collective action and picketing, which have their origins in the Francoist dictatorship and remained dormant for some time, have posed a challenge to unions when attempting to mobilise against management, although to some extent the legislation has further politicised aspects of industrial relations. Various manufacturing companies have often responded harshly to trade union collective action and have made extensive use of coercive options made available by the state on occasion.

## Scope of agreements

In this section we look first and foremost at the range of issues covered by collective agreements. In industries with stronger and more coordinated company and multi-employer bargaining traditions there is scope to address issues of flexibility, shift systems and 'pools of hours' (*bolsas de horas*, free time granted to compensate for overtime during peak periods of activity) from a worker-friendly perspective. Early retirement schemes are common as a point of negotiation. Questions of bullying and harassment have often been addressed and regulated within collective agreements and there has been a growing sensitivity to green issues. Numerous collective agreements contain elements of unilateral management decision-making, generally preserving management's 'right to manage'. While many issues are non-negotiable, limits are put on management in terms of the need to negotiate various terms and conditions of employment. Much depends not only on the higher-level contents of industry-level or related cross-company agreements, but also on the balance of forces and traditions in any one bargaining unit. In some contexts, a supply-side orientation has come to dominate aspects of bargaining and relations between union, management and state, as have issues such as training. This was a significant feature of collective bargaining renewal up until the Great Recession (Martínez Lucio 2002).

Critiques of collective bargaining argue that much of it tends to be oriented towards pay and specific working conditions, such as working hours, shifts and social benefit schemes. But this ignores the broad role played by institutions of collective bargaining in relation to health and safety in firms and in multi-employer bargaining frameworks. There are also special agreements or components of agreements that deal with retirement and redundancy processes. Although under equality legislation firms with over 250 staff are required to develop equality plans, development of the appropriate structures and activities varies widely and, in some cases, can be merely symbolic. Issues around bullying and even the environment have emerged in various cases as topics for collective bargaining and are increasingly present at least in formal terms, but their scope is very uneven and generally focused on more advanced large and medium-sized firms.

The main challenge is to extend these new types of content systematically in an environment in which the framework and content of collective bargaining are being challenged. The removal of the automatic extension of a collective agreement when no agreement has been reached on a new one means that unions effectively have to start negotiations from scratch when this happens. Sustaining new initiatives in relation to equality, for example, is difficult when the core terms and conditions of employment and relevant frameworks are being challenged and threatened, if not dismantled, as part of 'restructuring' drives. Outsourcing and temporary work are also no longer so tightly regulated within the framework of collective bargaining. Many industry-level agreements include clauses that are not being complied with due to the economic circumstances of the firm. Thus local collective agreements may be modified to exclude provisions of higher-level multi-employer agreements, but the statistics will not capture such a development as the latter agreements still exist formally. Broader overarching structures have also been steadily undermined. We mentioned the role of the committees (*comisiones paritarias*) earlier, but for example in tourism and hospitality they are virtually non-existent or very weak. There is no real and effective application of EU provisions on information and consultation beyond key industries and larger firms, although one could argue this is the case in much of southern Europe. Such structures emerge mainly in reaction to proposed closures or staff reductions. In some cases, such as the automobile industry, industrial observatories (*observatorios sectorales*), which represent an institutional space enabling greater dialogue on a wider variety of issues, have been undermined by the right-wing governments of the past few years.

While there have been general guidelines on pay and working conditions for some time, with varied success depending on the context, there has also been an increasingly perceived need for flexibility to accommodate specific strategies for sustaining employment in the context of alarmingly high unemployment levels generally. One could also argue that unions have accepted greater flexibility in various cases in terms of the content of agreements or the criteria for negotiation: these compromises have emerged due to the concern that systems of collective bargaining and joint regulation may be more systematically challenged by employers and management and undermine the very fabric of industrial relations. The aim of the larger, more institutionalised unions has been to sustain the processes of collective bargaining, even if the content of agreements appears to be deteriorating, with a view to maintaining a basis for

negotiation over the longer term in case the situation improves. In this respect, the authors' current research suggests that formal criteria are accompanied by a growing flexibility as regards economic factors (increasing precariousness in the labour market) and political factors (policies of deregulation in terms of workers' rights), underpinned by what Rocha (2014) calls a more authoritarian climate of industrial relations in Spain.

Another challenge that has been observed is the creation of hybrid agreements between various sectors and activities within firms to reduce the influence of a higher-level agreement. 'Fictitious agreements' involving little real input or meaningful debate also exist, however, especially in smaller firms. Indeed, some employers use a basic template designed by legal consultants that has little meaningful content for workers. Legal consultancy firms have been emerging to assist smaller employers bypass meaningful collective bargaining and to enable them merely to pay lip service to external agreements or frameworks. Although within the EU there is some interest in the extension of social and workers' rights, it very much depends on the local and national context and since the 1980s there has been little general innovation in the form and content of Spanish labour relations, apart from on issues such training and equality and even the latter have experienced serious operational obstacles. The feeling among many unionists interviewed by the authors is that there needs to be a much higher level of commitment to questions of worker participation in the EU and at the transnational level through a greater adherence to framework agreements.

## Conclusions

Overall, at least on paper, the system of collective bargaining in Spain remains fairly well regulated, with a relatively high level of collective bargaining coverage, well over 75 per cent even during the worst times of the economic crisis, and of involvement on the part of what could be considered representative unions. Indeed, over the past 30 years a certain degree of coordination had emerged. There has been substantial innovation as new contexts have emerged and the union movement has maintained an extensive system of internal (intra- and inter-union relations) and external governance (employer and state relations) in respect of joint regulation. There is growing concern, however, that this is increasingly nominal in some cases and that the extent of regulatory reach is limited in various contexts, even when a formal agreement has been reached. This could be argued to have been the case in some industries for some time prior to the current austerity crisis. Various challenges both to the external governance of regulation and the trade unions' ability to govern themselves can be identified.

First, in southern Europe, austerity measures and neoliberal policy approaches on the part of the EU have robustly underpinned national government efforts to weaken joint regulation and union influence. Second, while different terms and conditions of employment have been established in various industries, with the public sector tending towards a more centralised model, while certain key industries, such as chemicals, have a strong tradition of coordinated industry-level bargaining, there are signs of greater fragmentation and gaps in certain areas. In retail, for example, this has been due to a series of local provincial agreements that make up a complex pattern of regulation that in

the current circumstances undermines attempts at coordination and threatens to curtail it across the sector. We are also seeing more and more grey areas between different kinds of workers within industries being exploited to establish local ‘agreements’ that undermine national or higher-level standards, as established through collective bargaining. In addition, agreements are very difficult for the unions to monitor in industries dominated by small and medium-sized companies: there have always to some extent been grey areas in which implementation is limited to specific features of the collective agreement. Third, the legitimacy of unions has been challenged for various reasons beyond the fact that the legal framework is less supportive and that political exchanges with the government on social issues have been less fruitful in an age of austerity and right-wing policymaking. The almost Reagan-like challenge to the role of unions that has been developing in the past ten to fifteen years on the Spanish centre-right and its media has crystallised in a body of recent legislation that allows firms to opt out of agreements in particular circumstances (Fernández Rodríguez and Martínez Lucio 2013). This has had the effect of posing resource problems for unions that must monitor an ever-wider range of management behaviour and actions aimed at bypassing or not implementing provisions agreed in collective bargaining. In some cases, it has forced majority larger unions to face the wrath and criticisms of smaller, more radical unions, especially when terms and conditions have been agreed that fail to sustain adequate levels of employment or endanger the process of collective bargaining itself. This also means that collective bargaining has not expanded as strongly as it could have done to encompass a new set of progressive issues and agendas in a consistent manner. What is more, the new social movements and ‘new left’ that have emerged in the past five to ten years have been critical of the unions’ more institutionalist roles and their perceived distance from younger workers and their precarious labour market conditions, even if on questions of migration unions have been relatively proactive in terms of service and information.

Finally, the irony is that the extent of overall change has to some extent politicised collective bargaining, leading to a degree of union mobilisation and increasing recourse to the labour courts. This has created a new form of mobilisation alongside the more institutionalised form of industrial relations. This is a curious form of historical irony in which industrial relations finds itself between the vestiges of a coordinated model, on one hand, and a more social or mobilising model, on the other, as seen in the early years of democracy in the 1970s and 1980s, albeit without the latter’s full scope. What is more, the greater fragmentation of labour and employment relations means that constructing and developing further democratic engagement from within the unions and the workforce with regard to the design, content and negotiation of collective bargaining is likely to be a challenge and put pressure on unions’ bureaucratic structures.

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All links were checked on 8 January 2019.

## Abbreviations

<b>CCOO</b>	Comisiones Obreras (Workers' Commissions)
<b>CEOE</b>	Confederación Española de Organizaciones Empresariales (Spanish Confederation of Employers' Organisations)
<b>CEPYME</b>	Confederación Española de la Pequeña y Mediana Empresa (Spanish Confederation of Small and Medium-Sized Employers)
<b>CGT</b>	Confederación General del Trabajo (General Confederation of Labour)
<b>CNT</b>	Confederación Nacional del Trabajo (National Confederation of Labour)
<b>PP</b>	Partido Popular (Popular Party)
<b>PSOE</b>	Partido Socialista Obrero Español (Spanish Socialist Workers Party)
<b>UGT</b>	Unión General de Trabajadores (General Union of Workers)
<b>USO</b>	Unión Sindical Obrera (Workers' Union)

## Chapter 28

# Sweden: collective bargaining under the industry norm

Anders Kjellberg

Sweden is a small market economy, with ten million inhabitants, dominated by large export-oriented transnational companies. Between 1995 and 2018 the export share of GDP increased from 38 to 47 per cent. Sweden has been a member of the European Union (EU) since 1995 but is still able to run its own monetary policy as the country has not entered the euro zone. The Social Democrats have been the governing party for long periods, in 1932–1976, 1982–1990, 1994–2006 and since 2014; in the second and third periods, however, they have initiated or supported many neoliberal reforms (for instance, a substantial share of tax-financed schools, child care and elderly care are outsourced to private companies). Sweden has the most socially segregated union movement in the world, with separate blue-collar and white-collar national unions and confederations. There is a similar pattern in the other Nordic countries, but not as consistently as in Sweden. Like Denmark and Finland, two other Nordic countries with a Ghent system, Sweden has a high but declining union density (see Table 28.1). The substantial increase in union unemployment contributions in 2007–2013 partly eroded the Ghent system as an instrument for membership recruitment, particularly regarding blue-collar unions, which imposed the highest contributions. While in 2000 blue-collar union density was higher than white-collar density, the opposite has been the case since 2008. The density of employers' associations and the coverage of collective agreements remain stable at a high level.

Table 28.1 Principal characteristics of collective bargaining in Sweden

Key features	
Actors entitled to collective bargaining	Trade unions and employers' associations
Important bargaining levels	The workplace and the industrial level combined
Favourability principle / derogation possibilities	There is some degree of company-level discretion regarding agreements at the industry level
Collective bargaining coverage (%)	Collective bargaining coverage remains almost stable: it fell slightly from 93% in 2005 to 89% in 2017
Extension mechanism (or functional equivalent)	No extension mechanisms or functional equivalents are applied
Trade union density (%)	Union density decreased from 81% in 2000 to 67% in 2018
Employers' association rate (%)	The organisational rate of the employers' associations increased from 83% in 2000 to 88% in 2017.

Source: Kjellberg 2019a.

The Swedish system of collective bargaining based on industry-led pattern bargaining is at the same time centralised and decentralised, although not in the same way as in the classical three-tier Swedish model, in which agreements were concluded at peak, industrial and workplace levels for blue-collar and white-collar unions respectively. Thus, distinguishing the new two-tier system of industry pattern bargaining and organised decentralisation from the classical model is ‘cross-collar’ union coordination in manufacturing industry, which combines blue- and white-collar unions, and the corresponding coordination between their employer equivalents. Providing cross-industry wage coordination, manufacturing industry sets the industry norm. This is a benchmark that specifies a certain percentage of the upper wage increase for the whole economy. Although they do not participate in wage negotiations, however, the important coordinating role of peak organisations in the wage formation process is continued by means of the confederations’ leadership in marshalling consent for the Swedish pattern of coordination and articulation in collective bargaining. All the above points refer to the centralising features of Swedish collective bargaining and industrial relations. The implementation of industry bargaining at the workplace level in local negotiations is maintained in the new model but combines centralisation (industrial bargaining) and decentralisation (workplace bargaining). This renewed Swedish model, which is based on the Industry Agreement (Industriavtalet) of 1997, has largely stabilised wage formation and promoted relative wage equality and rising real wages.

## **Industrial relations context and principal actors**

Swedish industrial relations are distinguished by self-regulation, which means that wages and other employment conditions are largely regulated by collective bargaining (Kjellberg 2017). There are no statutory minimum wages or legal procedures for extending collective agreements and no laws regulating trade unions’ internal affairs. Similarly, there are very few legal restrictions on labour conflicts. The most important constraint was introduced in 1928 when industrial action was made illegal during contract periods, except for sympathy action. In 1966 all public-sector employees acquired full bargaining and dispute rights. The non-interventionist character of the state in the early history of Swedish industrial relations forced the employers to rely on their own strength when dealing with the growing socialist blue-collar union movement. Union rights were conceded in important compromises in 1905 and 1906. By the 1938 Saltsjöbaden Agreement between the blue-collar Swedish Trade Union Confederation (Landsorganisationen i Sverige, LO) and the Swedish Employers’ Confederation (Svenska Arbetsgivareföreningen, SAF) and the subsequent 1941 centralisation of LO, the way was paved for a long period of ‘labour peace’, centralised bargaining between LO and SAF and a ‘solidaristic wage policy’. The Bargaining Cartel of Private Sector White-collar Workers (Privattjänstemannakartellen, PTK), founded in 1973, was also involved in peak-level bargaining. Similar cartels appeared among public sector white-collar workers.

From the 1950s up to 1990 collective bargaining took place at three levels: peak-level agreements followed by industrial agreements implemented by workplace bargaining. When the dominance of the axis LO–SAF was broken, collective bargaining became

much more complicated and inflation rose considerably. In 1990 SAF closed its bargaining unit and advocated completely decentralised bargaining. In the mid-1990s a Social Democratic government encouraged the parties to reform the wage formation process as high nominal wage increases threatened Swedish competitiveness. The signatories of the 1997 industry norm (*Industriavtalet*) stressed the principle that no wage increases should be higher than those in manufacturing industry. The reinforced National Mediation Office (*Medlingsinstitutet*, MI) established in 2000, is explicitly ordered to foster the wage-leading role of the export sector by mediating in case of conflict and actively promoting norms backing up this role. The industry norm is considered necessary by all principal labour market actors and the state in response to intensified international competition, especially with Germany and Finland, and the great Swedish dependence on exports. The *Industriavtalet*, which like the *Saltsjöbaden Agreement* contains procedures and mechanisms for conflict resolution, is generally considered a success, although some unions, especially those active in the domestic sector, hold the opinion that wages should rise by more than the industry norm. Since 1997 there have been relatively modest nominal wage increases but rising real wages. In contrast to the period 1980–1994, when the average annual increase of nominal wages was 6.8 per cent, but real wages hardly increased at all, real wages grew by 64 per cent (MI) between 1995 and 2017. Unemployment is much lower than in the 1990s, when Sweden was hit by a deep economic crisis. Almost full employment among native Swedes, however, contrasts with high unemployment among foreign-born residents.<sup>1</sup>

SAF's successor, the Confederation of Swedish Enterprise (*Svenskt Näringsliv*, SN) is a strong supporter of the industry norm. Among its affiliates are the Swedish Engineering Employers' Association (*Teknikföretagen*), the Employers' Organisation for the Swedish Service Sector (*Almega*) and the Swedish Trade Federation (*Svensk Handel*). The Cooperative Employers' Association (*Kooperationens Förhandlingsorganisation*, KFO) and the Employers' Association of Swedish Banking Institutions (*Bankinstitutens Arbetsgivareorganisation*, BAO) are non-affiliated. The power of employers is strengthened by the growing share of employees in transnational companies with their headquarters abroad.<sup>2</sup> The public sector is represented by the Swedish Association of Local Authorities and Regions (*Sveriges Kommuner och Landsting*, SKL) and the Swedish Agency for Government Employers (*Arbetsgivarverket*). Some employers' associations argue for increased room for downward deviation, however.

While the blue-collar confederation LO is oriented towards social democracy, there are two politically independent white-collar confederations: the Swedish Confederation of Professional Employees (*Tjänstemännens Centralorganisation*, TCO) and the Swedish Confederation of Professional Associations (*Sveriges Akademikers Centralorganisation*, Saco). LO and TCO currently each have 14 affiliated national unions and Saco 23 affiliates. Of six independent unions *Ledarna* (managers/supervisors) is the largest. In 2018, the 57 unions together had 2,971,800 active members (LO had 1,232,800, TCO 1,097,400, Saco 538,900 and the others 102,600). Men and women are equally represented

1. In 2018, 15 per cent and four per cent, respectively (labour force surveys). With the exception of Austria, Cyprus and Luxemburg, Sweden is the EU member state with the highest share of inhabitants born abroad.
2. A union report stresses that the rate of return on capital invested must not be lower in Sweden than elsewhere due to the free movement of capital (IF Metall 2008). Consequently, wage claims must be moderated.

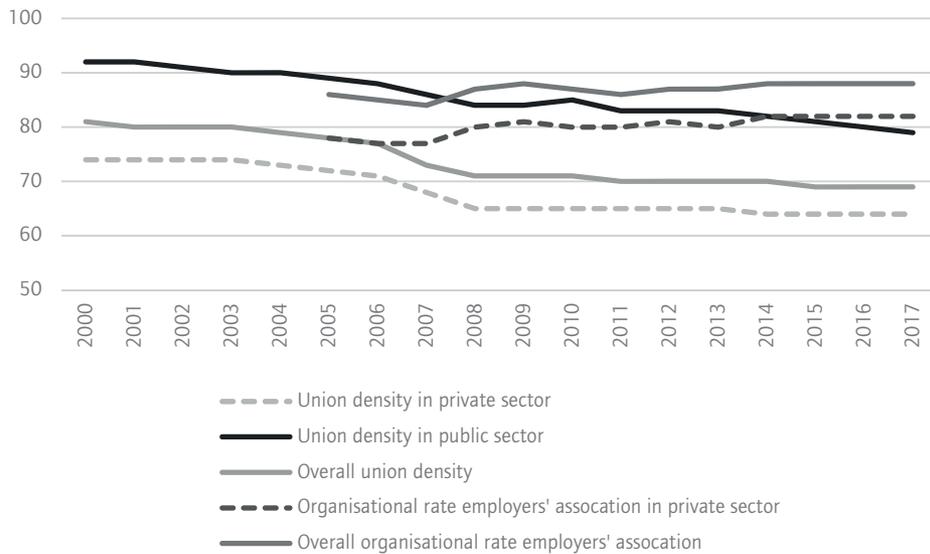
Table 28.2 20 largest national unions in Sweden (31 December 2018)

Union	Members	Female share (%)	Sector	Category	Confederation	Constellation
1. Unionen (white-collar workers in manufacturing and services)	551,500	44	Private	White-collar	TCO	FI, PTK
2. Kommunal (municipal blue-collar workers)	500,200	78	Both	Blue-collar	LO	
3. IF Metall (metal, chemical, etc workers)	246,800	19	Private	Blue-collar	LO	FI
4. Lärarförbundet (teachers)	167,300	84	Both	White-collar	TCO	OFR, PTK, LS
5. Vision (municipal and private white-collar)	138,500	72	Both	White-collar	TCO	OFR
6. Handels (commercial employees)	125,000	27	Both	White-collar	Saco	FI, PTK, Saco-S
7. Sveriges Ingenjörer (graduate engineers)	123,300	63	Private	Blue-collar/ White-collar	LO	
8. Ledarna (supervisors/managers)	94,200	32	Both	White-collar	Independent	PTK, OFR
9. Vårdförbundet (nurses)	92,100	90	Both	White-collar	TCO	OFR, PTK
10. Byggnads (building workers)	78,700	2	Private	Blue-collar	LO	6F
11. Seko (railways, post, etc employees)	72,200	25	Both	Blue-collar/ White-collar	LO	6F
12. ST (civil servants)	67,100	59	Both	White-collar	Saco	PTK, Saco-S
13. Jusek (lawyers, economists etc)	66,100	62	Public	White-collar	TCO	OFR
14. Lärarnas Riksförbundet (teachers)	63,100	70	Both	White-collar	Saco	OFR, PTK, LS, Saco-S
15. Akademikerförbundet SSR (social workers, HR personnel etc)	55,800	82	Both	White-collar	Saco	OFR, PTK, Saco-S
16. Transport (transport workers)	49,800	17	Private	Blue-collar	LO	
17. GS Facket (graphical and wood workers)	38,800	18	Private	Blue-collar	LO	FI
18. Läkarförbundet (Swedish Medical Association)	37,200	52	Both	White-collar	Saco	OFR, PTK, Saco-S
19. Naturvetarna (university graduates in natural sciences)	30,700	63	Both	White-collar	Saco	PTK, Saco-S
20. Civilekonomerna (economists)	28,800	56	Both	White-collar	Saco	PTK, Saco-S

Note: Pensioners and students are excluded, the unemployed are included. FI (Unions in Manufacturing), PTK (private sector white-collar unions), OFR (Public Employees' Negotiation Council), Saco-S (bargaining cartel of government Saco unions), LS (Teachers' Collaboration Council), 6F (Trade Unions in Cooperation).

Source: Kjellberg (2019b).

Figure 28.1 Union density and organisational rate of employers' associations in Sweden, 2000–2017 (%)



Note: Union density among 16–64 year-olds, excluding full-time students working part-time.

Source: Kjellberg (2019a).

among Swedish trade union members. The ‘cross-collar’ Unions in Manufacturing (Facken inom industrin, FI), an umbrella organisation encompassing several blue- and white-collar unions active in manufacturing across the different confederations, was founded in the same year (1996) as the participating unions took the initiative to bring the 1997 Industriavtalet into being. FI is a key player in collective bargaining, although the negotiations for setting the industry norm are conducted by its individual unions (unions 1, 3, 6 and 17 in Table 28.2): Unionen, the largest Swedish union, founded in 2008 by a merger between TCO unions in manufacturing industry and private services; the Association of Graduate Engineers (Sveriges Ingenjörer, SI), the largest Saco affiliate; IF Metall, the largest private sector LO affiliate, founded in 2006 when the Metalworkers’ Union and the Industry Union merged; and the LO affiliated unions GS Facket (graphical and wood workers) and Livs (food workers).

The Swedish model of self-regulation is based on a high union density, almost 70 per cent, and an even higher density of employers’ associations, of almost 90 per cent, which promotes a high coverage of collective agreements (Figures 28.1 and 28.2). In 2017, employers’ associations covered 82 per cent of private sector employees, but unions only 64 per cent. A dramatic change has occurred since 2000 when both union density and the organisational rate of employers’ associations in the private sector was about 75 per cent. The decline in union density is largely concentrated on blue-collar workers, which in Sweden are defined more broadly than in other countries, as most retail workers are also included. The union density of blue-collar and white-collar workers both stood at 77 per cent in 2006, but this percentage had decreased to 59 and 72 per cent for blue-collar

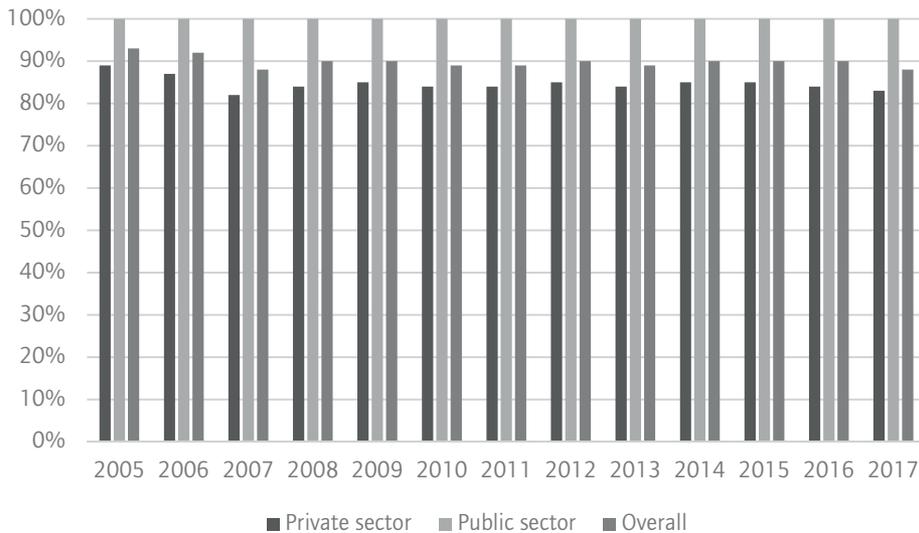
and white-collar workers, respectively, by 2017 (Kjellberg 2019). The high Swedish union density is usually attributed to the Ghent system, implying that state-supported union unemployment funds boost the attractiveness of union membership. In 2007 the centre-right government substantially raised fund contributions by reducing state subsidies. Within two years union density fell by six percentage points (Kjellberg 2011). By linking fund contributions to the rate of unemployment within each fund blue-collar fees became much higher than white-collar fees, especially as the financial crisis had the largest impact on blue-collar employment. In January 2014 the contributions to unemployment funds were restored to about the same level as before 2007, but blue-collar density has continued to decline (Kjellberg and Ibsen 2016) and since 2017 also white-collar density.

## **Extent of bargaining**

The coverage of collective bargaining is very high and has been stable over time, despite the absence of extension mechanisms. In general, nine out of ten employees are covered by a collective agreement (Figure 28.2). There is some industrial diversity in the coverage. In 2015 about 60 per cent of the employees in retail trade were covered by industrial collective agreements, in financial services about 90 per cent and in manufacturing 98 per cent. Substitute agreements are concluded between unions and firms not affiliated to employers' associations, implying that the industrial agreement is applied. About 80 per cent of private sector employees are covered by industrial collective agreements and another 4 per cent by substitute agreements; thus, about 16–17 per cent of the employees in the private sector are found at workplaces without a collective agreement. Some industrial agreements affect only individual companies, such as the Scandinavian Airlines System (SAS), not to be confused with substitute agreements between national unions and unorganised employers. Swedish collective agreements do not allow downward derogation at workplace level. In agreements without individual guarantees some people might not receive a wage increase at all. In the 2007 bargaining round, *Teknikföretagen*, the employers' association in engineering, argued that opening clauses would improve the terms of competition by increased flexibility and local adaptability. No opening clauses were introduced, however, as the unions rejected this, but more flexible working-hours and increased possibilities to recruit on fixed-term contracts were introduced.

The high coverage of collective agreements can be partly explained by high union density, which is boosted by the combined centralisation and decentralisation of industrial relations. These characteristics prevent fragmentary union coverage and facilitate membership recruitment by means of the extensive coverage of union workplace organisations. The existence of separate national unions and confederations for blue-collar and white-collar workers makes it easier for each social category to identify themselves with a union. Also, collective bargaining, as self-regulation in contrast to state regulation, is conducive to a high union density. While a high density certainly helps to explain the high collective bargaining coverage, the very high organisational rate of the employers' associations (88 per cent in 2017) adds to it. Moreover, the stability of this rate contributes to the steadiness of collective bargaining coverage

Figure 28.2 Share of workers covered by collective agreements in Sweden, 2005–2017 (%)



Note: There is a series break between 2006 and 2007 due to changes in the mode of calculation.  
Source: Kjellberg (2019a).

and compensates for the decline in union density resulting from the declining blue-collar membership. In contrast to German employers (see Chapter 12), their Swedish equivalents have showed no propensity to abandon their organisations.

Since the 1997 *Industriavtalet*, large bargaining rounds involving almost all unions and employers' associations have occurred in 1998, 2001, 2004, 2007, 2010, 2011/2012, 2013, 2016 and 2017, with the next one in 2020. The duration of agreements is thus usually three years and occasionally one year. Some agreements are valid for an indefinite period. In schools, the four-year agreement for 2012–2016, common to the two teachers' unions, was prolonged to 2018. If an agreement expires before the negotiations for a new one are finished, the old one remains in force. Furthermore, in the absence of extension mechanisms and statutory minimum wages, Swedish unions each year put pressure on about 10–30 unorganised employers by giving notice of strike action or blockades to get them to conclude a substitute agreement or join an employers' association (MI 2019: 45–56). Every year thousands of substitute agreements are signed, but few are preceded by industrial action. Only about 30–35 per cent of companies with employees have signed collective agreements, as most companies are very small. Among those with 5–19 employees almost 70 per cent have a collective agreement and among those with 20–49 employees almost 90 per cent (Kjellberg 2019a).

## Security of bargaining

Security of bargaining refers to the extent of union support by the employers and the state. When concluding the 1938 Saltsjöbaden Agreement, SAF and LO agreed on the desirability of a high density on both sides. Since then, organised employers have not opposed union membership among blue-collar workers. Initially, this spirit of cooperation did not include white-collar unions; a basic agreement between SAF and the leading private sector white-collar union was not concluded until 1958. Because of the employers' fierce resistance to negotiations with white-collar unions in manufacturing, commerce and banking, legislation on the right of association and negotiation was enacted in 1936, but it did not oblige employers to conclude collective agreements (Kjellberg 2017). Put differently, according to the principle of self-regulation Swedish unions must rely on their own strength to obtain contracts with unorganised employers. In a similar vein, neither labour law nor basic agreements contain procedures for union recognition. Nevertheless, there are several Acts ensuring the bargaining role of unions.

Thus, the Act on Union Representatives prohibits employers from preventing workplace or regional union representatives from performing their duties at workplaces with a collective agreement. Union representatives have the right to paid time for union work at their workplace, the scope and timing of which is decided in local negotiations. Also, according to the Act on Employment Protection, employers must negotiate in case of layoffs. The Act on Codetermination protects the right of the individual to join a union and provides unions with negotiating rights in three respects (Eriksson 2012). First, it guarantees codetermination negotiations when a company makes important changes in its activities or the employment conditions of individual employees are changed. The employer has the final say if the parties disagree. Second, in case of disputes over the interpretation or application of signed collective agreements, negotiations must take place first. If they fail, the matter can be brought to a court and in the last instance to the tripartite Labour Court. Industrial action may not be used in connection with such legal disputes. Strikes, lockouts, overtime bans and so on are allowed only in the case of disputes of interest. Third, the act stipulates union negotiating rights on collective agreements regarding wages and other employment conditions.

The MI may postpone conflicts for 14 days, but not in industries covered by the Industry Agreement or other negotiated agreements. Since the 1990s the SN has argued that the balance of power is tipped in favour of the trade unions because of their extensive conflict rights. Employers demand the introduction of a 'proportionality rule' and a ban on secondary action. Collective agreements apply both to union and non-union members and consequently do not function as positive incentives to join a union. Because the unions' bargaining role depends heavily on their strength, however, incentives for union membership are very important. Thus most unions provide income insurance, which provides a supplementary income to unemployed members of union unemployment funds. The Swedish Building Workers' Union (Svenska Byggnadsarbetareförbundet, Byggnads) is among the exceptions: it has no income insurance because of the risk of high cost during recessions. Until July 2019 IF Metall had no income insurance. Furthermore, all unions pay conflict benefits to members locked out or on strike, as well as legal support in disputes with the employer.

## Level of bargaining

In addition to the important role of coordinating their affiliates in bargaining rounds LO and SN, but also PTK, are involved in peak-level negotiations but only on issues other than wages (Table 28.3). The fact that Swedish industrial bargaining takes place in large bargaining rounds comprising more or less the whole labour force facilitates coordinated bargaining guided by the industry norm. In principle, the industry norm acts as a coordinating tool across industries and bargaining levels. The vertically very well-articulated Swedish unions facilitate the implementation of the industry norm and the employers on their part have no interest in conceding larger wage increases than the norm at workplace level. The declining and now almost non-existent wage drift is an indicator of that. Nevertheless, the bargaining model based on the industry norm is far from free of tensions. The ambitions of LO affiliates organising in the domestic sector to favour low-wage women-dominated groups, such as the food service industry ('horeca'), retail and other services sometimes come into conflict with the norm. During the preparations for the 2016 bargaining round LO coordination collapsed. LO and SN then eventually concluded an informal agreement requesting that the industry norm should be applied.

The most important union success in the 2007 bargaining round was a substantial rise in minimum wages. The aim was to prevent wage dumping as the *Laval* judgment

Table 28.3 Types of multi-level bargaining in the private sector

Level of concluding or coordinating negotiations	Important cases	
Peak-level agreements	LO–SN on occupational pensions and other insurance	PTK–SN on occupational pensions and other insurance
Bargaining rounds comprising the whole labour force	Facilitates the impact of the industry norm, in particular as manufacturing industry concludes the first agreements	
Peak-level coordination of negotiations on wages and other employment conditions	LO coordinates its affiliated unions to safeguard the industry norm but also to lift low-paid groups	SN coordinates its affiliated employers' associations to safeguard the industry norm which is given high priority
Coordination between the parties behind the Industry Agreement in the negotiations for national agreements in manufacturing industry	Coordination between the members of unions in manufacturing: 'cross-collar' coordination between LO, TCO and Saco unions in manufacturing	Coordination between the employers' associations signing the Industry Agreement
The industry norm that is supposed to be applied to all workers	The so-called 'mark': the commonly agreed wage increase expressed in a specified percentage: 6.8 per cent in the 2013–2016 three-year agreement; 2.2 per cent in the 2016–2017 one-year agreement; 6.5 per cent in the 2017–2020 three-year agreement.	
Industry agreements between national unions and employers' associations.	For example, between IF Metall and Teknikavtalet IF Metall or between Unionen/Sveriges Ingenjörer/Ledarna and the Teknikavtalet white-collar unions.	
A few company agreements	For example, between the Swedish Airline Pilots Association and SAS.	
Workplace agreements to implement industry agreements	Between workplace 'union clubs' and the employer. If there are no workplace union representatives a union official (ombudsman) from the local/regional union branch negotiates. There are also other models for local wage formation.	

Source: Author's elaboration.

gave companies with posted workers the right to pay no more than the minimum terms in Swedish collective agreements. Swedish minimum wages, aimed at young and unexperienced workers, are far below actually paid wages. Collective agreements regulate both. The rapidly deteriorating business cycle in autumn 2008 and winter 2009 resulted in massive lay-offs in the Swedish engineering industry. IF Metall signed a temporary, one-year 'Crisis Agreement' with Teknikföretagen in March 2009 in an attempt to avoid further mass redundancies and enabling unprecedented workplace-level concessions in pay and working time: local negotiations reduced monthly wage by up to 20 per cent, with a corresponding reduction of working hours. The three-year industrial agreement between IF Metall and Teknikföretagen (2007 +2.8 per cent wage increase, 2008 +2.5 per cent and 2009 +2.8 per cent) was not affected by the crisis agreement. By the end of June, every fifth employee in firms affiliated to Teknikföretagen was covered by a local crisis agreement, with an average length of six months. Besides the pressure imposed by accelerating unemployment, IF Metall was also pressed to initiate a central framework agreement to prevent local clubs making too large concessions to save jobs. Also contributing to this step taken by IF Metall was the absence of a government-financed system of severance pay in Sweden. Unionen, affiliated to TCO and the SI (Association of Graduate Engineers), affiliated to Saco, also signed crisis agreements, but only local ones, at workplace level. The 2009 crisis agreement was a parenthesis in Swedish collective bargaining as there are no opening clauses in industrial agreements. The crisis was deep but short in Sweden, with an impressive recovery already by 2010 (Bengtsson and Ryner 2017: 276). While the Teknikföretagen demand to prolong the Crisis Agreement was rejected by IF Metall in 2012, both agreed to call on the state to introduce a subsidised short-time working scheme, inspired by Germany's 'Kurzarbeit' scheme', which was enacted by the centre-right government in 2014. This tripartite move could be considered a novelty in the collective bargaining tradition in Sweden. A government investigator, a former IF Metall president, was appointed in 2018 to suggest improvements to the Swedish short-time working (*korttidsarbete*) scheme.

Coordinated bargaining guided by the industry norm is combined with different models of decentralised wage formation. While some industrial agreements are figureless, others contain traditional wage scales or piece work (models 1 and 7 in Table 28.4). Figureless agreements are most numerous in the public sector. No blue-collar union has concluded such an agreement and there is none in manufacturing industry. If there was, no industry norm would be possible. Some agreements guarantee individuals a fixed minimum wage increase, while the remaining pay increases agreed in industrial agreements are distributed at workplace level (agreement models 3, 5, 6 and 7); others have no such guarantees. In 2018, 40 per cent of all employees had some form of individual wage guarantee (62 per cent in the private sector and 82 per cent among blue-collar private sector workers). In Model 2 there is no local wage frame and no individual guarantee but if the local parties fail to conclude an agreement, a fall-back provision regulating the size of wage increases enters into force.

There are two aspects of centralisation and decentralisation: one refers to the scope for wage agreements and the other to distribution between individuals. In the public sector, individual distribution is done only at local level, while the scope for wage increases is

Table 28.4 Agreement models by category of workers and sector in 2018 (%)

Agreement model	Share of employees by sector (%)		
	Private sector	Local and central government	All sectors
1. Local wage formation without nationally determined wage increase (figureless agreements)	10	47	23
– Blue-collar	0	0	0
– White-collar: unions of managers, teachers, nurses and so on	24	79	49
2. Local wage formation with a fall-back provision (stupstock) regulating the size of the wage increase	14	13	14
– Blue-collar	5	2	4
– White-collar: graduate engineers/engineering, Unionen/IT, ST, medical doctors	27	21	24
3. Local wage formation with a fall-back provision regulating the size of the wage increase and some form of individual guarantee	9	0	6
– Blue-collar: IF Metall/chemical industry	3	0	2
– White-collar: Finansförbundet (Financial Sector Union), Unionen/engineering	17	0	9
4. Local wage frame (wage pot) without an individual guarantee	14	40	24
– Blue-collar: Kommunal (LO), IF Metall/steel	13	98	37
– White-collar: Unionen/motor trade/media	17	0	9
5. Local wage frame with an individual guarantee; alternatively a fall-back provision regulating the individual guarantee	16	0	10
– Blue-collar: IF Metall/engineering	18	0	13
– White-collar: Unionen/steel/trade/staffing	14	0	8
6. General wage increase and local wage frame	23	0	15
– Blue-collar: commercial employees, hotel and restaurant workers and paper workers	39	0	28
– White-collar	0	0	0
7. General wage increase (wage tariffs or piece work)	14	1	9
– Blue-collar: building and transport workers, painters	22	0	16
– White-collar	1	1	1

Source: MI.

decided entirely at this level only for every second public sector employee (Calmfors *et al.* 2018: 13). In particular, white-collar unions, dominated by public sector employees, hope by means of figureless agreements and individualised wage setting to change relative wages by obtaining more than the industry norm. To achieve this goal the nurses' union has interchangeably used industrial action and figureless agreements, but by no means always with success. Employers desire figureless agreements and individualised wage setting to achieve greater wage differentiation, alter Sweden's very compressed

wage structure and transform wages into a management instrument. In addition, some employers' associations pursue wage increases below the industry norm.

A 2013–2014 Saco study on members shows no difference in average wage increases between agreements that do not specify pay rises (so-called 'figureless agreements') and other agreements (Granqvist and Regnér 2016). According to other statistics, pay increases for three occupations characterised by labour shortages in the municipal sector (nurses, social workers and teachers) in recent years have been above the industry norm (DN 2017-03-30). LO considers it problematic that the official wage statistics in the public sector does not differentiate between white-collar and blue-collar workers; municipal employers might thus be able to redistribute money from blue-collar to white-collar workers without it being visible and argue that the average wage increase in the municipal sector does not exceed the industry norm. According to SKL, 'figureless agreements' provide space for extra pay increases in occupations and regions with labour shortages, while other municipal employees receive lower wage increases (Ekot 2017-03-29). In 2015 the members of Vision, Vårdförbundet and Akademikerförbundet SSR (unions 5, 9 and 15 in Table 28.2) in municipalities and hospitals received increases considerably above the industry 'mark' (Arbetet 2017-02-19). Not surprisingly, Vision, SSR and SKL in 2017 signed a new three-year figureless agreement for 160,000 white-collar municipal workers. But sometimes the opposite happens. The 2011–2014 figureless agreement between the Finansförbundet (Financial Services Union) and BAO (Model 1 in Table 28.4) was cancelled by the union in 2013 due to dissatisfaction with the local outcome of the agreement. Most members had experienced good wage development, but some groups obtained no wage increase. Union representatives in banks experienced severe difficulties concluding agreements on local wage principles. Since 2015 Finansförbundet has had an agreement in accordance with the third model presented in Table 28.4. It contains both individual and collective guarantees. The latter prevent the outcome from deviating too much between banks. A study of 383 occupations between 2014 and 2017 confirms that, above all, women-dominated shortage occupations, such as nurses, assistant nurses and teachers, received more than the annual average of 2.3 per cent of the studied occupations (MI 2018). The conclusion of the Mediation Office is that this indicates that the Swedish model of wage formation does not prevent changes in the relative pay of different occupations.

## **Depth of bargaining**

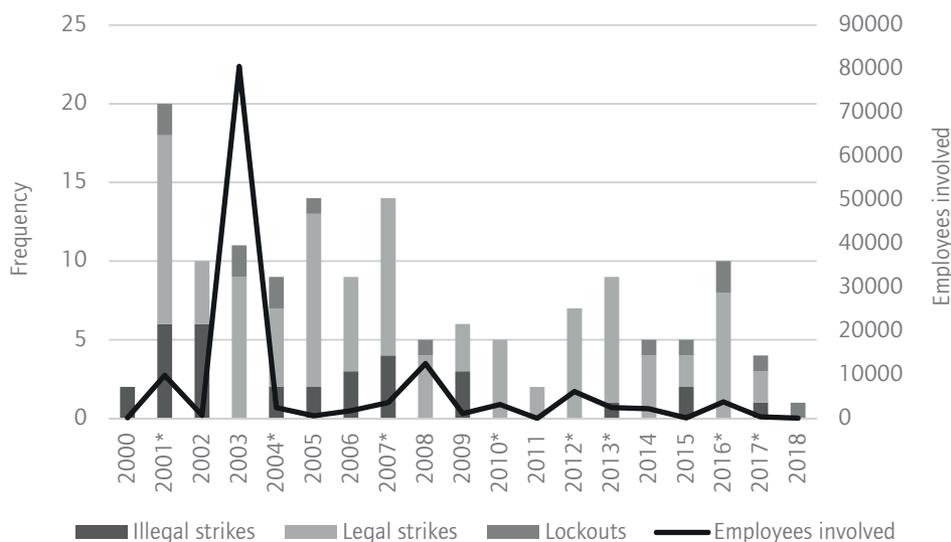
Depth of bargaining refers to the involvement of the workplace level in the bargaining process. Swedish unions are vertically well-integrated from the national level down to the local union branch and workplace club; there are no works councils. Union workplace clubs are stronger and more numerous in manufacturing and construction than in private services, such as retail, hotels and restaurants and haulage. This corresponds to greater union influence on local wage-formation in manufacturing than in the latter sectors (Karlson *et al.* 2014: 116-124). The same applies to large enterprises compared with small ones, many of which lack union representatives. In workplaces without clubs a union official from the local or regional branch negotiates on the implementation of industrial agreements. In large engineering workplaces there is usually a union club for

each of the following: IF Metall (LO), Unionen (TCO), Sveriges Ingenjörer (Association of Graduate Engineers) (Saco) and Ledarna (independent) (blue-collar number 3 and white-collar numbers 1, 6 and 8 in Table 28.2). When industrial agreements are implemented at workplace level, and in particular if they are figureless, ‘wage talks’ are often held between the individual employee and their superior. In other cases, the workplace union negotiates for the individual. In both cases it works best if the union and the employer together have constructed a local wage system in which criteria for wage setting are perceived as clear and fair. In 2013 eight out of ten workers were covered by local wage systems at workplaces where the IF Metall clubs had at least 50 members. The union’s aspiration is for individual wage development to be linked to development at work, as workers acquire more skills.

Decisions on industrial action are taken by national unions, not by workplace clubs or local branches. Unlike in Denmark and Norway, there are no membership ballots on wage claims, proposals from mediators or strikes, except in some white-collar unions. The TCO unions of teachers and nurses sometimes arrange advisory ballots. Consequently, it is not possible, as in Denmark and Norway, to use ballots as a centralising instrument by adding the votes from several bargaining units together into a single ballot. In this way, Swedish LO is able to circumvent protests from minority members and unions. Membership ballots were abolished in LO as a result of the 1941 centralisation (Lundh 2010: 195). The objective was to bring down the strike rate. The same argument was used in the United Kingdom to introduce balloting by legislation in the 1980s. Both unions and employers’ associations have well-filled conflict funds. Combined with the high density of unions and employers’ associations, this means that Swedish labour conflicts have the potential to be long and extensive. Aware of this, the negotiators on both sides are under pressure to find solutions to avoid strikes and lockouts. Consequently, the rate of labour conflicts is low in Sweden (Figure 28.3), also in comparison with other Nordic countries. Since the mid-1990s the most extensive strikes have occurred in the public sector, as is also the case in Denmark.

More than every second lost working day in the period 2005–2018 was concentrated in 2008, when almost all days lost were because of a nursing strike (MI 2009: 161–67). Discontent with both the outcome and the process of local wage formation caused the union to cancel the agreement (Ryman 2007: 58–59). By far the largest Swedish labour conflict in 2000–2018, however, occurred in 2003. Because of its dissatisfaction with wage outcomes during the first two years of a three-year agreement the Swedish Municipal Workers’ Union (Svenska Kommunalarbetareförbundet, Kommunal) cancelled the third year (MI 2004:122–131). About 600,000 working days were lost. It might seem strange that neither the large 2003 conflict nor that of 2008 was linked to major bargaining rounds; both were triggered by unions terminating agreements in advance due to discontent with local wage formation. The third largest conflict since 2000 was between the Byggnads (Building Workers’ Union) and two SN affiliates organising subcontractors in sheet metal working and plumbing. This combined strike and lockout caused 32,300 lost working days in 2012 (MI 2012: 220). Finally, notices on strikes, blockades, lockouts and so on are considerably more frequent than open industrial actions (Table 28.5). The threat of a retail strike in 2007 illustrates that a threat can exert pressure as effectively as a strike. The Commercial Employees’ Union

Figure 28.3 Labour conflicts in Sweden, 2000–2018



Note: \* Main bargaining round. For data on the number of days not worked, see Appendix A1.1. For 2007 and 2012–2014 the sum of 'legal strikes and lockouts' is somewhat higher than appears from the figure, which excludes lockouts' (lockouts corresponding to strikes).

Source: MI.

(Handelsanställdas Förbund, Handels) (LO) reached an agreement that, according to SN, exceeded the industry norm too much. For that reason, the Svensk Handel (Swedish Trade Federation) was strongly criticised by SN. In 2017 notification of strike action was given in 15 of the 497 industrial negotiations. Industrial action was taken in one case, although no strike action was involved. In addition, MI reported nine notifications on secondary action.

Union members could influence the formulation of claims in various ways. Every IF Metall member has a right to vote and is eligible for the union bargaining council, which appoints negotiating delegates. One-day meetings are held around the country at which elected representatives and members discuss urgent issues with personnel from the union headquarters and members of the executive committee. Also, the union congress can decide on bargaining demands and send proposals to the bargaining council. The executive committee has the final decision-making power not only to cancel collective agreements and to accept or reject agreement proposals, but also on industrial action. IF Metall participates in LO coordination to prepare bargaining rounds and formulate common demands. Together with the other blue-collar and white-collar unions in manufacturing, IF Metall also elaborates a common bargaining platform for Unions in Manufacturing (Facken inom industrin, FI). Sometimes tensions appear between the roles of IF Metall in LO and in FI. It is not always easy to reconcile the industry norm with demands made within LO to raise the relative wages of women-dominated low-

Table 28.5 Industrial action in industrial bargaining, 2000–2018

	2000	2001*	2002	2003	2004*	2005	2006	2007*	2008	
Legal strikes and lockouts, total**	0	14	4	11	7	12	6	11	5	
– of which strikes**	0	12	4	9	5	11	6	10	4	
Number of industrial negotiations with notifications of industrial action***	3	15	6	4	17	9	7	27	9	
Cases of industrial action taken (industrial bargaining)	2	5	2	2	4	3	0	5	7	
– of which strikes (industrial bargaining)	0	2	0	2	3	3	0	3	3	
Number of MI mediations in industrial negotiations***	5	20	2	6	24	11	7	30	9	
Expiring industrial agreements		Most	ca 65	ca 30		90		ca 500	ca 90	
Sectoral agreements signed during the year		Most	ca 65	ca 30	ca 420	>80	41	ca 500	ca 90	
Registered industrial agreements, total						572	572	572		
	2009	2010*	2011	2012*	2013*	2014	2015	2016*	2017*	2018
Legal strikes and lockouts, total**	3	5	2	7	8	5	3	10	3	0
– of which strikes**	3	5	2	7	8	4	2	8	2	0
Number of notifications in industrial negotiations (SN)			15	45	47	11	4	47	41	0
Number of notifications in industrial negotiations (MI)							3	40	23	0
– from unions							2	30	19	0
Number of industrial negotiations with notifications of industrial action***	4	23	9	23	19	6	2	25	15	0
Cases of industrial action taken (industrial bargaining)	1	8	4	8	7	2	1	7	1	0
– of which strikes (industrial bargaining)	0	4	0	6	4	2	0	6	0	0
Number of MI mediations in industrial negotiations***	6	27	10	23	25	5	2	20	15	0
Expiring industrial agreements		550	90	ca 500	>520	54	40	484	465	29
Sectoral agreements signed during the year	ca 30	550	153	ca 500	508	43	40	498	497	30
Registered industrial agreements, total	670	650	665	680	669	685	682	668	671	668

Note: \* Main bargaining round; \*\* including international/political strikes and local strikes against unorganised employers; \*\*\* number of industrial negotiations with notifications of strikes, lockouts, blockades or other industrial action.

Source: MI and SN (2019).

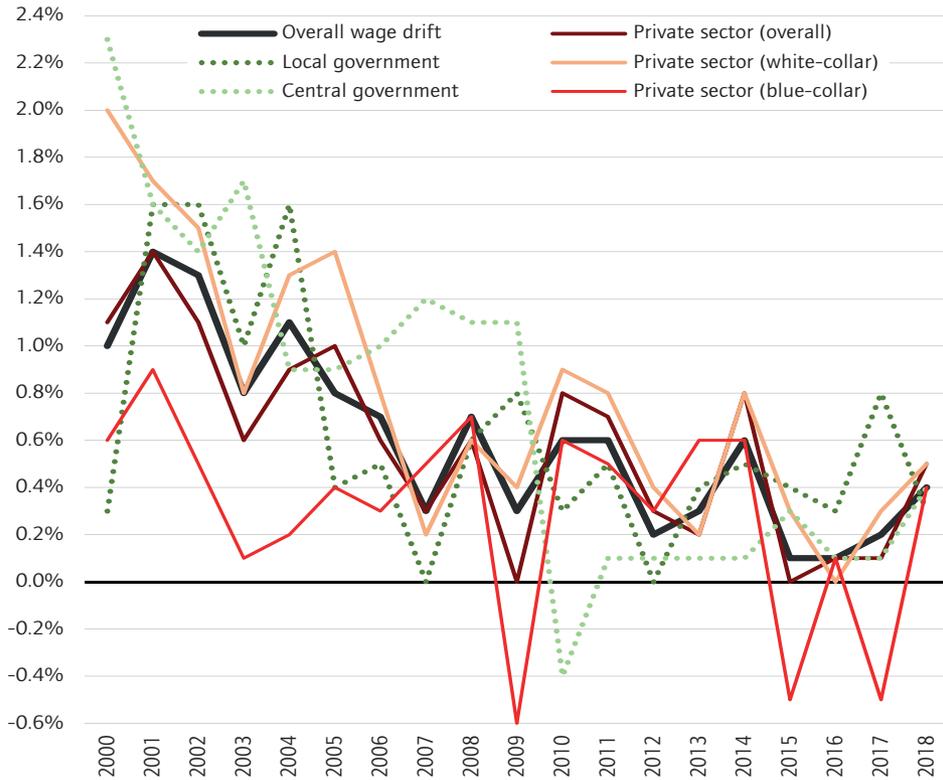
wage groups such as retail employees. Also, the industry norm is challenged by the five male-dominated LO unions labelled 6F (among them numbers 10–11 in Table 28.2), whose members are found predominantly in domestic industries. In the 2016 bargaining round they coordinated their demands but the unions active in manufacturing and those active in the domestic industries negotiated separately as domestic industries were recovering strongly from the crisis. The two teachers' unions (numbers 4 and 14 in Table 28.2) in the Teachers' Collaboration Council (Lärarnas Samverkansråd, LS) also negotiate together (with SKL and its private sector equivalents). All Saco unions with members in central government participate in the bargaining cartel Saco-S. These examples illustrate that, in addition to the internal, vertical processes in each union, also horizontal coordination and elaboration of demands may play a significant role.

## Degree of control

This dimension refers to the extent to which collective agreements define the working conditions of those covered by the agreement. First, we will examine the degree to which wages at workplace level are rising more than provided for in industrial agreements. Taking the labour market as a whole, the average annual wage increase in 1998–2013 was 3.3 per cent, broken down into 2.5 percentage points at industry level and 0.8 points at workplace level (Morin 2016: 21–26). White-collar workers, due to their considerably lower unemployment and stronger market position, obtained higher wage increases at local level (1.1 points) than did blue-collar workers (0.3 points). Conversely, centrally determined wages were more important for blue-collar workers (2.9 points) than for white-collar workers (2.2 points). The total average annual pay increase during the period was 3.2 per cent for blue-collar workers and 3.3 per cent for white-collar workers. White-collar wages increased on average 0.3 per cent more per year than blue-collar wages in manufacturing industry. Regarding the whole period 1998–2013 that means four per cent higher wage increases for white-collar workers than for blue-collar workers. Blue-collar workers in manufacturing and construction in turn received a larger share of wage increases at local (workplace) level compared with blue-collar workers in private services and municipalities, for which central agreements are more important. Union density is higher in manufacturing and construction than in, for example, retail, cleaning and hotels and restaurants (Kjellberg 2019a).

Trade union influence on local wage formation is greatest in large companies, especially in manufacturing. In retail, hotels and restaurants, transport and other private services the influence of union workplace clubs is much smaller but is partly compensated by strongly centralised industrial agreements, similar to the Danish 'normal wage sector'. Karlson *et al.* (2014) conclude that many companies consider unions a valuable ally with regard to communication and the implementation of collective agreements. The content of most agreements can be changed to some degree by local agreements, which presupposes the ability of local parties to reach agreements. Other employers are less interested in local negotiations and prefer to apply central agreements, which is more straightforward. In recent years, centrally agreed wage increases and actual wage increases have been more or less identical. Despite the economic boom no wage drift is found, except for a small amount in the municipal sector (Table 28.9). In particular,

Figure 28.4 Overall wage drift and in different sectors, 2000–2018 (%)



Note: The relatively few figureless agreements in the private sector are excluded. In the public sector, figureless agreements are approximated with the industry norm.

Source: MI.

construction is booming but no wage drift has appeared. Possible explanations include a growing number of building workers posted from abroad, very low inflation and increased employer discipline in not conceding wage increases more than industrial agreements. In 2008, another year of prosperity in Sweden until the financial crisis hit, wage drift was modest but centrally agreed wage increases were relatively high. In contrast, 1996 was distinguished by even higher industrial wage increases and relatively high wage drift.

Karlson *et al.* (2014) found that the industry norm has a decisive impact on wage setting in the private sector, including where central agreements contain no specific figures (Karlson *et al.* 2014: 105–106, 122–23). Most of the employers interviewed in 2011–2013 saw the industry ‘mark’ as a ceiling for wage increases, while a few expected small supplementary increases above it. A key conclusion was that ‘the collective agreements play a very large role for wage formation and wage setting in reality’ and that the industry norm ‘strongly governs wage formation and wage setting in reality, irrespective of the degree of centralisation of collective agreements’ (Karlson *et al.* 2014: 179;

author's translation). The high rates of bargaining coverage and employer association membership also contributed to the relatively low and stable wage inequality.

It should be observed that Figure 28.4 contains statistics only for whole sectors. Although the impact of the industry norm is great, the prospects of some groups to obtain more are not insignificant. Relative wages can be changed either by higher wage increases in industrial agreements or where there is plenty of scope for local wage formation and/or wage drift. The Municipal Workers' Union (Kommunal) in the 2016 bargaining round obtained 4.3 per cent for assistant nurses in the first year of the 2016–2017 agreement with SKL, which was almost double the industry mark at 2.2 per cent (Kommunalarbetaren 2016-04-29). But the union had to 'pay' for that with smaller increases in minimum wages. Second, the employers' options for wage differentiation improved (model 4 in Table 28.4). Compared with IF Metall, Kommunal has left more room for employers to elaborate criteria for wage setting unilaterally (Fransson and Stüber 2016: 100–108). Agreements without figures, fall-back provisions or individual guarantees increase employers' power to apply wage differentiation between occupations, individuals and regions without exceeding the industry norm. With expanded possibilities to concede extra pay to occupations with labour shortages the scope for market forces increases.

Finally, in the case of disputes about agreements central negotiations will take place if the local parties fail. As a last resort the issue may be brought to the Labour Court. The Saltsjöbadsavtalet LO-SAF/SN contains a negotiation order in case of disputes during contract periods and rules for the bipartite Labour Market Council, which deals with disputes about the interpretation of collective agreements. Industrial collective agreements contain negotiation orders, too. The labour inspectorate does not check the implementation of agreements; that is up to the unions and their local branches and workshop clubs. It is difficult for unions to supervise wages and employment conditions in companies without agreements. No law prevents unorganised employers from paying far below agreements. The Work Environment Authority (Arbetsmiljöverket) only carries out inspections of the working environment and working time.

## **Scope of agreements**

In accordance with the Swedish model of self-regulation a wide range of issues are regulated by collective agreements. Some agreements contain benefits supplementary to what is provided by law, others are legally conditioned, such as codetermination agreements, following the Act on Codetermination. There are two basic types of agreements: substantive agreements and procedural agreements. Regarding the latter, the most prominent is the Industry Agreement (1997), revised in 2011 and 2016. The revision in 2011, labelled 'Industry Agreement 2.0', stipulates that agreements should expire simultaneously to facilitate coordination, thus strengthening horizontal coordination of bargaining, especially beyond manufacturing, while the 2016 revision, in order to ensure coordination, further reinforced the role of the 'impartial chairpersons', a kind of mediation institute within the Industriavtalet, introduced from the outset, and contained a revised negotiation procedure. The signatory parties are also supposed

to work for the implementation of the industry norm in the labour market as a whole. Together with another 13 negotiation agreements (2018), among them the Municipal Negotiating Agreement, including schools, they cover 26 per cent of all employees and about 30 per cent of those covered by collective agreements (MI 2019: 40–41). Neither banking nor retail trade are covered.

Examples of substantive agreements include the collective agreements on supplementary insurance (cf. Table 28.5), such as those concluded between SN and LO/PTK. At the peak level there are substantive agreements on work injury insurance in addition to the statutory work injury insurance (LO, PTK); parental benefit supplement in addition to statutory parental insurance (LO); sickness insurance in addition to statutory sickness insurance (LO, PTK); occupational pension (LO, PTK); group life insurance: compensation to survivors in the event of death of a wage earner or salaried employee (LO, PTK); and career readjustment insurance in the event of work shortages, including severance pay and career readjustment support (LO, since 2004, and PTK, since 1973). Since 2000, LO and the SN association Swedish Staffing Agencies (Bemanningsföretagen) have concluded agreements for staffing agencies. White-collar unions also have such agreements.

Agreements at industry level regulate pay and pay increases (some are figureless), minimum wages, overtime pay, the length and scheduling of working hours, length of period of notice (if there is no collective agreement it is regulated by the Act on Employment Protection (Lagen om anställningsskydd, LAS), extension of the period of parental benefit supplement, holiday pay supplement, in addition to the holiday pay regulated by the Annual Leave Act (Semesterlagen), the use of temporary agency workers, partial retirement pension and flexible pension (2017) and the working environment. A special variant were the 2009 crisis agreements. Industrial agreements are implemented by workplace agreements, which may also cover such issues as skills development.

## Conclusions

Swedish industrial relations are distinguished by a high degree of self-regulation. There is no statutory minimum wage, but there is high coverage of collective agreements without state extension mechanisms. There are also very few legal restrictions on industrial action. The relatively new mediation office MI is equipped with more powers than its predecessors. In contrast to Norway, compulsory arbitration does not exist in Sweden. MI may resort to enforced mediation, but only in industries without negotiation agreements. The most important of them, the 1997 Industry Agreement, is based on stricter competitiveness-oriented horizontal coordination of the traditional manufacturing-led pattern-bargaining. This is implemented across the ‘collar’ line and across the whole economy by means of the norm-setting role of the ‘industry mark’. MI is supposed to work to maintain this norm. Although not without internal tensions SN and LO aspire to the articulation and coordination of their affiliates in accordance with the ‘mark’.

The balance of power between well-organised labour market parties and the awareness that conflicts can easily escalate into major trials of strength contribute to the low frequency of strikes and lockouts in Sweden. Union density is declining among blue-collar workers, above all in the private service sector, but the average rate of unionisation is still high. A growing share of employees are covered by figureless agreements; these are exclusively white-collar workers, mainly in the public sector. Also, the number of agreements without fall-back provisions or individual guarantees, or both, has increased. These developments challenge the industry-norm, which still has a major impact on Swedish wage formation. Some categories of low-paid blue-collar and white-collar employees believe that the industry norm makes it difficult to raise their wages relative to other groups, although a few have been fairly successful. Many female-dominated occupations still are paid below male-dominated occupations at a similar level of qualifications. Another challenge is that men on average are better paid than women even in the such same occupation.

The prospects for the Swedish model of wage formation, based on a high degree of self-regulation of well-organised employers and employees involved in collective bargaining at industry and workplace levels, appear relatively bright, despite several challenges, such as growing tensions between actors representing services and manufacturing industry, respectively: within the employer confederation SN between *Almega* (services) and *Teknikföretagen* (manufacturing) and within LO between 6F (building workers and so on) and unions in manufacturing such as IF Metall. *Almega*, calling into question the industry norm, is a strong proponent of figureless agreements. The expansion of such agreements, most of them in the public sector and exclusively among white-collar workers, might in the future challenge the industry norm if they result in higher wage increases than in manufacturing. The unions concluding such agreements aspire to obtain more than the industry norm, while employers consider them to be an instrument for increased wage differentiation without surpassing the industry norm.

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## Abbreviations

<b>6F</b>	Fackförbund i samverkan (Trade Unions in Cooperation; the LO unions for building workers, electricians, maintenance workers, painters and service and communication workers)
<b>BAO</b>	Bankinstitutens Arbetsgivareorganisation (Employers' Association of Swedish Banking Institutions)
<b>Byggnads</b>	Svenska Byggnadsarbetareförbundet (Swedish Building Workers' Union)
<b>FI</b>	Facken inom industrin (Manufacturing Unions)
<b>Handels</b>	Handelsanställdas Förbund (Commercial Employees' Union)
<b>IF Metall</b>	Industrifacket Metall (Industrial Union Metal)
<b>Kommunal</b>	Svenska Kommunalarbetareförbundet (Swedish Municipal Workers' Union)
<b>Livs</b>	Svenska Livsmedelsarbetareförbundet (Swedish Food Workers' Union) LO Landsorganisationen i Sverige (Swedish Trade Union Confederation)
<b>LS</b>	Lärarnas samverkansråd (Teachers' Collaboration Council)
<b>MI</b>	Medlingsinstitutet (National Mediation Office)
<b>OFR</b>	Offentliganställdas Förhandlingsråd (Public Employees' Negotiation Council)
<b>PTK</b>	Förhandlings- och samverkansrådet, formerly: Privattjänstemannakartellen (Bargaining and Cooperation Council; formerly: Bargaining Cartel of Private Sector White-collar Workers)
<b>Saco</b>	Sveriges Akademiernas Centralorganisation (Swedish Confederation of Professional Associations)
<b>SAF</b>	Svenska Arbetsgivareföreningen (Swedish Employers' Confederation)
<b>SAS</b>	Scandinavian Airlines System
<b>SI</b>	Sveriges Ingenjörer (Swedish Association of Graduate Engineers)
<b>SKL</b>	Sveriges Kommuner och Landsting (Swedish Association of Local Authorities and Regions)
<b>SN</b>	Svenskt Näringsliv (Confederation of Swedish Enterprise)
<b>SPF</b>	Svensk Pilotförening (Swedish Air Line Pilots Association)
<b>SSR</b>	Akademikerförbundet SSR (Union for Professionals)
<b>ST</b>	Fackförbundet ST (Union of Civil Servants)
<b>TCO</b>	Tjänstemännens Centralorganisation (Swedish Confederation of Professional Employees)

## Chapter 29

# United Kingdom: a long-term assault on collective bargaining

Jeremy Waddington

The election of the Conservative government led by Margaret Thatcher in May 1979 marked the end of the post-war consensus regarding the management of the UK economy and industrial relations. Between 1979 and 1997 successive Conservative governments generated a sea change in economic policy, centred on a neoliberal programme of reform in which trade unions and collective bargaining were viewed as unwanted rigidities in the labour market. With the stated objective of deregulating or ‘freeing’ the UK economy, the Conservative governments regulated trade union practice and activity on a scale not matched elsewhere in Western Europe. Although contemporary claims were made that there was no initial concerted intention to curb unions and collective bargaining (Prior 1986), between 1980 and 1993 no fewer than nine pieces of legislation were enacted, each of which restricted trade unions’ scope of action. In addition to weakening trade unions these measures promoted individual rather than collective rights and values, and encouraged employer prerogative, evidenced in the form of increasing derecognition of trade unions from the mid-1980s (Clayton 1989; Gall and McKay 1994). In summation, contrary to the situation prior to 1979, the legislation no longer accepted ‘the legitimacy of collective labour power’ (Wedderburn 1986: 84–85).

As a consequence of the neoliberal assault the period 1980 to 2017 saw the contraction of union density from 54.5 per cent to 23.2 per cent, while collective bargaining coverage fell from 70 per cent in 1980 to 26 per cent in 2016. Accompanying this neoliberal transformation of the economy was a sharp rise in inequality, which generated economic inefficiencies (Piketty 2014; Ostry *et al.* 2016). The rate of productivity growth remained lower than that achieved in the United Kingdom prior to 1980 and that attained by competitor countries (Cowen 2011), confirming that the presence of trade unions and collective bargaining does not necessarily inhibit productivity growth, as claimed by advocates of the neoliberal programme (Minford 1998). Furthermore, low levels of investment and training, weak employment protections to facilitate ‘hire and fire’ policies and the recommodification of labour characterise the UK economy (Keep *et al.* 2010; Glyn 2006; Gamble 2014). This chapter argues that the contraction of collective bargaining resulting from the neoliberal assault constitutes a diminution of a democratic structure of representation, which has generated little in terms of improved economic performance, the neoliberal stated intention, but has led to a polarised society within which the working lives of a significant number of workers have deteriorated markedly. To these ends the chapter reviews the industrial relations context and principal actors of UK industrial relations before assessing the six dimensions of collective bargaining identified by Clegg (1976). Table 29.1 outlines the impact of the neoliberal assault on the principal characteristics of collective bargaining, highlighting in particular the

Table 29.1 Principal characteristics of collective bargaining in the United Kingdom

Key features	1980	2000	2017
Actors entitled to collective bargaining	Trade union(s) together with employers' association(s) or company management		
Importance of bargaining levels			
Private sector	Industrial/company	Company	Company
Public sector	Industrial	Industrial	Industrial
Favourability principle/derogation possibilities	Yes		
Collective bargaining coverage (%)	70*	36**	26 (2016)***
Extension mechanism (or functional equivalent)	No extension mechanism or functional equivalent		
Trade union density (%)	54.5	29.8	23.2
Employers' association rate (%)	n.a.	n.a.	n.a.

Source: \* Milner 1995; \*\* Appendix A1.A; \*\*\* OECD (2018).

decline in collective bargaining coverage and trade union density, coupled with the decentralisation of collective bargaining in the private sector. These developments loom large in the analysis that follows.

## Industrial relations context and principal actors

Historically, the United Kingdom was characterised by voluntarist approaches to industrial relations in which employers and trade unions advocated a minimum of legal intervention. This characterisation became increasingly inappropriate during the 1960s and 1970s, however, when a range of legislation was enacted that impinged on industrial relations practices. The 1980s marked the end of voluntarism with the introduction of legislation intended to facilitate the implementation of the neoliberal programme.

Accompanying the programme of legislative reform introduced by the Conservative governments of 1979–1997 were four wide-ranging policies designed to consolidate the neoliberal political agenda: privatisation, the marketisation of public services, the abolition of the wages councils and steadfast Conservative government support for employers confronted by strike action. Although the Conservative government sold shares in companies that operated as private enterprises during the early years of its tenure,<sup>1</sup> it was only after 1984 that the sale of major public utilities took place, with the intention of sharply reducing the role of the state.<sup>2</sup> Integral to these privatisations was a contraction in, largely unionised, employment, the decentralisation of bargaining and

1. Prominent among the publically held shares sold off early during the period of Conservative government were those in Cable and Wireless and in British Petroleum.
2. Among the public utilities and services privatised were British Telecom, Sealink Ferries and British Transport Hotels (1984), British Gas (1986), British Airports Authority and British Airways (1987), British Steel (1988), Regional Water Authorities: England and Wales (1989), Regional Electricity Companies: England and Wales (1990), Electricity Generating Companies: England and Wales (1991), Scottish Electricity Companies (1992), British Rail (1994–1997).

the emergence of a more confrontational management style (Colling and Ferner 1995: 491–514).

In those services that remained within the public sector, measures to promote so-called internal markets took centre stage, whereby competition was introduced between the component parts of a particular public service. The outsourcing of elements of these public services, such as catering, cleaning and laundry services, added to the diminution of the public service ethos, a process accentuated by the withdrawal of the state from its role as ‘model employer’ (Winchester and Bach 1995: 304–334).

Wages councils originated in the Trades Boards Acts of 1909 and 1918 and were intended to provide a floor of protections, including pay and holidays, to workers in industries in which wage rates were particularly low.<sup>3</sup> Almost continual expansion of the coverage of these arrangements led to the Wages Council Act 1945, at which point ‘approximately one in four of all workers were covered’, with trade unionists negotiating on behalf of the workers covered (Deakin and Green 2009: 7). Because it regarded the wages councils as a rigidity in the labour market, the Conservative government dismantled them in 1993, thereby removing a floor of protections in a wide range of industries.<sup>4</sup>

The Conservative governments also offered support to employers confronted by strike action in strategic industries. In particular, the steel strike (1980), the miners’ strike (1984–1985) and the printers’ strike (1987) resulted in defeats for well-organised sections of the trade union movement that had a significant ‘demonstration effect’, as each defeat discouraged others from striking.

In the absence of any extension mechanism or a functional equivalent and confronted by the neoliberal assault, trade union membership collapsed from 54.5 per cent in 1980 to 30.7 per cent in 1997 (Waddington and Whitston 1995; DBEIS 2018), while the coverage of collective bargaining fell from 70 per cent to 36 per cent over the same period (Milner 1995; Appendix A1.A).

The Labour governments in office between 1997 and 2010 maintained many of the neoliberal policies of the previous Conservative administrations (Murray 2003; Ali 2018) in pursuit of the so-called ‘third way’. In his outline of this approach the leading academic proponent of the ‘third way’ did not consider it necessary to include any analysis of trade unions or collective bargaining (Giddens 1998). The Conservative legislation regulating the activities of trade unions remained largely in place, thereby restricting their scope of activity, a point acknowledged by Prime Minister Blair prior to the election in 1997. He stated that ‘the changes that we do propose would leave British law the most restrictive on trade unions in the western world’ (Blair 1997). In 1999 the Labour government reversed the United Kingdom’s opt-out from the European Social Charter. Two measures, however, impinged more directly upon collective bargaining.

3. Initially the Trades Boards Act of 1909 established trades boards in four industries: ready to wear and bespoke tailoring, paper box making, lace finishing and chain making.
4. In practice the process of dismantling the wages councils comprised three stages: initially in 1986 the power to set statutory paid holiday entitlements was removed, followed in 1993 by the abolition of 26 wages councils and in 2013 by the abolition of the wages council for agriculture.

First, the Employment Relations Act 1999 introduced new legislation on trade union recognition, which was intended to formalise the procedure whereby trade unions obtained recognition from employers. At best, however, the legislation had an impact on slowing the rate of decline in trade union density, which fell from 30.7 per cent in 1997 to 26.6 per cent in 2010 (DBEIS 2018). Second, the introduction of a national minimum wage in 1999 set a floor beneath which wages should not fall and, for the first time in the United Kingdom, set a minimum wage of national coverage. As the level of the national minimum wage failed to provide satisfactory living standards, more recent campaigns have focused on a UK living wage (Prowse and Fells 2016; Sellers 2017). Neither the recognition legislation nor the initiatives regarding minimum or living wages promoted the coverage of collective bargaining, which fell from 36 per cent in 1997 to 31 per cent in 2010 (Appendix A1.A).

A hung parliament resulted from the general election in 2010, the outcome of which was a Conservative-led coalition government.<sup>5</sup> The coalition implemented a wide-ranging neoliberal austerity programme in response to the financial crisis of 2007–2008, which resulted in lower living standards, particularly for those on the lower rungs of the earnings distribution, and deep financial cuts to public services. In addition, collective bargaining in the public sector was effectively suspended as a pay freeze was implemented. The pay freeze continued until 2017. Subsequent general elections in 2015 and 2017 returned Conservative governments,<sup>6</sup> while a referendum in 2016 resulted in a narrow majority favouring the United Kingdom's exit from the European Union. The principal legislative change during this period directly relevant to collective bargaining was the enactment of the Trade Union Act 2016, which continued the pattern of 1980–1993 in imposing yet further restrictions on trade union activity, notably regarding strike ballots (Tuck 2018; Darlington and Dobson 2015). Trade union membership declined from 26.6 per cent in 2010 to 23.2 per cent in 2017, while the coverage of collective bargaining contracted from 31 per cent in 2010 to 26 per cent in 2016 (Appendix A1.A).

While neoliberal collective labour legislation restricted the scope for trade union activity, after the 1960s a range of individual labour law measures provided some protections regarding, among other things, sex, race and disability discrimination; parental and maternity rights; for part-time workers; health and safety; and equality. Employment tribunals, initially called industrial tribunals, were set up to provide a relatively cheap means whereby disputes could be settled informally and were given the power to hear unfair dismissal claims in 1971. The Coalition government (2010–2015) reformed the procedures and introduced fees for those taking cases to an employment tribunal. The intention of the Coalition was to reduce the number of claims and thus undermine the range of individual rights available to workers. While the number of claims fell sharply after the legislation was enacted in 2013, the Supreme Court ruled in 2017 that the government had acted unlawfully and unconstitutionally in introducing fees and the fee system was abandoned. It remains to be seen whether the

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5. The Conservative Party was in coalition with the Liberal Democratic Party between 2010 and 2015.

6. Prime Minister May called the 2017 general election in an attempt to improve her parliamentary majority and thus strengthen her hand in the Brexit negotiations. Contrary to many expectations the Conservative position was weakened with the consequence that an alliance between the Conservative Party and the Democratic Unionist Party of Northern Ireland was negotiated to ensure a parliamentary majority.

ruling of the Supreme Court will result in an increased number of employment tribunal claimants.

Throughout the period since 1980 the actors authorised to engage in collective bargaining are individual companies, employers' organisations and trade unions. Most UK trade unionists are represented by trade unions affiliated to the Trades Union Congress (TUC). The TUC is the only UK trade union confederation. Similar to the trade union confederation in Germany, the Deutsche Gewerkschaftsbund (DGB, see Chapter 12), the TUC has very limited constitutional authority over affiliated trade unions, with the single exception of the capacity to expel affiliates. While TUC affiliates have always retained control over collective bargaining and excluded the TUC from involvement, during the 1960s and 1970s the TUC coordinated trade union engagement in the burgeoning range of tripartite institutions established by both Conservative and Labour governments. The Thatcher-led governments of the 1980s dismantled these tripartite institutions as part of the sea change in economic management, with the result that the trade union movement was effectively excluded from involvement in macroeconomic policy formulation. The Labour governments of 1997–2010 did not restore the tripartite institutions.

Most major unions are among the 49 affiliated to the TUC in 2018. The principal exceptions are the Royal College of Nursing and the British Medical Association. It should be noted, however, that there are about 130 trade unions listed by the Certification Officer, meaning that the TUC represents the majority of trade unionists, but a minority of trade unions. There is currently no single dominant 'type' of trade union in the United Kingdom. Among today's larger unions UNITE and the General, Municipal, Boilermakers and Allied Trade Union (GMB) are multi-industry unions with membership in both the private and public sectors, UNISON is a multi-industry union with membership concentrated in the public sector, while the Union of Shop, Distributive and Allied Workers (USDAW) organises members in retail and commerce.<sup>7</sup> Eight of the remaining nine unions with more than 100,000 members are occupational unions representing teachers, doctors or nurses. The ninth is the Communication Workers' Union, which organises workers in post, cable and telephones.

The Confederation of British Industry (CBI) is the principal employers' organisation. Similar to the TUC, the CBI does not have, and has never had, a collective bargaining function, although it participated in tripartite institutions during the 1960s and 1970s. The CBI accepts both individual companies and trade and employers' associations as members.<sup>8</sup> In all, the CBI claims to represent 188,500 businesses, which employ about one-third of employees in the private sector. Reflecting the diminution of the coverage of industrial collective bargaining, the number of employers' associations in the United Kingdom fell from 514 in 1976 to 97 in 2013–2014, while over the same period the membership declined from 210,615 to 93,585 employers (Goberman *et al.* 2018).

7. UNITE and UNISON are not acronyms. UNITE and the GMB are general trade unions with membership in both the public and private sectors. In both unions the private sector membership is larger than that of the public sector. UNISON also organises in both the private and public sectors, with the majority of members in public sector.

8. The CBI makes no distinction between trade associations and employers' associations in its membership details.

Only 13 per cent of contemporary employers' associations conduct collective bargaining (Goberman *et al.* 2018).

Employers' associations in the private sector until the 1980s tended to represent companies on an industrial basis and were engaged in industrial collective bargaining to settle terms and conditions of employment and administered dispute procedures. In order to undertake these tasks many employers' associations developed an infrastructure to bring together the views of member companies and to conduct negotiations. Throughout the 1960s and 1970s the pay rates set by many private sector employers' associations, particularly in engineering, automobiles and ship building, were subject to wage drift, as local supplementary pay rates negotiated by company management and shop stewards improved the rates set through industrial bargaining. The emergence of 'two systems' of collective bargaining, identified by the Donovan Report (1968), constituted a challenge for employers' associations and national trade unions, as local supplementary bargaining was relatively autonomous from both. During the 1970s the number of companies leaving employers' associations to conduct collective bargaining independently increased, but the 'collapse of associational activity among employers' (Crouch 1993: 269) in the United Kingdom took place during the 1990s when, with the support of the then Conservative government, many employers' associations withdrew from industrial collective bargaining, marked in 1990 by the abandonment of industrial bargaining in the engineering industry by the Engineering Employers' Federation. Although the character of industrial bargaining in the public sector changed markedly between 1980 and 2017 (see below), such bargaining remained in place. Employers' associations thus continue to conduct collective bargaining in many segments of the public sector.

## Extent of bargaining

As demonstrated above, the decline in collective bargaining coverage in the United Kingdom commenced during the 1980s. Table 29.2 shows that the decline in coverage continued between 1998 and 2017.<sup>9</sup> Depending on the data source used, the collective bargaining coverage declined from 40/35 per cent in 1998 to 26 per cent in 2017, according to the Labour Force Survey (LFS). Coverage is markedly lower in the private sector than in the public sector, but in both sectors it declined after 1998.

Data on the proportion of workplaces covered by collective bargaining elaborate the extent of contraction of collective bargaining. In the private sector, for example, collective bargaining covered 24 per cent of workplaces in 1998 but only 12 per cent in 2011 (Cully *et al.* 1999; van Wanrooy *et al.* 2013). In the private sector the contraction of collective bargaining has been accompanied by a rise in unilateral management pay setting, either by managers at senior levels within the organisation or by managers based in the workplace (Brown *et al.* 2009). In 2011 at private sector workplaces with five or more employees higher level management in organisations set pay at 42 per

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9. The year 1998 is used as the reference date in this chapter as a comprehensive Workplace Employment Relations Survey (WERS) was conducted during the year. Data drawn from this survey inform the analysis of each of the dimensions of collective bargaining identified by Clegg (1976).

Table 29.2 Coverage of collective bargaining (% of employees)

	1998	2004	2011	2017*
<b>Workplace Employment Relations Survey (WERS)</b>				
All workplaces	40	28	23	
Private sector	26	16	16	
Public sector	82	68	44**	
<b>Labour Force Survey (LFS)</b>				
All workplaces	35	35	31	26
Private sector	22	21	17	15
Public sector	75	71	68	58

Notes:

\* The WERS survey for 2011 is the most recent, hence no data are available for 2017.

\*\* This figure may overstate the extent of decline as a public sector pay freeze was in operation when the survey was conducted, which may have prompted respondents to state that there was no collective bargaining (see van Wanrooy *et al.* 2013: 84).

cent of workplaces and management based in the workplace set pay at 53 per cent of workplaces (van Wanrooy *et al.* 2013:83). In short, unilateral management pay setting has largely replaced collective bargaining in the private sector.

Four principal, but not mutually exclusive explanations of the protracted decline in collective bargaining coverage have been identified (Brown *et al.* 2009; Marginson 2012, 2015). The first explanation emphasises the shift in the composition of the labour force. In particular, the long-standing decline of manufacturing employment and the growth of employment in private sector services is effectively contraction in an area of relatively high collective bargaining coverage and expansion in an area of relative weakness. Similar shifts from areas of relative strength to weakness have been concurrent with the growth of private sector services in the form of a reduction in the average size of workplaces; the growth of part-time, temporary and agency employment; and the shift from manual to white-collar employment. Estimates suggest that around 10 per cent of the contraction in collective bargaining coverage can be attributed to these shifts in labour force composition (Brown *et al.* 2009).

A second explanation focuses on changes in the pattern of private sector ownership. WERS data suggest that the growth of foreign ownership and privatisation have exacerbated the rate of decline of collective bargaining, albeit in different ways. Privatisation appears to have had a direct effect insofar as privatised organisations are likely to eliminate collective bargaining for some or all of their employees (Bach 2010). Foreign ownership, in contrast, is viewed as having had an indirect effect in that foreign-owned companies have tended to conduct single-employer bargaining in preference to multi-employer bargaining (Edwards and Walsh 2009), thus prompting imitation among their British-owned counterparts, which initially encouraged the decline of multi-employer bargaining, and latterly a decline in bargaining coverage.

A third explanation of the decline in collective bargaining coverage focuses on the intensification of competitive pressures in product markets, which lead employers to abandon collective bargaining in order to secure pay flexibility and enhanced profitability (Brown *et al.* 2009). While these researchers identify the intensification of competitive pressures in product markets as the most influential factor on the decline in the coverage of collective bargaining, their analysis has been questioned on the grounds that the model employed is theoretically flawed, particularly regarding the extent of competition, the specification of the tested variables and the interpretation of the results (Marginson 2012). It thus remains to be seen how influential, if at all, the intensification of competitive pressures in product markets has been on the decline in collective bargaining coverage.

A fourth explanation rests upon the character of legal intervention and the changes in public policy towards collective bargaining and trade unionism that commenced in 1979. The impact of this explanation has been assessed above. Two additional points are apposite at this juncture, however. First, legislative and policy changes created the circumstances in which employers could act with considerable autonomy. Political change thus enabled employers to act to reduce the coverage of collective bargaining. Second, without a substantive change in the legislative framework it is difficult to imagine how trade union action alone can reverse the decline in collective bargaining coverage.

## Level of bargaining

In general terms, countries with high collective bargaining coverage tend to have multi-employer industrial bargaining systems. Such systems were in place in the United Kingdom during the 1960s and 1970s and it is no surprise that the decline in UK bargaining coverage is associated with the decline of multi-employer industrial collective bargaining and, if collective bargaining is retained, the rise of company bargaining. Three introductory points are noteworthy. First, the voluntarist tradition that prevailed until the 1970s resulted in relatively weak legal support for multi-employer industrial bargaining compared with other Western European countries (Sisson 1987: 109–136). Extension mechanisms were absent, for example, as was legal enforcement of settlements. Second, the Fair Wages Resolution was rescinded as part of the neoliberal assault, thereby weakening, if not undermining, multi-employer bargaining in segments of the public sector.<sup>10</sup> Third, in promoting individualised pay setting practices in the public sector, the state signalled a preferred course of action for private sector employers to imitate. The decentralisation of collective bargaining in Britain is thus integral to the neoliberal project.

Given the marked differences between the private and public sectors vis-à-vis the level of bargaining, the two sectors are considered separately. Successive WERS chart the decline of multi-employer bargaining: in 1984, 18 per cent of private sector workplaces

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10. Since 1891 the Fair Wages Resolution had required private sector holders of public service contracts to sustain the relevant terms of sectoral or occupational collective agreements.

set pay for some workers by multi-employer bargaining, a proportion that had declined to 9 per cent by 1990, to 3 per cent in 1998 and 2004, and to 2 per cent in 2011.<sup>11</sup> From around 150 multi-employer industrial agreements concluded during the mid-1980s, there are now around 30 agreements, concentrated in construction and the offshore energy sector (Emery 2015). During the latter half of the 1980s it is estimated that about one million workers moved out of the coverage of multi-employer industry-level agreements (Brown and Walsh 1991). Where collective bargaining remains in the private sector it has thus been decentralised to company level and, within some of the larger or more diverse companies, to group or divisional level.

In contrast, multi-employer bargaining remains relatively resilient in the public sector, with 58 per cent of workplaces reporting that pay for some workers was set by multi-employer bargaining in 2004 and 43 per cent in 2011 (van Wanrooy *et al.* 2013: 83). Two factors account for this recent decline. First, Pay Review Bodies<sup>12</sup> set pay at a larger proportion of workplaces in 2011 (35 per cent) than in 2004 (28 per cent). Second, the 2011 WERS was conducted when the public sector pay freeze was in force, which may have led survey respondents to report that employees were not covered by collective bargaining (van Wanrooy *et al.* 2013: 84).

Many of the larger groups of public sector workers have their pay set by multi-employer industrial bargaining. These groups include workers in local government, the National Health Service, education, community and youth work and the police. There is evidence, however, of debate about the relationship between national and local decision-making within the framework of public sector multi-employer industrial bargaining (Bach and Stroleny 2014). Variations in local pay rates for teachers have been encouraged by government changes to the pay system and the exclusion of Academies and ‘free schools’ from the national collective agreement. This weakening of national public sector multi-employer bargaining has been compounded by extensive outsourcing of services from the public sector, such as cleaning, catering and laundry, which effectively removes workers from coverage and transfers them to the private sector, where there is no guarantee of collective bargaining.

## Scope of bargaining

An employer in Britain has a clear legal obligation to negotiate aspects of the employment contract only when a trade union(s) has obtained recognition by means of the statutory procedure. The scope of bargaining is thus an indicator of the depth of recognition offered by an employer to a trade union (Brown *et al.* 1998). Similarly, the extent to which work is regulated by collective bargaining is influenced by the relative power of the employer and trade union. As a result of the shift in power towards employers promoted by the neoliberal reform programme, the scope of bargaining in Britain has

11. The data for 1984 to 2004 are based on workplaces with 25 or more employees, while those for 2011 are based on workplaces with five or more employees.

12. Pay Review Bodies are set up under statute to consider evidence from employers and trade unions before making a recommendation on a pay settlement to government. The government is not obliged to follow the recommendation made by a Pay Review Body.

Table 29.3 Scope of collective bargaining

	Public sector		Private sector		All workplaces	
	2004	2011	2004	2011	2004	2011
<b>All workplaces with union members</b>						
All seven items*	4	7	5	1	5	4
One to six items	59	57	39	36	47	45
None	37	36	57	62	49	51
Mean number of items	2.3	2.4	1.6	1.1	1.9	1.6
<b>Workplaces with recognised unions and members at the workplace</b>						
All seven items*	5	8	8	3	7	6
One to six items	62	58	63	61	63	59
None	33	35	28	37	31	35
Mean number of items	2.5	2.4	2.7	2.0	2.6	2.5

Note: \* The seven items are pay, hours, holidays, pensions, training, grievance procedures, and health and safety.

Source: van Wanrooy *et al.* 2013: 81.

been narrowed or 'hollowed out' and the emphasis in bargaining has shifted towards a competition-oriented agenda and away from an emphasis on productivity (Marginson 2015).

It was noted above that the extent of collective bargaining in the private sector remained broadly constant between 2004 and 2011. Table 29.3 shows that there was a marked contraction in the range of seven bargaining items negotiated by employers: pay, hours, holidays, pensions, training, grievance procedures and health and safety. This contraction demonstrates a hollowing out of the bargaining agenda. This process is illustrated by reductions in the proportion of workplaces with union members at which 'all seven items' and 'one to six items' were negotiated, a fall in the mean number of items negotiated and an increase in the proportion of workplaces at which none of the seven items were negotiated. While the proportions are higher at private sector workplaces with recognised unions and members present, the same pattern of development between 2004 and 2011 is observed. In other words, the scope of bargaining is narrowing irrespective of union recognition. In the private sector the proportion of workplaces at which unions were recognised and negotiations took place declined for each of the seven issues. In particular, negotiations over pay took place at 56 per cent of such workplaces in 2011 compared to 61 per cent in 2004, over hours at 37 per cent of such workplaces in 2011 compared to 50 per cent in 2004, and over holidays at 41 per cent of such workplaces in 2011 compared to 52 per cent in 2004 (van Wanrooy *et al.* 2013:81). To put this another way, in 2011 in the private sector where unions were recognised and trade unionists were present at the workplace, no negotiations took place at 44 per cent of workplaces over pay, at 63 per cent of workplaces over hours and at 59 per cent of workplaces over holidays.

By comparison with the private sector, the scope of bargaining in the public sector was relatively constant between 2004 and 2011. In particular, there was no change in the mean number of items negotiated both at workplaces with union members and at workplaces with recognised unions and members present. Furthermore, negotiations over pensions, training, grievance procedures, and health and safety took place at a larger proportion of workplaces at which unions were recognised in 2011 than in 2004, although the proportion of such workplaces at which pay, hours and holidays were negotiated declined (van Wanrooy *et al.* 2013: 81).

In addition to the hollowing out of the collective bargaining agenda there has also been a shift in the content of agreements towards items concerned with competitiveness of the enterprise. Studies of collective bargaining during the 1960s emphasised a basic ‘trade-off’ between productivity growth and pay within the enterprise, and the benefits that were thought to accrue to both bargaining parties (Flanders 1964; Jones and Golding 1966). While this view was contested (Cliff 1970), there is no doubt that these studies reflected the shift towards company bargaining and performance. Concurrent research explored similar issues within the context of piecework (Brown 1973). More recently, management has emphasised issues concerned with flexibility to increase competitiveness, whereas unions emphasise the maintenance of employment levels and/or the continuity of production (Marginson 2012). Working time flexibility; cost reducing measures, including reductions in bonuses, shift, unsocial hours and overtime allowances and new forms of labour usage are now pursued by management in return for commitments to maintain employment levels. While evidence from successive WERS suggests that pay remains the principal collective bargaining agenda item, it is apparent that issues involved in the trade-off between competitiveness and job security are assuming a greater significance (van Wanrooy *et al.* 2013: 25–48).

## Security of bargaining

Security of bargaining concerns the factors that determine trade unions’ collective bargaining role. The voluntarist tradition ensured a relatively weak legislative framework to secure bargaining compared with the other Western European countries considered in these volumes. Collective bargaining in Britain, as in Ireland (see Chapter 15), may be secured through the achievement of union recognition, which, once attained, places a legal obligation on employers to negotiate over aspects of the employment contract.

Legislation on union recognition has had a mixed history. No legislation was in place between 1980 and 1999 following the enactment of the Employment Act 1980, the first of the neoliberal measures designed to restrict trade unionism. A recognition procedure was reintroduced in the Employment Relations Act 1999, but currently the limitations of the statutory recognition procedure mean that it is rarely invoked (Moore *et al.* 2013).

The absence or limitations of recognition procedures place great importance on trade union density in ensuring security of bargaining. Where trade unions are strong, they are more likely to secure bargaining arrangements and, as noted above, a wider bargaining

agenda. The absence of an extension mechanism further highlights the imperative of dense trade union organisation to sustain any security of bargaining arrangements. In this sense the United Kingdom and Ireland (see Chapter 15) are similar.

The converse of trade unions seeking recognition is employers seeking to derecognise unions and thus evade any obligation to bargain collectively. Derecognition was observed first on a relatively large scale during the mid- and late-1980s (Clayton 1989). During the early 1990s derecognition became more widespread as some employers, galvanised by the neoliberal regulatory regime, sought to eliminate union influence (Gall and McKay 1994). Derecognition tended to be concentrated in specific industries, such as ports and print and publishing, rather than becoming an economy-wide phenomenon. By the late-1990s derecognition was negligible (Gall and McKay 2000), in part due to a change in employers' strategies following the election of a Labour government in 1997. Derecognition was thus a contributory factor in promoting the contraction of collective bargaining, but, apart from a few specific industries, was not the principal factor.

More important than derecognition for the contraction of bargaining was the limited recognition secured by trade unions at newly established workplaces (Millward *et al.* 2000). Although there was an initial surge in recognition agreements following the enactment of the Employment Relations Act 1999, resulting in about 200,000 new trade union members (Gall 2007), recognition fell away rapidly thereafter (Moore *et al.* 2013). While many limitations of the legislation of 1999 have been documented (Ewing 2001), the point remains that collective bargaining in Britain is inherently insecure because it is over-dependent on recognition legislation and union density rather than, as elsewhere, an enforceable right to bargain linked to support for bargaining in the form of an extension mechanism and legally enforced collective agreements.

Also associated with the voluntarist tradition is the absence of a 'right to strike' in the United Kingdom, a feature found in many other EU Member States. Instead of a right to strike UK trade unions have immunity from known liabilities for organising industrial action, initially established by the Trade Disputes Act 1906. What constitutes lawful industrial action has been the subject of regular debate since 1906 and has been subject to numerous legislative changes. Given the objectives of the neoliberal reform programme it is no surprise that restricting industrial action and thus reducing security of bargaining has been a key policy objective. In particular, the Employment Act 1980 imposed restrictions on secondary industrial action and picketing and, furthermore, facilitated the dismissal of workers taking unofficial industrial action; the Employment Act 1982 reduced the range of immunities within which industrial action was lawful; the Trade Union Act 1984 required a majority of members to vote for industrial action in a secret ballot if the trade union was to retain immunity; the Employment Act 1988 introduced measures to make it easier for individual trade union members to take legal action against trade unions when industrial action was called; and the Trade Union Act 2016 imposed further restrictions concerning strike ballots (Davies and Freedland 1993; Tuck 2018). In short, the legislation limited security of bargaining by restricting the circumstances in which trade union immunities applied to the organisation of industrial action.

## Degree of control

The degree of control of collective agreements refers to the extent to which the terms and conditions agreed by collective bargaining correspond to actual terms and conditions of employment. In addition, the degree of control embraces issues concerned with the resolution of disputes concerning the interpretation of agreements.

During the 1960s and 1970s wage drift, particularly in the engineering and chemical industries, was marked, with the consequence that multi-employer bargaining in these industries did not set the terms and conditions applied at the workplace (Phelps Brown 1962). By 1978, for example, survey evidence suggested that less than 10 per cent of employers in the engineering industry and less than 25 per cent in the chemical industry regarded multi-employer agreements as the most important level of pay bargaining (Sisson 1987: 21). The absence of any mechanisms whereby the terms and conditions set by multi-employer industrial agreements were legally binding ensured that there were few limitations to wage drift. In practice, a tight labour market coupled with high rates of unionisation and strike activity strengthened the bargaining position of local union representatives.

Even though local managers agreed these supplementary terms and conditions, senior managers cited wage drift as the reason for their later withdrawal from multi-employer industrial bargaining (McKinlay and McNulty 1992; Zagelmeyer 2003: 212–18). The decentralisation of collective bargaining in the private sector to company or workplace level has effectively promoted closer correspondence between the terms agreed through collective bargaining and those in operation. This development took place during the 1980s and 1990s when unemployment was relatively high and trade union membership was in decline, thereby weakening the trade union bargaining position.

During the 1960s and 1970s wage drift in Britain was viewed primarily as a private sector issue that was most marked when labour markets were tight and the capacity of labour to mobilise was high. This explanation certainly applies to the period after the financial crisis of 2007–2008 when average weekly earnings rose at a slower rate than collectively agreed wages and the capacity of labour to mobilise was low. The Labour Research Department database, for example, shows that for seven of the eleven years after 2007–2008 earnings increases lagged behind collective agreements in the private sector. In other words, in the private sector there has been a negative earnings drift for the majority of the period since the financial crisis as the capacity of labour to mobilise is much more restricted compared with the 1960s and 1970s.

A second element of the control of collective bargaining concerns the procedures in place to resolve disputes over the content of agreements. In this context the impact of the neoliberal assault is readily observed. In 1998, 80 per cent of workplaces with a recognised trade union had a collective disputes procedure in place (Millward *et al.* 2000: 157). This proportion fell to 78 per cent in 2004 and to 75 per cent by 2011 (van Wanrooy *et al.* 2013: 159). Taking all workplaces into account, however, reveals a significant decline, reflecting the diminution in trade union coverage, as the proportion of workplaces with a collective disputes procedure declined between 2004 and 2011

from 40 per cent to 35 per cent, while the proportion of workplaces without a recognised trade union, but with a collective disputes procedure, fell from 29 per cent to 24 per cent over the same period (van Wanrooy *et al.* 2013: 159). Where a collective disputes procedure is in place, the majority (68 per cent) make provision for cases to be referred to an institution beyond the workplace and of these, 54 per cent prohibit industrial action before the matter is referred to the outside institution (van Wanrooy *et al.* 2013: 160). The institutions beyond the workplace to which reference should be made include the Advisory, Conciliation and Arbitration Service (ACAS) for conciliation, mentioned in 37 per cent of collective disputes procedures; ACAS for arbitration, 25 per cent; independent mediation, 11 per cent; a trade union, 38 per cent; and an employers' association, 13 per cent (van Wanrooy *et al.* 2013: 160).

## Depth of bargaining

Depth of bargaining refers to the extent to which local managers and local trade union representatives are involved in the formulation of claims and the subsequent implementation of collective agreements. As conceived by Clegg (1976: 8) the depth of bargaining assumes the presence of multi-employer industrial bargaining and is concerned to establish how the terms of industrial collective agreements are formulated and administered at the workplace. The decentralisation of collective bargaining to the company level in the private sector in Britain has thus tended to eliminate debate about the depth of bargaining as originally formulated.

Two caveats should be raised at this juncture regarding depth of bargaining. The first and most apparent is that multi-employer industrial bargaining remains in place throughout much of the public sector, with the consequence that the depth of bargaining as formulated by Clegg (1976) retains its significance. Second, where private sector collective bargaining has been decentralised to company level multi-industry trade unions attempt to coordinate their bargaining activities to achieve the same or similar outcomes in separate company-level negotiations within the same industry (Traxler and Mermet 2003). The depth of bargaining in this context thus has many similarities with Clegg's formulation, particularly regarding the generation of agreed negotiating targets. Arguing that trade unions attempt to coordinate their negotiating targets is not to assume that these targets are achieved through bargaining. Indeed, commentators view Britain as characterised by uncoordinated bargaining in the private sector (Marginson and Sisson 2004: 67–70). It is to argue, however, that trade unions bring together local representatives to identify bargaining targets that might be prioritised, on the understanding that these targets will not be achieved universally.

Industrial bargaining in the public sector and attempts to coordinate bargaining objectives within an industry in the private sector comprise essentially similar processes. Initially, local representatives and senior trade union officers meet to set targets and priorities for negotiation in both the public and private sectors. In some segments of the public sector this initial meeting may involve representatives from more than one trade union. Local government manual workers, for example, are represented by

UNISON, UNITE and the GMB. Irrespective of sector, the rates of increase of inflation and earnings are the principal indicators used to formulate a claim. In addition, in the private sector company profitability and productivity growth may also be taken into account. More recently, both trade union negotiators and employers have taken rises in the national minimum wage and the UK living wage into account in the course of wage bargaining (Sellers 2017).

In the public sector senior national officers then lead the bargaining, often in conjunction with a team that comprises some lay representatives. The outcome of these negotiations will be subject to a ballot of all members covered by the agreement. In the private sector, local representatives and/or full-time officers bargain at company level within the framework agreed at the initial meeting. The outcome of company bargaining is then put to a ballot of all members covered by the agreement. In both the public and private sectors a failure to agree may lead to strike action. Once an agreement is in place it is assumed that local representatives will act to ensure compliance. Recent evidence suggests that the capacity of trade unions to ensure compliance is open to question, as workplaces with recognised trade unions are increasingly unlikely to have an on-site lay representative (Charlwood and Forth 2009). In 2011, 34 per cent of workplaces with a recognised trade union had an on-site lay representative (van Wanrooy *et al.* 2013: 58), suggesting that the capacity of trade unions to monitor the operation of agreements at the workplace is compromised.

Public sector employers and private sector employers where multi-employer industrial bargaining remains in place will also meet prior to bargaining to set negotiating objectives, usually under the auspices of the relevant employers' association. In the public sector these objectives may be subject to constraints based in government policy. After 2010, for example, the Conservative-led coalition government implemented a series of annual pay freezes or pay caps, which effectively eliminated the need for employers to set negotiating objectives for pay. When private sector multi-employer industrial bargaining was widespread, cleavages between large and small and between domestic and international companies had to be overcome to set negotiating objectives. Currently, however, multi-employer industrial bargaining in the private sector tends to be found in industries comprising smaller companies (Emery 2015: 229–332), suggesting that such cleavages are no longer key to establishing a negotiating stance.

Exceptions to the above at which the depth of bargaining is limited are the Pay Review Bodies, established by government to set terms and conditions of employment for large numbers of public sector workers.<sup>13</sup> Each Pay Review Body takes evidence from government, employers and trade unions and then makes a recommendation. Government is not obliged to implement the recommendation, however, and trade unionists may take industrial action if they are dissatisfied with the outcome. In the context of the depth of bargaining Pay Review Bodies are more technocratic exercises than traditional collective bargaining insofar as the objective of the parties, government, employers and trade unions is to make a case to convince the Pay Review Body rather

13. There are six Pay Review Bodies, which cover about a quarter of the 5.8 million public sector workforce. Pay Review Bodies operate for Doctors and Dentists, Armed Forces, Nursing and Other Health Professions, Prison Service, School Teachers and Senior Salaried Staff.

than engage in a direct exchange with a competing party. The implementation of a Pay Review Body Recommendation, however, requires the same presence of local representatives to ensure compliance.

## Conclusions

The aim of the neoliberal strategy is to deregulate or 'free' markets by removing rigidities in the labour market, including trade unions and collective bargaining. A wide-ranging series of legislative measures restricted trade unionism, with the consequence that the coverage and scope of collective bargaining contracted. A corollary of restricting trade union activity was the promotion of employer prerogative. Employers took the opportunity to decentralise collective bargaining, to restrict the scope of bargaining and to establish a greater degree of control over collective agreements, where they remain in place. The decline in collective bargaining coverage is associated with a rise in the proportion of workplaces at which either senior or local managers set pay unilaterally.

The neoliberal programme has thus effectively removed the democratising processes associated with collective bargaining from many public sector workplaces and the majority of private sector workplaces in Britain. Evidence from successive WERS demonstrate that the presence of trade unions and collective bargaining is associated with more intense communication between managers and workers, and greater trust between the parties. Furthermore, there is no consistent evidence to suggest that human resource management techniques are sufficient to generate the communication and trust lost as a result of contracting collective bargaining (Sisson and Purcell 2010). In short, the British workplace has become less democratic and more subject to unilateral management decision-making as a result of the neoliberal programme. This shift is associated with higher levels of inequality and poverty among those in work, and a lower wage share for labour. The increase in productivity growth sought by proponents of the neoliberal programme has also not materialised.

Governments elected after 1997, irrespective of their composition, have retained the principal elements of the neoliberal programme. The Labour governments of 1997 to 2010 led by Prime Ministers Blair and Brown, for example, retained the measures that restricted trade union activity that were enacted between 1980 and 1993 by successive Conservative governments. The contraction in the coverage and scope of collective bargaining, coupled with the decentralisation of bargaining were thus features of the entire period 1980 to 2017, albeit occurring at different annual rates. While trade unions have invested considerable resources in organising new members, these initiatives, at best, have slowed the rate of decline rather than reversed it. At the time of writing it is difficult to imagine a reversal of the effects of the neoliberal programme without state intervention to promote the coverage of both trade unionism and collective bargaining.

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All links were checked on 29 November 2018.

## **Abbreviations**

<b>ACAS</b>	Advisory, Conciliation and Arbitration Service
<b>CBI</b>	Confederation of British Industry
<b>GMB</b>	General, Municipal, Boilermakers and Allied Trade Union
<b>LFS</b>	Labour Force Survey
<b>TUC</b>	Trades Union Congress
<b>USDAW</b>	Union of Shop, Distributive and Allied Workers
<b>WERS</b>	Workplace Employment Relations Survey

## Chapter 30

### Conclusion: towards an endgame

Torsten Müller, Kurt Vandaele and Jeremy Waddington

Extensive collective bargaining coverage is an integral feature of a social market economy. Within western Europe, a high coverage rate was established in the period 1950 to 1980, based primarily, although not exclusively, on multi-employer industrial bargaining. The economic policies associated with social market economies were abandoned or downplayed, to different degrees, from the 1980s onwards and neoliberal economic and social agendas adopted. This involved an increasing asymmetry between market-liberalising and market-correcting measures, which, in the field of industrial relations, were aimed at improving employers' capacity to adapt flexibly to changing market conditions; or, as Baccaro and Howell (2017) put it, at expanding employers' discretion to determine wages and other terms and conditions of employment. This is not to argue that neoliberal economic policies had the same effects throughout western Europe, but certainly that trade union organisation and collective bargaining were viewed through a very different lens after 1980. Whereas previously there had been a broad understanding that trade unions and collective bargaining are an integral part of a social market economy, they are now viewed primarily as institutional 'rigidities' that hamper employers' discretion.

The review of western Member States of the European Union (EU) included in this publication indicates a dominant pattern of bargaining decentralisation and, in some cases, the fragmentation of industrial bargaining resulting from the adoption of neoliberal policies. In contrast, in central and eastern Europe collective bargaining was absent before 1990. The perceived imperative of EU membership in central and eastern European countries after 1990 was associated with attempts to establish collective bargaining systems. Although the rhetoric accompanying these processes focused on systems based on industrial bargaining, the results tended to rely on company bargaining and, compared with western Europe, relatively low bargaining coverage. Where (cross-)industrial bargaining was established, in Romania for example, it was relatively short-lived. In some cases, social dialogue rather than collective bargaining prevailed, as neoliberal-oriented states attempted to co-opt nascent labour movements to particular reform agendas. While the pursuit of neoliberal policy agendas certainly limited the development of industrial bargaining in central and eastern European countries, employers' reluctance to engage in such bargaining and/or to establish viable employers' associations compounded their effects.

Within the EU there were thus very different trajectories of change. What is apparent from every one of the country chapters that comprise this publication is that European-level policymakers did nothing to arrest the decline of social market economies in

western Europe. To the contrary, as part of the Troika, consisting of the European Commission, the European Central Bank and the International Monetary Fund, European policymakers accelerated the shift away from the social market economy in Member States particularly hard hit by the financial crisis and the subsequent sovereign debt crisis. Similarly, in central and eastern European countries, European policymakers participated in attempts to create multi-employer bargaining systems, but to no wide-ranging effect. The failure of European-level policymakers to help defend the social market economy in western Europe and to establish institutions to create it in central and eastern European Member States calls into question the viability of EU-level policymaking in the crucial area of collective bargaining, an area that is supposed to distinguish European economies from others elsewhere in the world.

The sections below examine the main developments and long-term trends in the six dimensions of collective bargaining identified by Clegg (1976). The analytical focus is on the broad contours within systems of collective bargaining at country level. Industrial and sectoral variation is thus downplayed. Each bargaining dimension is discussed by reference to the 28 Member States of the EU. If no specific data source is provided, the information provided in the sections below is drawn from the country chapters.

Throughout, cross-references are made to other dimensions to illustrate the interlinkages between dimensions. The level of bargaining, for example, is closely linked to the scope of agreements, as different issues may be dealt with at different levels of bargaining and responsibilities between levels may change over time. The level of bargaining is also linked to the extent of bargaining. More centralised systems tend to be characterised by wider bargaining coverage than decentralised systems based on company-level bargaining. This also means that the coverage of agreements concluded at the various levels can be used as an indicator of the relative importance of different levels. Furthermore, the level of bargaining is linked to the security of bargaining because the 'rules of the game' define the responsibilities of each level and the mode of vertical coordination between the different levels can take different forms. These rules can be based on autonomous regulation by the bargaining parties via collective agreements or on legislation enacted by the state. Because the specific shape of the collective bargaining system is always an expression of the previous or existing power relationships between trade unions, employers and the state, the level of bargaining also depends on the strength and coverage of trade unions and employers' organisations and their strategic preferences.

If there is an overarching argument that draws together material from many of the 28 Member States of the EU it is that the assault on collective bargaining born of the implementation of neoliberal economic and social policies has substantially weakened the regulatory capacity of collective bargaining. Whereas in much of the western European countries private sector wages were once largely taken out of competition by means of multi-employer industrial bargaining, this is no longer the case. In central and eastern European Member States, wages were never taken out of competition. The 'endgame' to which our title refers concerns the rise of unilateral managerial pay setting and increasing wage inequality, reflecting the reduced impact of collective bargaining on Member State economies. Based on the following analysis of the key trends in each

of Clegg's six dimensions, the policy issue addressed in the final section of this chapter is, how can collective bargaining's declining influence be reversed?

## Level of bargaining

The level of bargaining refers to the practice of bargaining at different levels, cross-industry, sector, industry and company level, and the relationship between these levels. The latter aspect refers to the various mechanisms of vertical coordination defining the competencies and prerogatives at each level. Because vertical coordination involves a two-way relationship of mutually interdependent bargaining levels, the term 'articulation' is used when referring to this dimension of coordination (Marginson 2015: 98). Similar to the approach adopted throughout, the term 'sectoral bargaining' refers to negotiations that cover one of the following three sectors: manufacturing, public services and private services. Each of these three sectors comprises different industries: manufacturing, for example, includes automobiles, chemicals, ICT, textiles, food and many others.

The level of bargaining is an important analytical dimension when describing the basic architecture of a collective bargaining system. In a nutshell, centralised systems with multi-employer arrangements in which collective bargaining takes place primarily at (cross-) industry level can be distinguished from decentralised single-employer systems within which the company level is the most important place for negotiations. The main trend across Europe since the 1980s is decentralisation, involving a shift from multi-employer to single-employer bargaining arrangements (Visser 2016). While the country chapters confirm the general trend towards more decentralised bargaining arrangements, they also show substantial variation between EU Member States. The analytical focus here is thus, first, on the variation in national developments regarding the intensity and patterns of decentralisation processes; and second, on identifying the different factors that account for national differences.

Decentralisation is understood as the devolution of bargaining competences and regulatory capacity to lower levels. This can involve shifts from cross-industry to industry or company level, or, as is more often the case, from industry-level to company-level bargaining. The regulatory capacity at each level can be measured quantitatively in terms of the number of agreements concluded and/or the coverage each level contributes to total collective bargaining coverage. Regulatory capacity can, however, also be measured qualitatively in terms of the scope of issues dealt with at each level. Decentralisation therefore does not necessarily decrease the regulatory capacity of the collective bargaining system as a whole. In principle, from a quantitative perspective, the decreasing number/coverage of industrial agreements may be compensated by an increase in the number/coverage of company-level agreements, so that the overall coverage stays the same. By the same token, from a qualitative perspective, decentralisation may result in industrial agreements being increasingly relegated to the level of framework agreements that leave the actual determination of wages and other terms and conditions to company-level agreements.

For these reasons decentralisation needs to be distinguished from decollectivisation. Whereas decentralisation may lead to a relative increase of regulatory capacity of lower levels either quantitatively or qualitatively, decollectivisation refers to a process in which the formal devolution of bargaining competences to lower levels results in a decrease of regulatory capacity. Put differently, decollectivisation denotes the general weakening of collective bargaining as a tool to regulate the employment relationship, regardless of the level at which it takes place. Decollectivisation is often associated with the replacement of industrial or company-level collective agreements by unilateral management decision-making or by negotiations between management and individual employees.

Decentralisation can take two different forms: organised or disorganised (Traxler 1995). Organised decentralisation occurs when the devolution of regulatory capacity is guided by some kind of articulation mechanism that defines the terms and conditions under which negotiations at lower levels take place. The mode of articulation determines the degree to which higher-level bargaining parties retain some degree of control over lower-level bargaining processes and the extent to which (cross-)industrial agreements maintain their capacity to prescribe the content and procedure of subsequent negotiations conducted at lower levels (Marginson 2015: 100). There are two principal articulation mechanisms, which can be state-supported or autonomous. First, the favourability principle establishes a clear hierarchy between bargaining levels and between collective agreements and the law. It stipulates that lower-level agreements can only improve the standards set in higher-level agreements and that no collective agreement, regardless of the level at which it is concluded, can undercut legal provisions (OECD 2017: 148). The favourability principle can either be based on law, as in France, Germany, Greece, Portugal, Spain and the central and eastern European countries, or it can be based on collective agreements, as in the Netherlands, the Nordic countries, Ireland and the United Kingdom. Second, strong multi-level trade union representation may ensure close links between trade union structures at higher and lower bargaining levels. The intensity of union links across different bargaining levels is closely linked to the institutional arrangements of employee interest representation. Union links across bargaining levels tend to be more developed in single-channel systems of interest representation than in dual systems of interest representation in which there is a clear division of labour between trade unions at (cross-)industry level and works councils at company level. A third, less common state-supported mode of articulation comprises indexation mechanisms (see Security of bargaining), which can be seen as a functional equivalent to cross-industry agreements in defining the scope of negotiations for lower-level wage bargaining.

In contrast, disorganised decentralisation occurs when lower-level negotiations are detached from higher-level negotiations and the devolution of bargaining competences is not, or only loosely, guided by articulation mechanisms. Disorganised decentralisation therefore often involves the replacement of higher-level agreements by lower-level ones and the weakening or abolition of existing articulation mechanisms. In the following analysis the concepts of decentralisation and modes of articulation will be used to analyse the key trends as regards level of bargaining across the EU28.

## Relative importance of bargaining levels: the disappearance of cross-industrial bargaining

The most striking development over the past twenty years has been the disappearance of cross-industrial bargaining in the EU28. While in many countries, such as Austria, Denmark, the Netherlands, Spain and Sweden, cross-industrial wage bargaining was abandoned during the late 1970s or early 1980s (Visser 2016: 12), by 2000 cross-industrial bargaining was still present in seven countries: Belgium, Finland, Greece, Ireland, Romania, Slovakia and Slovenia. Within these seven countries Slovakia was the first to abandon cross-industry bargaining in 2000, when tripartite social dialogue, which had previously generated general agreements with wage stipulations, was relegated to a consultative process. Slovenia was next, in 2008, when the employers entered into a general agreement for the private sector for the last time. In Slovenia since then industry has been the dominant bargaining level in the private sector and cross-industry bargaining is limited to the public sector, where there is still a central platform for collective bargaining. During the crisis, cross-industry bargaining was ended in Greece, Ireland and Romania. In Ireland, this was the result of the employers' decision in 2009 to end social partnership, which dominated Irish industrial relations from 1987 to 2009, and to pull out of centralised wage bargaining. As a consequence, collective bargaining shifted from cross-industry to the sectoral level in the public sector and to the industrial and company level in the private sector. In Greece and Romania, the termination of cross-industrial collective bargaining was the result of legislative changes by the government. Finland is the country in which the cross-industrial level lost its dominant role most recently, in 2016, with the shift from tripartite peak-level incomes policies to bipartite industry-level pattern bargaining. Belgium is the last remaining country in which the cross-industrial level still plays an important role in determining wages and other employment terms and conditions through the Central Economic Council, which calculates the wage norm for the Interprofessional Agreement, that in turn provides the framework for the negotiation of agreements by the joint committees at the industry level. Beneath the surface of this institutional stability in Belgium, however, there are signs that industrial agreements are increasingly becoming framework agreements, leaving the more substantial regulation of employment terms and conditions to the company level.

Another important finding of the country chapters is that, despite the continuing decentralisation trend, multi-employer bargaining systems, involving industrial bargaining to different degrees, are still predominant in the EU28. As Table 30.1, which refers to both the private and the public sector, illustrates, there are clear regional patterns. Of the seven countries in which company-level bargaining dominates, Greece is the only western European country. All the other countries are from central and eastern Europe. By the same token, 11 of the 13 countries in which industrial bargaining dominates are from western Europe. Slovakia and Slovenia are the only central and eastern European countries in this group. As can be seen from Table 30.1, the remaining eight countries are characterised by mixed bargaining regimes, combining industry- and company-level bargaining.

Table 30.1 Bargaining regimes and degree/dynamics of (de)centralisation

Country	Bargaining regime	Dominant level	Degree/dynamics of (de)centralisation
Czechia	SEB	Company	Decentralised
Estonia	SEB	Company	Decentralised
Greece	SEB	Company	Disorganised decentralisation turning into decollectivisation
Hungary	SEB	Company	Decentralised
Latvia	SEB	Company	Decentralised
Lithuania	SEB	Company	Decentralised
Poland	SEB	Company	Decentralised
Bulgaria	Mixed	Industry/company	Partially decentralised
Croatia	Mixed	Industry/company	Partially decentralised
Cyprus	Mixed	Industry/company	Disorganised decentralisation in the South; decentralised in the North
Ireland	Mixed	Industry/company	Organised decentralisation
Luxembourg	Mixed	Industry/company	Partially decentralised
Malta	Mixed	Industry/company	Partially decentralised
Romania	Mixed	Industry/company	Disorganised decentralisation
United Kingdom	Mixed	Industry/company	Partially decentralised
Austria	MEB	Industry	Organised decentralisation
Belgium	MEB	Industry	Organised decentralisation
Denmark	MEB	Industry	Organised decentralisation
Finland	MEB	Industry	Organised decentralisation
France	MEB	Industry	Organised decentralisation
Germany	MEB	Industry	Combination of organised und disorganised decentralisation
Italy	MEB	Industry	Organised decentralisation
Netherlands	MEB	Industry	Organised decentralisation
Portugal	MEB	Industry	Disorganised decentralisation turning into decollectivisation
Slovakia	MEB	Industry	Combination of organised and disorganised decentralisation
Slovenia	MEB	Industry	Organised decentralisation
Spain	MEB	Industry	Disorganised decentralisation
Sweden	MEB	Industry	Organised decentralisation

Notes: The categories dealt with in this table refer to both the private and the public sector. 'SEB' stands for single-employer bargaining and 'MEB' for multiple-employer bargaining.

Source: Authors' compilation based on country chapters.

While this kind of categorisation into multi- and single-employer bargaining systems provides a quick overview of the collective bargaining landscape in the EU28, it is simplistic in two respects. First, none of the categories exist in their pure form. This means that in systems in which the company level dominates there is also industrial

bargaining, to some degree. Second, countries within the same category vary substantially vis-à-vis the relative importance of the various bargaining levels.

Even in highly decentralised single-employer systems, exemplified by the Baltic countries and Poland, there are some industry-level agreements. In Czechia, where single-employer bargaining predominates, industrial agreements account for 16 percentage points of the 50 per cent total bargaining coverage. But these industrial agreements are mainly framework agreements that leave the more detailed regulation of the employment relationship to company-level agreements, which, as a result, have a higher regulatory capacity.

Mixed systems combine industrial bargaining, mainly in the public sector, with company-level bargaining in the private sector. Examples of this particular distinction between public and private sector bargaining are Croatia, Cyprus, Malta and the United Kingdom. The United Kingdom is usually grouped in the category of highly decentralised single-employer systems (OECD 2017; Marginson and Welz 2015). This is justified when looking at the private sector, where in 2011 pay was determined by industrial agreements in only 2 per cent of workplaces. In the public sector, by contrast, there is some resilience in industrial bargaining, which determines pay in 43 per cent of workplaces. When grouping the various systems it is therefore important to take into account sectoral and industrial variation of bargaining arrangements.

Unsurprisingly, the countries in which industrial agreements dominate also show great variation regarding the regulatory capacity of the different levels. Concerning pay, two Nordic countries, Denmark and Sweden, are at one pole of the continuum, at which a great deal of autonomy is left to the company level in determining actual pay. In Denmark, industrial agreements define minimum standards, which can be supplemented and topped up by company-level agreements. In Sweden, the ‘industry norm’ defines the ceiling for wage increases, but within this there is ample scope for decentralised wage setting at company level, particularly on the distribution of the wage increase between groups of employees. At the other pole of the continuum is Belgium, where the room for local wage bargaining is more limited because of the dense institutional framework at cross-industry and industry level, which defines the limits for wage increases.

## Different patterns of decentralisation

The country chapters confirm the general trend towards decentralised bargaining. They also show that decentralisation can occur at different levels and in different forms. In formerly highly centralised systems, such as Finland, Ireland, Romania, Slovakia and Slovenia, decentralisation means the devolution of regulatory power to the industry level; in the case of Romania, and partly in Ireland, even to the company level. In the remaining multi-employer bargaining systems decentralisation involves the shift of regulatory capacity from the industry to the company level.

Depending on the existing mode of articulation and the nature of its modification, decentralisation is either organised or disorganised. The key characteristic of all cases

of organised decentralisation is that articulation mechanisms stay in place and are modified in a way that opens up scope for derogations at lower levels, while, at the same time, retaining some degree of control for higher-level actors and agreements.

One way to achieve this objective is to loosen up the favourability principle. The primary example of this variant of organised decentralisation is France, where the range of issues for which company-level derogations from industrial agreements are possible has consistently been extended by increasingly undermining the favourability principle. This process started in 2004 when legal changes excluded four areas from downward derogations at company level. Concurrently, the 2004 law introduced far-reaching possibilities for industry-level negotiators to block derogations, so the actual use of derogations remained limited. This changed with the recent so-called Macron Ordinances of 2017, which both widened the range of issues that are excluded from derogations and considerably reduced the possibilities for industry-level actors to block derogations. In practice, the Ordinances abolished the favourability principle and afforded primacy to the company level. Articulation in France is thus no longer based on the state-supported favourability principle, but on the autonomous capacity of trade unions to maintain close links between industry- and company-level union activities. This is increasingly difficult in smaller companies with a weak union presence. Even though legal changes also extended the possibilities for non-union representatives to conclude company-level agreements, the majority of company-level agreements are still signed by union delegates. For the time being decentralisation in France is still organised, but it remains to be seen whether this can be maintained in the light of the Macron Ordinances of 2017, which weakened state support for articulation.

Another way to open up the scope for company-level bargaining is to change the nature of industrial agreements, converting them into less substantive and less specific framework agreements with a reduced capacity to define universally applicable standards (Marginson 2015: 100). Following this route, organised decentralisation can be pursued in the following ways (Ibsen and Keune 2018: 10; Visser 2016):

- concluding *minimum agreements*, which define only minimum standards and leave the more detailed regulation of wages and terms and conditions to company agreements, although they cannot undercut industrial minimum standards;
- concluding *figureless agreements*, which do not specify any wage standard and leave the determination of wages entirely to the company level;
- concluding *corridor agreements*, which define minimum and maximum standards that need to be respected by company-level agreements;
- including *general derogation clauses* in industrial agreements, which delegate the regulation of particular issues to the company level and specify the conditions under which this is possible. The company-level agreement can derogate from standards set in the industrial agreement;
- including *temporary opening or hardship clauses* in industrial agreements, which enable company-level actors to derogate from industrial-level standards if a company is in financial difficulties;
- including *opt-out clauses* in industrial agreements, which enable companies to postpone or even not apply certain parts of the industrial agreement.

Different combinations of the above options have been used in Member States to realise organised decentralisation. In the Netherlands, for instance, there is a combination of opt-out clauses from extended agreements, which they call ‘dispensation clauses’, and minimum agreements, which, in 2014, accounted for almost 50 per cent of all industrial agreements. In Denmark, a similar solution has been adopted in replacing the normal wage system, in which an industrial agreement determines wages at company level by minimum and figureless agreements. Today, the latter two types of agreement apply to more than 80 per cent of the workers covered by a collective agreement in Denmark. In Germany the use of general derogation clauses, temporary opening clauses and opt-out clauses have, over time, de facto hollowed out the favourability principle. In contrast to France, this did not happen through legislative changes, but was based on collective agreements, which specify the conditions under which derogations from industrial agreements are possible. The option to include opening clauses in industrial agreements has also been used in Austria and Finland, albeit to a much lower extent than in Germany. In these countries, opening clauses are strongly linked to dealing with the economic crisis. By contrast, in Germany the frequent and more general use of opening clauses, for instance, to improve the competitiveness of companies, transformed an initially temporary measure into a permanent institutional feature of the bargaining system.

The key objective of devolving competences to the company level is to increase flexibility for employers, while, at the same time, retaining the regulatory capacity of industrial agreements. The extent to which the latter objective can be achieved is heavily influenced by the more general arrangement of employee interest representation. In this respect, single-channel systems are more supportive than dual-channel systems because company-level interest representation in dual systems is based on works councils, which formally are not trade union structures. In contrast, company-level interest representation in single-channel systems rests on the presence of trade unions in the company or workplace. Denmark is a case in point, where the single channel system, coupled to institutionally supported high union density, facilitates close links between industry- and company-level union structures. This, in turn, ensures that industry-level actors and agreements enjoy a considerable degree of control over company-level bargaining processes, both procedurally and substantively. The examples of Germany and the Netherlands illustrate that this is more difficult in dual-channel systems of interest representation. The devolution of regulatory capacity to the company level means that works councils are increasingly involved in negotiations over wages and working time, which previously, at least formally, was the sole prerogative of trade unions at industry level. Because works councils are not formally trade union structures, articulation between industry and company level essentially rests on the presence of union delegates in works councils. Germany illustrates that maintaining this link is difficult even in traditional industrial union strongholds, such as metalworking and chemicals, but it is even more difficult in sparsely unionised private services.

The lack of strong articulation between bargaining levels and, as a consequence, reliance on state-supported articulation mechanisms, is a characteristic shared by Greece, Portugal, Spain and, to some extent, Romania, where disorganised decentralisation has been the dominant trend. When the state withdrew its support for articulation

mechanisms in these countries there were no autonomous structures in place that could prevent company-level agreements from becoming detached from multi-employer bargaining arrangements. Furthermore, in these countries government introduced legislative changes to this effect under strong pressure from European and international institutions, which made financial support conditional on labour market reforms, including those of the collective bargaining system. These reforms, often imposed in the face of protests from trade unions and employers, include the following measures: first, overturning, suspending or abolishing the favourability principle in order to reverse the existing hierarchy of bargaining levels, thereby giving company-level agreements precedence over industrial agreements, even if this leads to inferior standards; and second, providing active support for company-level negotiations by giving non-union institutions or personnel the possibility to conclude company-level agreements in the absence of unions. In Greece, active support for company-level negotiations also involved lowering the number of people a firm has to employ to be able to negotiate company-level agreements. Similarly, Romania introduced mandatory bargaining in companies with more than 20 employees, combined with tighter representativeness criteria for trade unions as a precondition to negotiate valid collective agreements at both industrial and company level. Where unions do not meet these tighter criteria, employers can negotiate with non-union structures.

The impact of disorganised decentralisation on the regulatory capacity of collective bargaining varies between Member States. Greece has experienced the most far-reaching implications with a contraction of collective agreements at all levels: disorganised decentralisation thus became decollectivisation, with employers increasingly turning to unilateral action or individual negotiations as the preferred mechanisms for regulating the employment relationship. Spain is at the other pole of the continuum. In Spain, the far-reaching formal changes to the bargaining system did not substantially alter the relative importance of industry- and company-level agreements. An important explanatory factor is the employers' limited interest in company-level negotiations. Instead of negotiating more company-level agreements they took advantage of other measures introduced by the 2012 reforms, such as the increased possibilities for temporary derogations and unilateral modification of working conditions (Rocha 2018).

## **Security of bargaining**

Security of bargaining refers to the factors that support negotiations between employers and trade unions to jointly regulate the employment relationship, and, more specifically, determine the bargaining role of trade unions, which can be operationalised in terms of three different dimensions of power resources of trade unions (Lehndorff *et al.* 2018). These can be enhanced or reduced depending on the strategies of the state and employers. The first dimension concerns institutional power resources, which comprise the legal underpinning of the collective bargaining system, including the definition of the 'rules of the game', and the bargaining parties' rights and obligations. More specifically, the institutional dimension also includes the regulation of trade union recognition for bargaining purposes. A second dimension concerns organisational power resources, which include Clegg's original conception of 'union security' in the sense of the support

provided by employers and the state for union organising and promoting and sustaining high membership levels. Because meaningful bargaining also depends on trade unions' capacity to mobilise their membership and to pursue industrial action, organisational power resources include the regulation of strikes. A third dimension concerns societal power resources, which include the ideological and discursive underpinning of collective bargaining (Brandl and Traxler 2011). In all these respects, bargaining security can either promote or obstruct the trade unions' bargaining role, and, in so doing, either enhance or restrict the capacity of employers and the state to determine pay and conditions unilaterally.

Before key developments in security of bargaining are discussed, two caveats should be entered. First, while a change in bargaining security introduced in one country might have a marginal impact, the same change may have a marked impact in another country. Institutional change or instability is thus relative to a country's initial situation vis-à-vis bargaining security. Second, the timeframe considered here is principally the period 2000–2016, but far-reaching changes in bargaining security occurred in an earlier period in several countries. This is obviously the case in the Netherlands, with the Wassenaar Agreement of 1982; the United Kingdom, with extensive legislative measures to restrict trade union activity enacted during the Thatcherite 1980s and early 1990s; Belgium, with the competitiveness law of 1996; and Sweden, with the Industry Agreement in 1997. Similarly, neoliberal principles 'infused' the collective bargaining system from the start in several central and eastern European countries, especially the Baltic states (Bohle and Greskovits 2012).

## Institutional support

The most fundamental way of supporting bargaining security is the constitutional or legal right to freedom of association and bargaining, which essentially provides unions with a bargaining monopoly. This is common practice in the EU28. Even in countries with a long voluntarist tradition, such as Sweden and the United Kingdom, there is legislation endorsing the bargaining role of trade unions. In some countries, the recognition of trade unions for bargaining purposes is linked to certain representativeness criteria. In particular, this applies to countries with a tradition of multi-unionism, such as France, Italy and Spain, and/or strongly developed company-level bargaining, such as Hungary and Poland. In the past twenty years, the legal support for bargaining security via union recognition has been undermined in various ways. One strategy has been to introduce or tighten the representativeness criteria for trade unions as a precondition to bargaining. In Romania, for instance, the Social Dialogue Act of 2011 abolished cross-industry bargaining and excluded small companies from collective bargaining because it required a minimum of 15 employees to form a union. Even in companies with a union presence the representativeness criteria have been severely tightened. Romanian trade unions now need to represent 50 per cent of the workforce to be recognised for negotiations, rather than one-third under the previous legislation.

Another measure that undermined the security of bargaining for trade unions was the extension of negotiation rights for works councils and non-union representation

structures, as occurred in France, Greece, Hungary, Lithuania, Portugal and Romania. In Spain, it was not so much the extension of bargaining rights to non-union bodies, but the allocation of more room for unilateral management determination of employment conditions that undermined bargaining security. Portugal illustrates the importance of a constitutional right to bargaining for trade unions. In Portugal, non-union structures need a union mandate to negotiate agreements at company level. The Troika's attempt to remove this requirement during the crisis failed because it would have been in breach of the Portuguese constitution. In all these countries it is apparent that removing trade unions' bargaining monopoly went hand-in-hand with an increased push for company-level bargaining. As a consequence of the increased decentralisation of bargaining to the company level, the established division of labour between works councils and trade unions has become increasingly blurred. Works councils are increasingly integral to the bargaining process, taking over the bargaining role of unions in some instances because of the weakness of union representation at company level. When management dominates non-union bodies and works councils there is the risk that they will be merely a 'fig leaf' concealing the unilateral settlement of pay and employment terms and conditions, while paying lip service to collective bargaining.

Another form of institutional support for bargaining security is the participation of trade unions in bipartite or tripartite social dialogue, or in the governing or supervisory boards of labour market or social security institutions. Social dialogue institutions can play an important role at the policy level and in regulating employment relations. In particular, this applies to central and eastern European countries, with their shorter traditions of collective bargaining. In Slovakia, until 2000, social dialogue in the tripartite Economic and Social Council led to a general framework agreement, which included provisions on wages. Hungary is another example, where recommendations of the tripartite National Council for the Reconciliation of Interests (OÉT) used to serve as the basis for collective agreements signed subsequently at industry and company level. Over time, however, this function has been downgraded to an advisory role. As a consequence, today social dialogue institutions are largely disconnected from collective bargaining and their impact has, at best, an ad hoc character. Nonetheless, in central and eastern European countries involvement in social dialogue institutions still offers an important channel for influencing government socio-economic policies and enables trade unions to compensate for their lack of bargaining power at lower levels. There is also the danger that trade union involvement in social dialogue institutions will result in 'PR corporatism', in which union participation in tripartite structures is used to legitimise government policies (Bernaciak 2013). This became more prominent during the economic crisis.

Statutory minimum wages are another form of state support for bargaining security. Statutory minimum wages exist in 21 EU Member States. The only exceptions are Austria, Belgium, Cyprus, Denmark, Finland, Italy and Sweden, where minimum wages are negotiated. In some central and eastern European countries, namely Bulgaria, Croatia (until 2008), Estonia, Hungary (until 2011), Poland, Romania (until 2011) and Slovakia, minimum wages were or still are negotiated in a tripartite body at national level. If a tripartite agreement is reached, the resulting minimum wage assumes a statutory character. If the negotiations fail the minimum wage is set unilaterally by the

government (Schulten *et al.* 2015: 330). Statutory minimum wages not only provide a safety net, ensuring minimum wage standards for employees who are not appropriately covered by collective agreements. They also provide an important anchoring function for the whole wage structure. Two examples of this anchoring function are Hungary and France. In Hungary, involvement in the tripartite negotiations on the minimum wage in the OÉT was very important for trade unions because it compensated their weakness in industrial and company-level bargaining. With the degrading of the national tripartite structure to a consultative function, this compensatory role was weakened. The two statutory minimum wage levels for ordinary and skilled workers, however, still play an essential role in ensuring wage security for workers. In France, the development of the statutory minimum wage sets the pace for wage settlements in industrial wage agreements, particularly for low-wage categories. To a certain extent, France's statutory minimum wage can be seen as a functional equivalent to a national framework agreement that sets the pace for subsequent negotiations at industrial level. Overall, statutory minimum wages that apply to all workers compensate for low union density in those industries in which trade unions are too weak to ensure high bargaining coverage as a tool to secure appropriate wages. This was why trade unions in Germany pushed for the introduction of a statutory minimum wage in 2015, having previously rejected the idea of a statutory minimum wage for many years.

Furthermore, in a limited number of small, in population, countries, 'automatic' indexation mechanisms are still in place, which link nominal wage increases to prices of goods and services to maintain purchasing power. Thus, the cost of living adjustment systems are fairly uncontested in the south of Cyprus and Malta, but more so in Belgium and Luxembourg. These countries share, in the context of the European Semester, the same country-specific recommendations from the European Commission in terms of reform of indexation mechanisms. The government temporarily manipulated the index mechanism in Luxembourg in 2012, 2013 and 2014, whereas different arrangements were made within industries. The index mechanism has been hollowed out in Belgium over the years, including a recent suspension for a year, and it continues to be called into question by right-wing populist and neoliberal political parties. At the same time, Belgium, the south of Cyprus and Sweden have introduced a ceiling to wage-setting. This applies to the private sector in Belgium and Sweden, via a wage-norm and an industry-norm, respectively. A framework agreement introduces a ceiling linked to the nominal increase in GDP in the semi-public and public sector in the south of Cyprus. In other countries, such as Italy, Romania and Spain, specific index mechanisms are part of collective agreements.

## Organisational support

Organisational support for bargaining is particularly important in countries with a voluntarist tradition of industrial relations, and weak legal support for bargaining security. In these cases, bargaining security depends heavily on trade unions' strength and their capacity to bring employers to the bargaining table. Trade unions' organisational power resources depend heavily on membership levels, and their capacity to mobilise and conduct industrial action. One measure to boost membership levels is trade union

involvement in the administration of the welfare state. A special arrangement of this kind is the so-called ‘Ghent system’, which institutionally embeds unions in the labour market and the welfare state regime, and provides incentives for workers to unionise and to remain a union member. This unemployment insurance system has been weakened by policy changes. Some have affected unemployment benefits, in terms of duration, coverage or eligibility; others have promoted other actors than trade unions to set up their own unemployment funds. Or both have been combined. Thus, a strengthening of unemployment regulation, especially since the beginning of the crisis in 2008, has indirectly affected the quasi-Ghent system in Belgium, resulting in a decline in union membership (Vandaele 2017).

In contrast to Belgium’s compulsory unemployment system, unions in Denmark, Finland and Sweden still have their own unemployment insurance funds that are subsidised by the state, and membership of which is voluntary. Different policy changes affecting the Ghent system in these countries in recent years have, to different degrees, caused de-unionisation, which puts pressure on the voluntary character of the collective bargaining system (Høgedahl and Kongshøj 2017). Finally, bargaining security can also be buttressed at the meso-level. Examples include vocational training and social security funds that are present in a number of countries at the industry level. They are governed on a bi- or tripartite basis, and they provide, for instance, skills-based education and training and supplementary benefits.

The right to take industrial action is, in most countries, implicitly guaranteed by the constitution via freedom of association, or internationally via the European Convention on Human Rights or the Charter of European Basic Rights. While the right to take industrial action was relatively restricted in central and eastern Europe from the start (Welz and Kauppinen 2005), this right has been further curbed in several countries (Xhafa 2017). Strike regulations, however, became more relaxed in the Estonian public sector and more generally in Lithuania, although it remains to be seen what this means in practice. As with union recognition, it is at the implementation level that differences between countries are most marked. Several industries are conceived as ‘essential’, including sometimes a minimum service provision, thereby limiting the use of the strike weapon and undermining trade unions’ countervailing power in the bargaining process. The strictness of ‘peace clauses’ in collective agreements can further explain differences in the use of the strike weapon and its timing. Needless to say, employers’ tactics and strategies also influence how the right to industrial action is exercised in practice. Employers generally enhance bargaining security if they legitimise, commit to and support the setting of employment terms and conditions via collective agreements and do not implement trade union avoidance or busting tactics and strategies. This also entails that employers’ associations provide incentives for full membership of individual companies, because the employers’ association rate is a crucial factor in the extent of bargaining (see Extent of bargaining).

The impact of union recognition can also be seen in bodies for worker representation at the workplace or company level. While in Belgium, for instance, this is the sole prerogative of the trade unions, this is not the case in several other countries, in which non-unionised workers can also be appointed or elected in those bodies, although in

many cases the bodies are still dominated by the unions. In a similar vein, although possible in theory, non-union bodies at the workplace or company level are far less common. Similarly, union prerogatives, such as facility time and regulations protecting against anti-union behaviour by management, particularly the unlawful dismissal of union representatives or shop stewards, also contribute to bargaining security. A difference should be noted, however, regarding the objectives of long-standing bodies and those more recently formed. The International Labour Organization (ILO) promoted dual-channel representation of employees at the company level when the collective bargaining systems were in their infancy in central and eastern European countries (Vaughan-Whitehead 2000). Directive 2002/14/EC on employee information and consultation also encouraged the creation of dual-channel representation in those countries if there was no information and consultation body in place. In these cases, instigated by the ILO and the European Commission, the bodies created have often been a concern for unions in central and eastern European countries, which viewed them as a potential channel for manipulation by management. In practice, however, their incidence is confined to certain industries, and, where they exist, they are often union-dominated.

### Ideological and discursive underpinning

Across the EU28, during the period covered here, bargaining security is marked by relative institutional robustness and stability, especially in the EU Member States with a tradition of multi-level collective bargaining. Path-departures and abrupt institutional modifications took place in only a few cases, namely Greece, Hungary, Portugal and Romania, even though bargaining security has been restored, to a certain extent, in the post-crisis period in Greece and Portugal. These four countries are prime examples, however, of the influence of changes in government and/or EU institutions and the ideological underpinning of approaches to collective bargaining. In Portugal, for instance, security of bargaining was weakened by the centre-right governments of 2011–2015, but partially restored under the subsequent new centre-left government. The importance of the ideological underpinning in shaping bargaining security is further illustrated by the intervention of the Troika in countries that required financial support during the economic crisis. The reforms imposed on Greece, Ireland and Portugal were based on a neoliberal economic approach that views multi-employer collective bargaining and trade unions with strong wage-setting power as ‘institutional rigidities’ that impede market-driven economic adjustment processes (Schulten and Müller 2015). As a consequence, decentralising collective bargaining by removing or limiting the favourability principle and promoting measures that result in an overall reduction of trade unions’ wage-setting power, such as more restrictive representativeness criteria for trade unions, were central elements of the ‘employment-friendly’ reforms promoted by the Troika (European Commission 2012: 103–104).

More positive examples of the importance of ideological underpinning are Austria, where multi-employer bargaining depends strongly on the support of both sides of industry for the social partnership approach; Germany, where multi-employer bargaining used to be considered an integral part of the social market economy as the preferred societal

model; and Sweden, where both sides of industry support multi-employer bargaining as a tool to implement a solidaristic and egalitarian wage policy. More recently, however, at least in Austria and Germany, the ideological foundation of multi-employer bargaining has been showing some signs of erosion. In Austria, right-wing and liberal governments have repeatedly attacked the chamber system as the institutional embodiment of social partnership and multi-employer bargaining. In Germany, the employers' retreat from multi-employer bargaining goes hand in hand with stronger support for a neoliberal approach to organising the employment relationship.

## Extent of bargaining

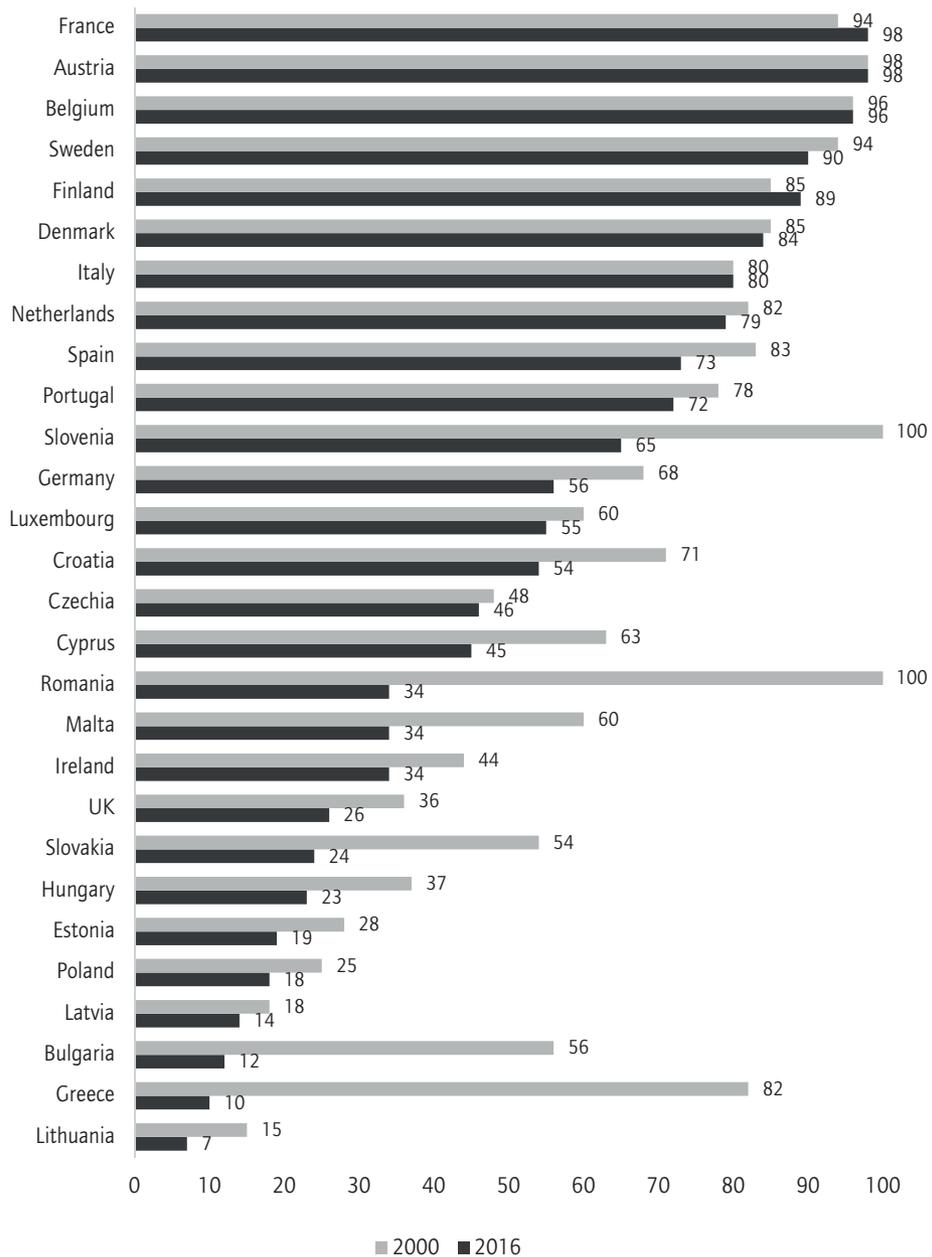
The extent of bargaining measures bargaining coverage, the share of employees covered by a collective agreement. Figure 30.1 illustrates the variation in bargaining coverage across the EU28. It also illustrates that the highest bargaining coverage, the largest extent of bargaining, exists in those countries characterised by multi-employer, or at least mixed, bargaining systems, ranging from France and Austria at the top end to Croatia at the bottom end of this group. In contrast, the coverage of bargaining in the countries characterised by single-employer bargaining is below 50 per cent. This clearly shows a close link between the level and the extent of bargaining. According to calculations based on a sample of 48 OECD countries, the level of bargaining accounts for about three-quarters of the cross-national variation in bargaining coverage (Visser *et al.* 2015: 6).

Every country with high bargaining coverage shares at least one of the following three characteristics: first, legal extension mechanisms, or functional equivalents, that ensure that industrial agreements also apply to companies that did not sign the agreement or are not affiliated to the employers' association signatory to the agreement; second, *erga omnes* practices that extend agreements at company level to all workers of the respective company, regardless of whether or not they are unionised; third, broad-based bargaining parties that ensure wide coverage of collective agreements and are willing to participate in collective bargaining. The latter applies to Denmark and Sweden, where no legal extension mechanism or *erga omnes* rules exist, but high bargaining coverage rests solely on the organisational strength of the two sides of industry. Against this background, it is not surprising that the countries with the highest decline in collective bargaining coverage over the past 20 years, particularly during the economic crisis, were to varying degrees affected by measures that led to the decentralisation of bargaining and/or that suspended or curtailed legal extension mechanisms. In the following the effect and the development of the various factors are analysed in more detail.

## Extension mechanisms

Extension mechanisms are an instrument of public policy that applies a collective agreement beyond its signatories. Such mechanisms exist in 22 EU Member States (Visser 2016: 6). The exceptions are Cyprus, Denmark, Italy, Malta, Sweden and the United Kingdom. Malta and the United Kingdom follow the voluntarist Anglo-Saxon

Figure 30.1 Development of collective bargaining coverage (2000 and 2015/2016)



Note: Early figures for Hungary are from 2001 and for Bulgaria, Cyprus, Greece, Latvia, Lithuania and Malta from 2002. Source: Appendix A1.A. Data for Bulgaria and Croatia for 2016 are from Eurofound (2018). The 2016 data for Greece, Malta and Poland are from the respective country chapters. For Romania both figures are from the country chapter. The later data for Hungary, Ireland and Luxembourg are from 2014.

industrial relations tradition. There is great variation, however, in the practical operation of extension mechanisms across Europe. In particular, variation in the frequency of use and the preconditions for extending a collective agreement impact on the extent of bargaining.

Concerning the frequency of use of extension mechanisms, three groups of countries can be distinguished (see Table 30.2). The first comprises those countries in which the extension mechanism is frequently used and the majority of (cross-)industrial agreements, therefore, are generally applicable. This group consists of Belgium, Finland, France, Luxembourg, the Netherlands, Slovenia and Spain, which are all in the top-half of Figure 30.1, illustrating the close link between high coverage and the frequent use of extensions. In 2000, Greece, Portugal and Romania also belonged to this group, but, due to far-reaching changes in the legal requirements for extending collective agreements, which are discussed in more detail below, the frequency of use dropped dramatically, as did coverage: in Greece from 82 per cent in 2002 to 10 per cent in 2016; and in Romania from 100 per cent to 34 per cent. Portugal is a special case because official coverage figures always refer to the ‘stock of agreements’, which are all the agreements that exist, but which may not have been renewed for years and, therefore, have lost their regulatory capacity. The more telling picture in Portugal is the ‘flow of agreements’, which refers to the newly concluded or renewed agreements, whose coverage dropped to 10 per cent in 2014, as a consequence of the legal reforms, and only slowly recovered to 28 per cent in 2016, when less restrictive criteria for the extension of agreements were introduced. Thus, if one takes the ‘flow of agreements’ as the key indicator for collective bargaining coverage rather than the ‘stock of agreements’, the decline in coverage as a consequence of the less frequent use of extensions is as dramatic as in Greece and Romania.

Austria and Italy should be added to the first group of countries as functional equivalents to extension mechanisms ensure high bargaining coverage. In Austria, there is the possibility of extending collective agreements. This option is rarely exercised, however, because on the employer side most industrial agreements are signed by the Chamber of the Economy. Compulsory company membership of the Chamber of the Economy ensures that all agreements signed by the Chamber automatically apply to all companies in the respective industry. A similar chamber system with compulsory membership existed in Slovenia until 2006, when voluntary membership was introduced. As a consequence, membership dropped considerably and employers also used this as an opportunity to terminate agreements. Both factors play an important role in explaining the decline in coverage in Slovenia from 100 per cent in 2000 to 65 per cent in 2016. In Italy, the functional equivalent is the constitutional right to ‘fair remuneration’, which, in case of a dispute, Italian labour courts usually define as the remuneration laid down in the relevant collective agreement (Treu 2016).

The second group of countries in Table 30.2 with ‘limited’ use of extension, are those in which it is limited to a small number of industries, in particular more labour-intensive and domestic-oriented industries with a high number of small and medium-sized enterprises (SMEs), for example, construction (Schulten 2016). This group comprises Bulgaria, Croatia, Czechia, Germany, Ireland, Slovakia and, more recently, Portugal. Finally, the third group of countries in which the legal possibility for extension is ‘rarely’

Table 30.2 Use of extension mechanisms

Country	Criteria	Frequency of use
Belgium	Bargaining parties must be representative	Frequent
Finland	(1) 50% bargaining coverage (2) Agreement must be concluded by representative bargaining parties (3) Agreement must be valid for the whole of Finland	Frequent
France	(1) Representative trade union (30% at last workplace elections) (2) Agreement not opposed by a trade union having received more than 50% of the votes; nor by industrial employers' association representing more than 50% of the employees of affiliated companies	Frequent
Luxembourg	National Conciliation Office must support extension	Frequent
Netherlands	(1) Employers' organisation must cover at least 60% of employees (2) Extension must not conflict with general interest	Frequent
Slovenia	(1) At least one representative trade union and employers' association must sign agreement (2) Employers covered by agreement must cover more than 50% of employees	Frequent
Spain	Signatory parties must represent at least 50% of employees.	Frequent
Bulgaria	Bargaining parties need to be representative	Limited
Croatia	(1) Agreement must be signed by most representative trade union and employers' association (2) Agreement must be in public interest	Limited
Czechia	Signatory must be most representative trade union and employers' association	Limited
Germany	Agreement needs to be in public interest	Limited
Ireland	Court must take into consideration implications for competitiveness and employment levels	Limited
Portugal	Extension must fulfil the principle of equal pay for equal work	Limited
Slovakia	Agreement needs to be representative; i.e. trade unions need to be established in at least 30% of employers affiliated to the signatory employers' association	Limited
Austria	Bargaining coverage of at least 50%	Rare
Estonia	Most representative organisation in the industry must have signed the agreement	Rare
Greece	Employers affiliated to the signatory employers' association must employ at least 51% of employees in the industry	Rare
Latvia	Signatory employers' association must represent at least 50% of employees and generate at least 50% of the turnover in the industry	Rare
Lithuania	Bargaining parties have to specify motives for extension	Rare
Poland	Extension must satisfy 'vital social interest'	Rare
Romania	Signatory employers' association must represent at least 50% of employees	Rare

Source: Appendix A3.

used in practice, comprises the Baltic states, Hungary and Poland, as well as, more recently, Greece and Romania. In these countries, an extended collective agreement is exceptional.

Frequency of use is closely linked to the criteria on which the extension is based, which can be more or less supportive (see Table 30.2 and Appendix A3). In the majority of countries, the extension of collective agreements is based on certain representativeness criteria, which can address either the agreement in question or the signatories of the agreement. In the variant addressing the agreement, the decisive criterion is the coverage of the agreement. In practice, this means that the agreement needs to be representative by meeting a certain coverage threshold, which is usually set at 50 per cent of all the employees in workplaces covered by the agreement, regardless of union membership. Examples of this approach are Austria, Finland, Germany (until 2015), Portugal and Slovenia. The second variant requires representativeness of the signatories of the agreement. In practice, a wide range of criteria is used to determine whether an organisation is representative. One approach is to establish whether the representativeness criteria apply to both sides of industry or only one. As a rule, these criteria apply to both sides of industry, but in Hungary, Latvia, the Netherlands and Romania, for instance, representativeness criteria apply only to the employers' side. In the three central and eastern European countries the signatory employers' organisation has to represent at least 50 per cent of the employees. In the Netherlands the threshold is even higher, at 55–60 per cent. On the trade union side, representativeness is measured either in terms of union density or, as in France and Spain, based on the results of the recent elections to representative structures at company level. In Croatia and Czechia, representativeness of the signatory parties is measured in relative terms. In these two cases, 'the most representative trade union and employers' association' must sign the agreement.

In addition to representativeness criteria some countries have more flexible criteria. In Croatia, Germany and the Netherlands, for example, the extension has to be in the public or general interest. Other countries also apply economic criteria. In Latvia, the signatory employers' associations not only have to represent 50 per cent of the employees, but also generate at least 50 per cent of the turnover in the relevant industry or territory. Another variant is Ireland, where the court that issues extensions needs to take into consideration the potential implications for competitiveness and employment levels (see Table 30.2 and Appendix A3).

In the past, changing the extension mechanism was a popular tool for governments to influence the extent of bargaining. The best example is probably Portugal, where the criteria for the extension mechanism were changed several times, depending on whether the political objective was to boost or to limit the extent of bargaining. Until 2011, Portugal had a system of 'quasi-automatic' extension of collective agreements, without any representativeness criteria. This meant that the Ministry of Labour extended virtually any valid agreement at the request of the signatory party without applying any other criteria (Naumann 2018). Under pressure from the Troika to increase wage flexibility, the government first suspended the issuing of extension ordinances in 2011 and then, one year later, introduced a 50 per cent representativeness threshold for employers' associations. The legal changes in 2012 also laid down that the potential implications for competitiveness had to be taken into consideration for an extension. The resulting dramatic decline in the number of extensions and the criticism of the restrictive criteria from both trade unions and employers prompted another change of

the criteria in 2014. This allowed extensions when employers' associations represented at least 30 per cent of micro, small and medium-sized enterprises. As a consequence of the 2014 reform, the number of extensions recovered from an all-time low of nine extensions in 2013 to 84 in 2017. This is still far below the level of 109 extensions in 2010 before the first reform in 2011, however. Another Portuguese legal change in 2017 removed the representativeness criteria and replaced them with more inclusive criteria based on the constitutional principle of 'equal pay for equal work'. A further example of reforms restricting the use of extensions is Greece where, in 2011, once again under pressure from the Troika, the regime of 'quasi-automatic' extensions was abolished by 'temporarily' suspending the extension mechanism for the duration of the financial support programmes. The same happened in Romania, where in 2011 the automatic extension of industry-level agreements was abolished. The extension of industry-level agreements now requires that the signatory employers' association represents at least 50 per cent of employees.

Germany and the Netherlands went in the other direction, introducing reforms to extension mechanisms aimed at broadening the extent of collective bargaining. In 2009, the Dutch government tightened the rules granting companies an exemption from extension decisions. The new rules envisage that companies must negotiate a valid company-level agreement with a trade union and show 'compelling reasons' why they should be granted an exemption from industry-level standards (Visser 2016: 8). In Germany, the government tried to facilitate the use of extensions by replacing the fairly restrictive threshold of 50 per cent bargaining coverage with the more flexible 'public interest' criterion. The reform did not achieve the intended objective, however, for two main reasons. First, one indicator of the public interest of an extension was that it should be of 'predominant importance'. As the regional labour ministries responsible for issuing extensions still applied the threshold of 50 per cent bargaining coverage to prove the relevance of the agreement and to avoid legal uncertainties, the number of extensions did not change as a consequence of the reform (Schulten 2018: 84). Second, the new law did not change the role of the bipartite collective bargaining committee (Tarifausschuss), which needs to approve extensions by a majority vote. This provides each side of industry with a de facto veto power, which the German employers' association has used to reject a number of applications for an extension (Schulten 2018).

Another approach to lowering bargaining coverage is to reduce a collective agreement's period of validity after expiry (Visser 2016). In Greece, the 2012 reforms reduced this period from six to three months. In Portugal, the validity of agreements after expiry was reduced in two steps, to 18 months in 2009 and one year in 2014. The 2012 reforms in Spain ended the principle of indefinite validity and limited it to one year, as in Portugal.

## Strength and approach of bargaining parties

In addition to state support, trade unions and employers' associations with a broad membership base and a supportive attitude towards collective bargaining influence bargaining coverage. In single-employer bargaining, union presence at company level is a key factor determining the extent of bargaining: put simply, without unions

there is no collective bargaining. In multi-employer bargaining systems, however, the employers' rate of coverage seems to be more important than union density. In many countries, for example, the coverage of multi-employer bargaining far exceeds union density. The extreme case is France, with 11 per cent union density and 98 per cent bargaining coverage. By the same token, over the past 20 years, bargaining coverage, as a rule, has proved to be much more stable than union density. This divergence of union density and bargaining coverage is not surprising because in multi-employer bargaining systems employers covered by an industrial agreement make sure that the agreed terms and conditions apply to all workers, including non-unionised workers, to avoid creating an incentive for workers to join a union. The frequent use of extension reinforces this effect. There are only two examples, Denmark and Sweden, where, in the absence of strong state support, high bargaining coverage is based solely on the strength and supportive attitude of trade unions and employers' associations.

This is not to say that union density plays no role in multi-employer bargaining systems. Obviously, strong unions that can force the employers to the bargaining table and can ensure the implementation of collective agreements are an important factor supporting multi-employer bargaining and high coverage. Evidence from the country chapters, however, confirms that the strength of employers' associations is more important than union density as a determinant of the extent of bargaining. Based on an analysis of 25 OECD countries, a much stronger correlation between bargaining coverage and employers' association rate was found than that between coverage and union density (Visser 2013: 16). This is not to argue that strong employers' organisations are the cause of high bargaining coverage, but the two are associated and may be supported by strong state intervention in the form of extension mechanisms. Strong extension mechanisms may be an incentive for companies to affiliate to employers' associations. When employers are covered by an extended industrial agreement, they might as well join the signatory employers' association in order to influence the negotiations (Schulten *et al.* 2015: 393).

In many central and eastern European countries, the weakness and fragmentation of employers' associations and their hostility towards negotiating industrial agreements is an important explanation for the low bargaining coverage. Organisational weakness and a reluctance to negotiate take different forms. In Estonia and Poland, for instance, trade unions in many private sector industries simply lack an industry-level negotiating partner on the employers' side. In Hungary, employers' associations are primarily lobbying organisations and companies are reluctant to join or to authorise them to negotiate industrial agreements. In Czechia, industrial bargaining is particularly limited in industries dominated by foreign multinationals, which prefer to negotiate individually at company level. Finally, in Slovakia employers' associations have increasingly decided to opt out from industrial bargaining because they no longer see any benefits from it. Employers' associations do so by changing their legal status so that they are no longer eligible to sign collective agreements. In Slovakia, the hostility towards collective bargaining goes hand-in-hand with a general tendency on the part of both sides of industry to prefer legal solutions to collective agreements. Such solutions are viewed as easier to implement and as evoking a stronger commitment on the employers' side, lowering the risk of free-riding.

Employers' incremental retreat from multi-employer bargaining is an important factor explaining the fall in bargaining coverage in many, mainly western European, countries that used to have high bargaining coverage. An illustrative case in point is Germany, where employers started to withdraw from collective bargaining after reunification in the 1990s. The employers' retreat from collective bargaining was underpinned by a neoliberal narrative according to which collective bargaining and labour market institutions more generally were viewed as hampering companies' capacity to adjust flexibly to changing market conditions and therefore damage international competitiveness. As a consequence, employers pushed for more flexible arrangements for regulating wages and other terms and conditions. This involved two courses of action. Companies that decided to stay within the multi-employer bargaining system increasingly pushed for a decentralisation of bargaining by including opening clauses in industrial agreements, which became a regular feature after 2000. A substantial number of companies, however, decided to opt out from multi-employer collective bargaining by disaffiliating from employers' associations or, in the case of newly established firms, by not joining employers' associations in the first place. The opt-out option was particularly prevalent in eastern Germany, which employers used as a kind of laboratory to establish new patterns of industrial relations and collective bargaining.

Other examples of employers' retreat from collective bargaining include the United Kingdom where, particularly in newly established workplaces, the employers' refusal to recognise trade unions for collective bargaining purposes contributed to the sharp decline of bargaining coverage from 70 per cent in 1970 to 26 per cent in 2016. In Slovenia, another country that saw bargaining coverage plunge, some employers took advantage of the decision to end compulsory membership in the Chamber of Commerce and Industry in 2006 to quit and terminate agreements to cut costs.

A number of other examples illustrate how employers' persistent support for multi-employer bargaining helped to sustain the extent of bargaining. In Sweden, for instance, employers show no signs of leaving employers' organisations despite similar competitive pressures to those experienced by their German counterparts. After the bargaining round in 2010, the employers' federation in engineering (Teknikföretagen) and in textiles and fashion (Teko) threatened to exit from the 'industry agreement' because it failed to deliver the required wage restraint. In response, the two sides of industry increased the coordinating role of the 'industry agreement', which set the pattern for subsequent negotiations (Dølvik and Marginson 2018). In Portugal, employers supported the recovery of bargaining coverage by signing the tripartite agreement of January 2017, which included a commitment to refrain from any unilateral requests to terminate agreements for a period of 18 months. Similarly, in Spain, despite the new possibilities for company-level bargaining provided by legal changes since 2012, the uptake has been slow. This can be partly explained by the employers' reluctance to discard industrial collective agreements, because, to a certain extent, they provide a level playing field for all companies and help to avoid unfair competition and social dumping (Rocha 2018: 258).

## Depth of bargaining

Depth of bargaining refers to the extent to which trade unions and employers are involved in collective bargaining at all levels. Because comparative information on how the employers' side is organised in the bargaining process is very scarce, and in many countries simply not available, the remainder of this section will deal exclusively with internal union processes, focussing on the relationship between the union and its members. More generally, depth of bargaining is prominent in bargaining rounds and may influence the duration of bargaining. It is also linked to the coordination of bargaining, whereby bargaining actors of one bargaining unit can decide on the degree of synchronisation with other units in order to equalise pay and employment terms and conditions (Traxler and Mermet 2003). Put differently, negotiation priorities and objectives within and between unions are coordinated to achieve similar bargaining outcomes in separate company-level negotiations within the same industry or between comparable industries. The depth of bargaining ideally implies a bi-directional process, arising from the democratic ethos that underpins trade unionism. It entails the participation of the lower bargaining levels throughout the bargaining process. Those at lower bargaining levels can be first involved in the formulation of bargaining demands, and in setting the bargaining mandate. Subsequently, those at lower bargaining levels can play a role in the ratification of draft collective agreements, and in the follow-up to agreements, if implemented. Those at lower bargaining levels might also be involved in the negotiation process: in adjusting bargaining demands, refining the bargaining mandate to the negotiation dynamics or participating in industrial action.

While the external regulation of collective bargaining can promote depth of bargaining by facilitating coordination between bargaining levels, it is primarily linked to trade unions' internal organisation and distribution of power, financial capacity and personnel resources. The depth of bargaining touches on questions of trade union governance and democracy, and the relationships, articulation and tensions within the trade unions between full-time officers, 'lay' activists and members. It is probable, however, that multi-employer industrial bargaining is, *ceteris paribus*, likely to confer power within a trade union on the centre, where the personnel directly responsible for the conduct of negotiations are usually located.

With these points in mind, different approaches have been conceptualised for describing and analysing relations between trade unions and their members (Heery and Kelly 1994; Snape and Redman 2004; McAlevey 2016). Three approaches to member–union relations have been identified: they can be labelled the 'professional relationship', the 'participative relationship' and the 'managerial relationship'. Each approach assumes different roles for union members, shop stewards or union representatives, works councillors, full-time union officers and union leadership in achieving union objectives in the collective bargaining process or in other realms of union activity. Power relations between those member categories and personnel categories within the union are different in each approach.

First, a professional relationship assumes that members are passive consumers of union services, although with collective interests and needs. The professional relationship is based on an 'economic exchange' between the union and its members for the purpose of realising immediate gains and benefits. Feedback from, and the participation of, members in union activities are minimal, as it is believed that members lack motivation or necessary

skills, or both. Instead, specialist full-time union officers, often supported by research staff, administer union activities, including collective bargaining. Full-time officers tend to assume the collective interest and needs of the union members. In the professional approach, full-time union officers, as protagonists of expert representation, tend to seek compromises with employers in collective bargaining, while union leadership represents the union vis-à-vis government.

Second, a participative relationship is marked by social relationships as trade union members are considered to be potentially active participants. Although this approach largely depends on staff or leadership for decision-making and problem-solving, it occasionally entails the involvement of union activists, who are supportive of union goals, for the mobilisation of members. A more 'radical' and recent variant of this approach is based on 'deep organizing' (Holgate *et al.* 2018), which is marked by covenantal orientations that are based on shared values and ideological identification between the union and its members. In this bottom-up approach, which tries to put self-organisation at its centre, the base of union activists is ideally widened through engaging and mobilising ordinary union members, although such an approach is more likely to be confined to small radical unions or types of alt-unionism in the US context, where company bargaining predominates, if there is any bargaining at all.

Third, as a response to trade union membership decline, and like the professional relationship, the managerial relationship assumes that union membership is mainly instrumental. The interests and needs of ordinary union members, however, are to be considered opaque in the managerial relationship. The emphasis lies on individual interests and needs, which are not given or cannot be defined by full-time officers and union activists. Therefore, these interests and needs have to be researched via surveys targeting specific member groups. Such surveys are also conducted to set the collective bargaining agenda. Promoting individual or differentiated services and targeting recruitment campaigns on particular groups of non-members are seen as strategies for extending unionism to greenfield industries. Under the aegis of the managerial approach the balance of power in union decision-making shifts from union activists or full-time union officers to union leaders, but also to union specialists and consultants providing advice and support.

Assessing the bargaining depth of the countries studied here, based on these three approaches, it should be underlined that the country chapters focus on the dominant approach of the main trade unions within collective bargaining. It should be acknowledged, however, that variation either between unions, within and between industries, or between union confederations in cases of union pluralism, condition internal formal union procedures and actual practices. Formal union procedures are 'linked to historical traditions, which also shape variations in the practical understanding of union democracy and the structures adopted to achieve it' (Gumbrell-McGormick and Hyman 2019: 101). Understandably, approaches related to collective bargaining can also differ from other union activities. Approaches to member-union relations are dynamic and can thus change over time, and they can be combined, resulting in hybridisation. Finally, assessments of the dominant approach to member-union relations within the framework of collective bargaining are carried out from an expert or observer perspective in most country chapters, as research is largely lacking about this bargaining dimension. In other words, in-depth, country-level

and comparative studies of rulebook decision-making procedures and actual intra-union policymaking on collective bargaining are rare. That said, some general observations can be made about union–member relations in collective bargaining and their consequences for the depth of bargaining.

First, approaches to union–member relations in collective bargaining processes are generally ‘sticky’, as trade unions in only a few countries have changed bargaining rules and routines in the period considered here. The participative approach, with considerable input from below, tends to be dominant in several countries, especially those with a strong and long-term collective bargaining tradition. Although the absolute number of shop stewards or trade union representatives is high, however, a proportion of union members tend to be passive in high-union density countries, such as Belgium, Denmark or Sweden, all ‘Ghent system countries’, and this despite the intentions of the participative approach. Furthermore, the engagement and participation of the rank-and-file in collective bargaining does not exclude the use of surveys, prominent in the managerial approach, or quantitative measures providing a technocratic framework for negotiations, as in the professional approach. The latter approach certainly prevails in a number of countries, mostly in central and eastern Europe, but not always, as the Portuguese case illustrates. Limited rank-and-file involvement in the collective bargaining process can simply reflect bargaining traditions, but can also stem from the fact that some unions, especially in central and eastern Europe, lack personnel and financial resources. Both explanations are interrelated. In any case, the ‘stickiness’ in union–member relations regarding collective bargaining implies that the participatory approach and, to a lesser extent, the professional approach typify the depth of bargaining rather than the managerial approach.

Second, it is important to consider the bargaining level in assessing the depth of bargaining. Thus, the odds that depth of bargaining will increase by shifting from a professional to a participatory approach are higher in decentralised systems of collective bargaining, with smaller bargaining units (Clegg 1976). This is especially noticeable in some countries with multi-employer bargaining systems, such as Denmark and Sweden: while the professional approach is dominant at the industrial level, deeper involvement of rank-and-file members in the bargaining process often prevails at company level. Conversely, in the Irish case, social partnership at the national level overshadowed collective bargaining at lower levels, so that the depth of bargaining was limited. In the same vein, inter-union frictions and intra-union tensions, with a disconnect between the union confederation and its affiliates, are occasionally apparent in centralised bargaining systems. Intra-union divisions based on, for instance, ethno-linguistic dimensions or the distinction in employment statutes between manual and white-collar workers, may further complicate the depth of bargaining. A quintessential example of these different divisions marking trade unions is Belgium. There is also a trade-off between the depth of bargaining and the number of unions involved in the bargaining process. In Croatia, for example, the depth of bargaining becomes weaker if more unions are involved in the negotiations, so that internal procedures do not jeopardise external union relationships and inter-union coordination costs are lowered. Furthermore, the depth of bargaining is also limited if union representation is weak at the company level. Moreover, at company level, not only trade unions and their members set the bargaining agenda: in several countries, works councils or non-union bodies are granted an informal or formal bargaining role (see Security of bargaining). But seeking compromises with

management and sometimes leaning to concession bargaining, works councils and other bodies tend to adopt a professional approach.

Finally, while the managerial approach has gained importance in other fields of trade union activity, notably in organising (Gumbrell-McCormick and Hyman 2003: 95–97), it seems that this is less the case in collective bargaining. In countries in which unions have been influenced by the managerial approach, it is combined with other approaches. Unions in Germany and the Netherlands demonstrate that the depth of bargaining can be less ‘sticky’. German unions have responded to membership decline by shifting from a largely professional approach towards a hybrid approach, borrowing from the participatory and managerial approaches in trying to involve their members and even non-members in the bargaining process. A recent example is IG Metall’s strategy of basing its demands in the 2018 bargaining round on a large-scale survey, in which more than 700,000 employees expressed their bargaining preferences (Schulten 2019: 18). In contrast to Germany, but in a similar context of membership decline, Dutch unions tend towards a more managerial approach, which is also extended towards non-union members. A notable exception is, however, the depth of bargaining in cleaning, where a participatory approach is dominant due to the influence of the ‘organising model’ (Connolly *et al.* 2017; Knotter 2017).

## **Degree of control of collective agreements**

Degree of control refers to the extent to which collective agreements define the employees’ actual terms and conditions. Degree of control therefore concerns three issues. First, the content of agreements in terms of the detail with which they specify mandatory terms and conditions. Second, implementation and monitoring. And third, the various mechanisms for dealing with disputes about the interpretation of an agreement, including mediation and arbitration procedures.

The first issue, the content of collective agreements, is closely linked to the regulatory capacity of collective bargaining (see Extent of bargaining). Whereas extent and coverage concern the number of workers covered by collective agreements and whether collective agreements still exist, degree of control concerns whether, where collective agreements still exist, actual terms and conditions correspond to the terms of the agreement. This question is particularly relevant for industrial agreements. In some countries, such as Croatia and Slovakia, industry-level agreements leave actual wage setting to the company level. Industrial agreements do not strictly define the basic wage in Croatia, whereas in Slovakia they only define minimum standards and do not include specific wage grades. In these cases, the degree of control is necessarily limited. In other countries, however, decentralisation negatively affects the degree of control because industry-level agreements increasingly turn into framework agreements, leaving ample room for derogations or more specific provisions in company-level agreements. The examples discussed in more detail above (see Level of bargaining) include Denmark, with a shift from a normal wage system to a minimum wage system and figureless agreements; Germany, where opening clauses have become a standard feature in industrial collective agreements; and France, Greece, Portugal and Spain, where the

favourability principle was abolished or reversed, so that the company level takes precedence over the industry level.

In the case of organised decentralisation, the devolution of bargaining competences from the industry to the company level should, in principle, not negatively affect the overall degree of control because company-level agreements replace and complement industrial agreements in defining the actual terms and conditions. Evidence from the country chapters illustrates, however, that even in Denmark and Sweden, where the decentralisation of bargaining is marked by strong articulation between the industry and the company level, based on a single-channel system of interest representation and encompassing trade unions and employers' associations, there is a growing trend towards a diversification of wages and terms and conditions. This is even more pronounced in countries with less well-functioning articulation mechanisms or in countries characterised by disorganised decentralisation. Decentralisation, therefore, almost inevitably leads to fragmentation and diversification of wages and terms and conditions, which undermines the most central protective function of collective agreements, which is to take wages and working conditions out of competition.

When assessing the degree of control, the scope of agreements is also an important factor with regard to what kinds of workers are covered by a collective agreement. Often, collective agreements apply only to the 'core' workforce and exclude certain categories of workers. In the southern part of Cyprus, for instance, the degree of control of collective agreements is seriously hampered by the growing proportion of the workforce employed on a temporary basis on fixed-term or service contracts, that is, outside the remit of collective agreements, even though they perform the same tasks as the so-called 'core' workforce. The scope of the agreement, therefore, influences the degree of control not only with regard to the issues covered, but also with regard to the category of workers covered by a collective agreement: that is, whether it is inclusive or exclusive.

The second factor that influences the degree of control of collective agreements is the monitoring of employers' compliance with the agreement. In the majority of EU Member States it is the formal and principal responsibility of the labour inspectorate as a public body to ensure that actual terms and conditions comply with collective agreements and the law. The degree of control exercised by the labour inspectorate will depend, *inter alia*, on its regulation, competences, allocated budget and the room provided for the bargaining actors to influence its discretionary power. Exceptions are those countries with a strong voluntarist industrial relations tradition, such as Denmark, Finland, Sweden and the United Kingdom, where local and workplace trade union structures are responsible for monitoring the implementation of collective agreements. In Denmark and Sweden, there is a separate Working Environment Authority, which carries out inspections of the working environment and working time. To this group of countries one can add the Netherlands, where the law stipulates that it is up to the bargaining parties to control and ensure compliance with the agreement. Many agreements in the Netherlands contain provisions to improve compliance, including the establishment of an inspectorate structure, particularly in those industries with a high risk of non-compliance, namely construction, retail and the temporary agency industry.

The other exceptions are Austria and Germany, where, in the context of the dual system of interest representation, works councils are responsible for monitoring compliance with collective agreements and the law. In dual systems of interest representation, there are two important preconditions for effective implementation of collective agreements and the monitoring of compliance: first, the presence of a works council, and second, well-functioning articulation between company-level works councils and the trade union that negotiated the agreement at industry level. Although the first precondition seems fairly obvious, in Germany only 9 per cent of all establishments, covering 41 per cent of the workforce, have a works council. This representation gap poses a considerable challenge for the effective implementation and monitoring of agreements, in particular in small- and medium-sized enterprises, which are much less likely to have works councils than large companies. The close link between works councils and trade unions is important because German works councils are only responsible for monitoring compliance; they have no right to enforce collective agreements, for instance, by taking the company to court. This is because rights based on collective agreements are individual rights. In the case of non-compliance only the individual employee can take the company to court. This is where the trade union undertakes an important role because it provides important advice to works councils, as well as legal support and protection for individual employees. As a rule, this even covers legal costs.

Thus, the key to ensuring compliance with collective agreements, and therefore a high degree of control, is the presence of workplace employee representation structures, regardless of whether these are works councils in dual systems of interest representation or union structures in the case of single-channel systems. Even in those countries where a public labour inspectorate monitors collective agreements, the presence of union structures is important because, in practice, the labour inspectorate depends strongly on the information provided by company-level union structures in order to take action. These two points suggest that the degree of control is likely to be less developed where unionisation or the rate of coverage of works councils is low.

The third element that determines the degree of control comprises dispute resolution mechanisms to deal with conflicts concerning the interpretation of an agreement. All countries covered in this publication have staged dispute resolution mechanisms of some kind, which normally range from conciliation, mediation and arbitration to court action (Purcell 2010). Conciliation and mediation are often used synonymously with reference to the involvement of a third party with the aim of facilitating and encouraging a common understanding among the parties involved. Arbitration, as a rule, refers to the involvement of a third party responsible for hearing the case and eventually taking a binding decision. In most cases, a dispute must have gone through a process of mediation and/or arbitration before it passes to a court.

The specific form of these dispute resolution mechanisms varies considerably across the EU Member States, depending on the national industrial relations tradition. In the Nordic countries, for instance, with their strong voluntarist tradition, collective agreements define the procedures of a staged process of negotiations for the bargaining parties, which start at workplace level. If no solution is found, the matter is referred to the industry or even cross-industry level, before, if a solution has still not been found, the

dispute is settled by the industrial arbitration tribunal or the labour court as a last resort. In other countries with a voluntarist tradition, such as the United Kingdom and Ireland, the bargaining parties are also encouraged to find a solution through negotiations, but the process is supported by independent statutory bodies: the Advisory, Conciliation and Arbitration Service in the United Kingdom and the Workplace Relations Commission in Ireland. In other countries, the two sides of industry set up special bodies. In Croatia, for instance, the two sides try to resolve disputes through negotiations, either by the standing body for monitoring and interpreting collective agreements or an ad hoc bargaining committee. Similar bipartite structures to deal with disputes concerning the interpretation of collective agreements have been set up in Belgium, Germany and Luxembourg. Another way of involving the two sides of industry in the handling of disputes are labour disputes commissions, which exist in Estonia, Latvia and Lithuania. In Lithuania, for instance, the labour dispute commissions comprise an equal number of employer and employee representatives. The labour dispute commission hears all cases involving collective industrial labour disputes about compliance with labour regulations. All cases must pass through the labour disputes commission before they can be considered by a court.

Recent reforms of dispute settlement procedures have had different objectives. Conferring legal status on the industrial arbitration system in Denmark in 2008 was aimed at strengthening and improving the system and, therefore, strengthening the degree of control of collective agreements. The same objective underpinned the introduction of a conciliation procedure in Latvia in 2008 (Voss *et al.* 2015: 26). Other reforms, however, considerably weakened the degree of control. The most far-reaching reform of the arbitration system took place in Greece as a consequence of the requirements imposed on the Greek government by the Troika as part of the financial rescue programme. In 2010, the government first extended the principle of unilateral recourse to arbitration, which previously existed only for the employee side, to the employer side. In 2012, the government abolished the principle of unilateral recourse by making arbitration conditional on the consent of both sides, which essentially provided the employers with a veto on arbitration. The government also restricted the scope of arbitration awards to the basic wage. Subsequently, the Council of State invalidated these arbitration reforms as unconstitutional and restored the previous legislative framework. The parliament, however, responded by creating a burdensome and time-consuming process, thus successfully restraining the restorative effect of the Council of State's decision. This policy achieved its intended effect as there was a dramatic drop in arbitration decisions between 2010 and 2016.

Assessing the development of the degree of control of collective agreements more generally, the country chapters illustrate a decreasing trend. One reason is the reforms leading to the decentralisation of collective bargaining. The country chapters also demonstrate, however, that in a range of countries government policies have reduced the degree of control by explicitly restricting monitoring and conflict resolution institutions, the original intention of which was to ensure or increase the degree of control of collective agreements. Besides Greece, there is Hungary, where there was no established grievance procedure in the first place, and the government targeted the trade unions' capacity to monitor compliance. The 2012 Labour Code not only transferred the right

to monitor working conditions from trade unions to works councils, but also curbed the labour inspectorates' scope of action. Furthermore, in 2015 the government reorganised the labour inspectorate and introduced waivers on fines, especially in SMEs. Similarly, cuts in the resources available to the labour inspectorate in Portugal, coupled with the increasing weakness of trade unions at the workplace level, particularly in SMEs, made it more difficult to detect illegal practices that circumvent collective agreements. These measures to reduce the degree of control of collective agreements can be seen as part of a broader strategy to shift the balance of power in favour of employers and to extend their scope of action.

## Scope of agreements

The scope of collective agreements, or the range of items set by collective bargaining, is marked by issues of quality and quantity. Quality refers to the actual substance of collective agreements, which is influenced primarily by the balance of power between the trade union(s) and the employer or employer associations. Quantity may be defined by the regulatory framework, which provides the space for employment terms and conditions subjected to collective bargaining and demarcates managerial prerogatives. Extension mechanisms can increase the scope of collective agreements, however, especially in countries in which the employers' association organisation rate is weak, or where union density is low, as in central and eastern Europe. Moreover, although with notable differences between central and eastern European countries, the turmoil and uncertainty associated with the fall of the communist regimes demanded stability in employment relations through legal minimum standards set during or after the transition (Bohle and Greskovits 2012). This has curtailed the scope for collective agreements from the very start in most central and eastern European countries. This situation contrasts with that of much of western Europe, where, historically, grassroots dynamics and cross-class coalition-building have generally prompted collective bargaining systems based on corporatist arrangements or voluntarism (Berger and Compston 2002; Crouch 1993).

Nevertheless, in the period considered here, the scope of collective bargaining is marked by contraction. The decline in the extent of bargaining is associated with a reduction in the scope of bargaining in several countries. Thus, low bargaining coverage implies that collective agreements are less significant in determining pay and terms and conditions. In this sense, collective agreements, conceptually, are far less a public good. They are increasingly a private good, regulating the pay and employment terms and conditions of unionised companies. A 'bargaining drought' has been pronounced throughout the private sector in the United Kingdom, and in most central and eastern European countries employment terms and conditions tend to be laid down by law. Likewise, while union presence tends to be stronger in the public sector, the scope of bargaining is generally more limited as genuine collective bargaining is restricted to certain occupations or industries. In some countries, collective bargaining has also almost ground to a halt, limiting the replacement of new agreements, so that there has been no widening of the scope of bargaining. Countries with strong bargaining traditions can be considered islands in a sea in which collective bargaining is sinking. Even in some

of these countries, increased derogation possibilities for individual companies have made inroads in the scope of bargaining. The scope of bargaining is also influenced or overruled by state 'intervention' affecting the autonomy of trade unions, employers and employers' associations, and the capacity of these organisations to regulate pay and employment terms and conditions. Moreover, processes of labour market segmentation and fragmentation, and increasing employment precarity, undermine the scope of bargaining if trade unions are unable to adapt their governance structures and strategies to promote inclusive solidarity through comprehensive collective agreements (Doellgast *et al.* 2018).

Turning to the quality dimension of the scope of bargaining, three main dimensions come to the fore in terms of the range of issues tackled by collective agreements. First, even if collective bargaining occurs, the bargaining agenda may be hollowed out in several countries. While the United Kingdom is characterised by a narrowing of the bargaining agenda, in various central and eastern European countries collective agreements merely reiterate legal minimum standards of employment terms and conditions, such as industry-level agreements in Czechia and Slovakia. Likewise, innovative agreements that create managerial obligations and new rights for workers seem far less common or even absent in countries where company bargaining is dominant. Nevertheless, while such agreements are associated with higher bargaining levels, today's collective agreements at the industrial level tend to set only minimum employment terms and conditions in those industries in which organised decentralisation is the order of the day. These agreements provide a negotiating framework for bargaining at the company level, with the result that the actual scope of bargaining becomes more tangible at this level. Collective agreements with little substance at the industrial level are thus considered a signal to start bargaining at the company level in multi-employer bargaining systems. This indicates that the range of issues in collective agreements is linked to bargaining level and degree of decentralisation.

At the company level, or in single-employer bargaining systems, concluding agreements that only enumerate legal minimum standards, of the kind concluded in many central and eastern European countries, is at least a guarantee that management will respect and not bypass standards. These agreements can also be a tactical way for trade unions to sustain the bargaining relationship with management. Unions hope then to conclude better agreements if the economic context changes and 'makes it possible'. The same reasons also explain the trade-off that is made in concession bargaining: collective agreements are concluded that temporarily lower employment terms and conditions in exchange for maintaining employment levels. Similarly, the scope of bargaining has not widened in some crisis-hit southern European countries, as the renewal of collective agreements has come to a standstill because of the economic crisis. The 2008 crisis and its aftermath has provided an 'ideal' context for concession bargaining, which has often been encouraged by new regulations on wage-setting and labour market flexibilisation. Concession bargaining is not strictly confined to the crisis context, however. Various new regulatory initiatives for changing employment terms and conditions are part of long-term tendencies before the crisis, and they at least confirm, but more likely reinforce them. Thus, wage setting was every so often marked by modest wage increases before 2008. Likewise, the further managerially-dominated flexibilisation of working

hours in terms of numbers and organisation has accentuated pre-crisis tendencies (Pisarczyk 2017). It remains to be seen, from a workers' perspective, whether the quality dimension of the scope of bargaining will recover when, or if, the economy picks up.

A second dimension of the quality of the scope of bargaining confirms earlier findings concerning a broadening of the scope of collective agreements to include more qualitative issues, such as gender equality and work–life balance. This development is most marked in industries with strong bargaining traditions, but is not found in all countries. Collective agreements dealing with qualitative items, for example, are nearly absent from Poland. Nevertheless, qualitative issues reflect a shift in union interests that is primarily linked to changing member composition and preferences, of which the increased importance of women among union members is a key factor. More family-friendly work arrangements and progress in work–life balance are often a response to more intensive working-time arrangements and the advancement of flexible types of work organisation linked to efforts to reduce labour costs. The economic crisis, however, seems to have curtailed progress on the work–life balance agenda (Kresal 2017). Equally, the broadening of collective agreements to include more qualitative items also follows from unions' bargaining strategies in pursuit of negotiating flexibility, whereby wage moderation or restraint is tolerated if compensated by employment terms and conditions of a qualitative character.

A third qualitative dimension of the scope of bargaining concerns the objectives of collective bargaining. While the main goals of collective bargaining are essentially to equalise workers' pay and employment terms and conditions within a bargaining unit, this aim has been downgraded in several countries by systems within which individual workers can choose options à-la-carte. Although such 'cafeteria' formulae demonstrate that collective bargaining can go hand in hand with individualisation of the employment relationship, they require trade unions to maintain a degree of control over collective agreements. This leaves it open whether pay flexibilisation via individualised benefits is not a Faustian bargain for trade unions, especially 'given traditional assumptions that solidarity requires the standardisation of conditions and rewards across the workforce as a whole' (Gumbrell-McCormick and Hyman 2003: 108). The individualisation of pay is particularly evident in performance-related and 'merit-based' pay systems, driven by human resource policies reflecting management preferences. Performance-based management systems exemplify how company financial results and, more generally, macroeconomic performance influence bargaining scope in general.

## Key trends and policy pointers

A quick glance at the titles of the various country chapters of this publication illustrates the dire straits of collective bargaining in Europe. Stability and resilience are the most positive developments referred to in the titles of, for example, the chapters on Belgium, Croatia and Italy. The titles of most of the other chapters contain some kind of reference to erosion, decentralisation or fragmentation. If there is one feature shared by almost all countries covered in this publication it is that over the past 20 years the regulatory capacity of collective bargaining has decreased, albeit to varying degrees; and that in

most cases policymakers at European and national level have played an active role in advancing this development. This active role also includes what lawyers would call a ‘failure to render assistance’.

Baccaro and Howell (2017) depict this development as a universal long-term trajectory of neoliberal transformation. Despite continuing institutional differences across European countries, the result of this neoliberal transformation is a convergence in institutional functioning leading to an increase in employers’ discretion over determining wages and other terms and conditions of employment. The apodictic and universal nature of this assessment has been challenged by Dølvik and Marginson (2018), whose analysis of collective bargaining developments in northern European countries illustrates that the incremental adaptations made to wage regulation arrangements are aimed principally at stabilising, rather than undermining such arrangements and are therefore at odds with Baccaro and Howell’s thesis of a universal neoliberal trajectory. Based on the northern European experience, Dølvik and Marginson (2018) see ‘a trajectory of continued and perhaps sharpened divergence in European industrial relations’ (2018: 423).

The findings of the country chapters suggest an intermediate position. While we agree with much of Baccaro and Howell’s general analysis of a strong influence of state-supported neoliberal policies in collective bargaining arrangements, which have tilted the balance of power even further to the advantage of employers, the country chapters provide only limited evidence for their universal character. By the same token, while Dølvik and Marginson’s analysis provides important empirical evidence to refute the universal character of Baccaro and Howell’s assertion of a neoliberal trajectory, their exclusive focus on northern European countries entails a risk of downplaying the danger that neoliberal-minded policymaking poses to the regulatory capacity of collective bargaining.

The analysis of developments in 28 countries almost by definition excludes identifying a universal trend that applies to all of these countries. Each EU Member State has its own distinctive industrial relations tradition and institutional and political framework conditions, which have shaped the direction and extent of change in the past 20 years in various ways. First, certain framework conditions and constellations of actors are more prone to pursue or fall in with neoliberal policies than others. Second, where neoliberal policies have been pursued, in some countries there were stronger countervailing forces limiting the impact of attempts to change bargaining institutions in a neoliberal direction. Third, as a consequence of the first two dynamics, countries are at very different stages in the neoliberal trajectory.

More concretely, this means that there are a range of mega-trends, such as intensified international competition, financialisation, the structural economic shift from manufacturing to services and the weakness or absence of classic social democratic governments, as traditional allies of labour and trade unions. These inherently shift the balance of power between trade unions and employers even further in favour of the latter and so increase the pressure to change collective bargaining systems in a manner consistent with the neoliberal policy agenda, which increases employers’ discretion. The neoliberal pressure resulting from these dynamics is more or less the

same for all countries. National collective bargaining systems, however, do not have the same capacity to resist. In countries with strong and highly coordinated multi-employer bargaining systems, strong trade union movements with a robust presence at the company level, broad-based employers' associations that support multi-employer bargaining and governments that refrain from actively undermining bargaining security, the countervailing forces to neoliberal changes are much stronger. The strength of these countervailing forces differs across time and within countries, depending on the specific power constellation of industrial relations actors and their interests and strategies. This applies, in particular, to the role of the state, whose approach to collective bargaining is closely linked to the political orientation of the current government. It is against this background that the country chapters confirm the general neoliberal trajectory of undermining the regulatory capacity of collective bargaining (Baccaro and Howell 2017), while also illustrating that the extent of these dynamics differs considerably across the 28 EU Member States. This, in turn, confirms an increased divergence in collective bargaining across Europe (Dølvik and Marginson 2018). Bearing this in mind, the objectives of the remainder of this section are, first, to identify the factors that account for different extents to which the regulatory capacity of collective bargaining has declined across the EU28 and, second, to address the key policy issue of how we can reverse this diminution of the significance of collective bargaining as a tool to jointly regulate the employment relationship.

### Accounting for differences

The regulatory capacity of collective bargaining is influenced mainly by the extent of bargaining, referring to the proportion of the workforce covered by collective agreements, and the degree of control, referring to the effective implementation, monitoring and enforcement of collective agreements, which, in turn, ensures that the terms of agreements are actually complied with. Concerning the extent of bargaining, the crucial factor that accounts for differences in the decline of the regulatory capacity of collective bargaining across Europe is the strength of multi-employer bargaining. In those countries in which bargaining coverage has diminished, the decline of multi-employer bargaining has, as a rule, been actively promoted by an increasing push from European and national policymakers and/or employers towards decentralisation. This involves a gradual increase in the significance of company-level bargaining and unilateral decision-making by employers. In contrast, those countries in which bargaining coverage has remained fairly stable over time are characterised by stability in multi-employer bargaining. Government measures that actively undermine multi-employer bargaining include far-reaching changes to the institutional set-up, such as the outright abolition of (cross-)industrial bargaining; the weakening of articulation mechanisms, such as the abolition or reversal of the favourability principle; and the introduction of more restrictive criteria for the extension of collective agreements.

Another important factor underpinning multi-employer bargaining is the organisational strength of the bargaining parties. Here, the state has also intervened in a restrictive manner by reducing the security of bargaining. This has involved measures that affect trade unions' institutional power resources, such as tightening up representativeness

criteria as a precondition for union recognition for bargaining purposes; making it easier for non-union representation structures to negotiate company-level agreements; and, particularly in central and eastern European countries, degrading the regulatory role of tripartite social dialogue institutions. Other state measures aimed at reducing bargaining security by undermining trade unions' organisational power resources include policy measures and continued political pressure to weaken the Ghent system in Belgium and the Nordic countries; curbing the right to strike, particularly in the public sector, as one of the few remaining union strongholds; and, most dramatically in the United Kingdom, enacting legislation to restrict the capacity of trade unions to organise in expanding sectors of the economy.

In addition to government policies designed to undermine the strength of multi-employer bargaining, the weakness of employers' organisations and their lack of or waning support for multi-employer bargaining have contributed to reducing the regulatory capacity of collective bargaining. In central and eastern European countries, the weakness and fragmentation of employers' associations, the disinclination of many companies to join an employers' association and the refusal of employers' associations to negotiate with trade unions are important explanations of the absence of multi-employer bargaining. Similarly, in western European countries, the employers' incremental retreat from multi-employer bargaining arrangements has also contributed to the decline in bargaining coverage. Furthermore, in those western European countries in which bargaining coverage has remained comparatively high, such as the Nordic countries, Belgium, France, Italy, the Netherlands and Spain, the employers' association rate has also remained high and they have retained their broadly supportive attitude towards multi-employer bargaining. In France, Italy and Spain this can be seen in the limited uptake of the newly created opportunities for negotiations at company level (Pedersini 2018: 293).

The degree of control of agreements is the second main factor that influences the regulatory capacity of collective bargaining. Three issues account for differences in the extent of any decrease in such capacity. First, the scope of agreements, referring to the issues covered in collective agreements. Second, trade union presence at the workplace or, in dual systems of interest representation, close articulation between company-level representation structures, such as works councils, and trade unions at industry level. Third, the existence of effectively functioning mediation and arbitration mechanisms to resolve disputes concerning the interpretation of agreements in a way that ensures a level playing field and constrains the employers' capacity to disregard collective agreements by acting unilaterally.

Developments in the scope of agreements may limit the regulatory capacity of collective bargaining in different ways. One trend is a contraction of the bargaining agenda. Particularly in central and eastern European countries, the importance of legislation in setting terms and conditions has increased at the expense of collective agreements. In some countries, collective agreements merely reiterate the legal minimum standards. Another development, more common in countries with a long tradition of multi-employer bargaining, is a broadening of the bargaining agenda by addressing more qualitative issues, such as gender equality and work–life balance in response to changed preferences

of the workforce. Often, however, this broadening is coupled with a hollowing out of the content of industrial agreements, which increasingly become framework agreements that leave the more specific regulation of the terms and conditions to the company level. Furthermore, in many cases, the inclusion of qualitative issues is linked to increasing the choices of individual employees: for instance, whether they prefer wage increases or more time-off. Overall, these changes in the scope of bargaining have led to increased individualisation and diversification of terms and conditions. This does not necessarily mean a diminution of the regulatory capacity of collective agreements, as long as the unions can ensure that the increased flexibility at the company level is embedded in and guided by the framework set out in the industrial agreement.

Increased individualisation and diversification highlight the importance of the presence of trade unions at the company level and/or close articulation between company-level representation structures and industrial union structures. Throughout the country chapters, this issue emerges as one of the crucial preconditions for ensuring a high degree of control of collective agreements. Trade unions or company-level representation structures with close links to trade unions are the central actor in detecting cases of employers' failure to comply with collective agreements. Even in countries in which the monitoring of agreements is officially the responsibility of a public body, such as the labour inspectorate, the latter often relies on the information provided by workplace unionists to take corrective action. Where the state more generally pursues an approach of reducing the regulatory capacity of collective bargaining, it has tackled the extent of bargaining and the degree of control, for instance, by making it more difficult for trade unions to trigger arbitration; by shifting the responsibility of monitoring collective agreements at company level from trade unions to non-union structures; or by cutting the resources available to labour inspectorates.

The difference in the extent of the decline of regulatory capacity over the past 20 years, ranging from minimal in the Nordic countries to extensive in countries such as Greece and Romania, is accounted for by the presence or absence and the strength of the combined effect of the various factors mentioned above, which influence the extent of bargaining and the degree of control of collective agreements. The different country-specific shapes and combinations of these factors have made some countries move far along the neoliberal trajectory, while others have shown more resilience. This, in turn, has further increased the divergence of collective bargaining arrangements in Europe.

### Where do we go from here?

The key policy issue emerging from the reduced significance of collective bargaining as a regulatory tool concerns how this trend can be reversed. The analysis of the key drivers of the continuing erosion of collective bargaining's regulatory capacity shows that an encompassing strategy, first and foremost, needs to strengthen the extent of bargaining and the degree of control of collective agreements. Such an approach needs to include the strengthening of collective bargaining 'from below', focusing on the development of more encompassing bargaining parties with a stronger membership base; and the

strengthening of collective bargaining ‘from above’, focusing on the mobilisation of political and societal support for collective bargaining (Müller and Schulten 2018).

Strengthening collective bargaining from below requires that trade unions develop their organisational power resources in particular by reversing the decline of union density. A broader membership base not only increases their legitimacy in the political arena, but also increases their potential to force employers to the negotiating table. In recent years, trade unions across Europe have made progress in developing new organising strategies to become more attractive for workers in traditionally weakly unionised labour market segments, such as private services and the new economy, and in attracting traditionally underrepresented groups of employees, such as young workers (Bernaciak and Kahancová 2017; Vandaele 2018a, 2018b). Strengthening collective bargaining from below involves developing a stronger trade union presence within companies and at the workplace. The analysis of the driving forces of the erosion of collective bargaining illustrates that a strong union presence at the workplace is an essential prerequisite for a close articulation underpinning multi-employer bargaining and for a high degree of control that ensures proper implementation and monitoring of collective agreements. It should be acknowledged, however, that trade union membership is lower now than at any other time since 1950, despite the enormous resources devoted to organising in some countries. It remains to be seen whether the long-term decline in unionisation can be reversed by union activity alone or requires the assistance of the state in promoting unionisation. If it is the latter, as seems likely, a significant shift away from the neoliberal agenda is required among policymakers.

Any strategy to strengthen collective bargaining from below also requires support from the employers’ side: in particular, in the form of broad-based employers’ associations, which encourage wider bargaining coverage. The support of employers requires the development of comprehensive organisational structures, coupled with a more supportive attitude towards multi-employer bargaining, halting the incremental retreat from multi-employer bargaining arrangements. This also requires that employers’ associations more decisively advocate the advantages of multi-employer collective bargaining in taking wages and working conditions out of competition and in providing an institutionalised process for resolving conflicts of interest (Visser 2016: 2). The strategy of offering selective membership, pursued for example by employers’ associations in Germany, permitting affiliated companies *de facto* to choose to opt out of collective agreements, may help to improve membership levels, but do little to improve the extent of bargaining.

While strengthening collective bargaining from below is an important element in the overall approach to reverse the decline of collective bargaining, all the measures described are time- and resource-intensive, particularly on the trade union side. Furthermore, the current position of trade unions in some countries and industries is so weak that improving the regulatory capacity of collective bargaining will not be possible without the support of the state, strengthening collective bargaining from above. In short, the state’s active undermining of multi-employer collective bargaining over the past 20 years will have to be reversed.

The country chapters illustrate some initiatives by national governments to support multi-employer bargaining. These include recent attempts in Greece, Portugal and Spain to reverse some of the most far-reaching ‘reforms’ that have been introduced in the guise of ‘crisis management’. Further examples are the introduction of a new law for the ‘strengthening of collective bargaining autonomy’ in Germany in 2015 and the start in 2017 of an European Social Fund project to establish industry-level bargaining in five industries in Latvia. While these initiatives are all helpful in supporting multi-employer bargaining in individual countries, a more broad-based revitalisation across the EU28 requires stronger political support from the European level.

In the past 20 years, European institutions, such as the Commission and the European Central Bank, were among the most fervent supporters of a neoliberal transformation of collective bargaining. As part of the Troika and by issuing country-specific recommendations at the end of the annual European Semester process, they advocated decentralisation and a shift from multi- to single-employer bargaining, on the grounds that this would enable companies to swiftly adapt to changing economic circumstances. More recently, however, there have been indications of a change in the European-level narrative in the field of wages and collective bargaining. The new narrative no longer views wages merely as cost factor that needs to be reduced at all costs, but explicitly acknowledges the important role of wages in boosting internal demand and in advancing social cohesion. This broader view of wages also implies that multi-employer bargaining and strong trade unions should be recognised as central to achieving the objective of more dynamic wage growth (European Commission 2018). This view of wages and collective bargaining is part of a broader acknowledgment of the need to strengthen the social dimension of the EU. The most visible sign of this re-orientation is the adoption of the European Pillar of Social Rights (EPSR), Principle 8 of which includes an explicit commitment to encourage the two sides of industry to conclude collective agreements (European Commission 2017: 33). A look at actual practice, however, shows that, to date, European policymakers have failed to live up to the rhetorical commitments made in the EPSR as regards support for collective bargaining. The clearest evidence of this failure is the 2018/2019 country-specific recommendations, which continue to promote the decentralisation of collective bargaining. In the recitals, Italy was asked to support more bargaining at firm level in order to improve the swift adaption of wages to local economic conditions; while Finland received the informal recommendation to continue with more decentralised bargaining at industrial and local level to ensure that wage increases do not harm cost competitiveness (Müller *et al.* 2019: 58).

While these examples illustrate yet another wasted opportunity to contribute to a reversal of the long-term assault on collective bargaining, in principle all the tools needed to reverse the trend at European level are present. In the past, European policymakers have used three tools to change national collective bargaining arrangements along neoliberal lines (Müller and Schulten 2019). First, the Troika made the provision of financial assistance conditional on the implementation of neoliberal structural reforms. Second, at the end of the European Semester, the annual cycle of macroeconomic coordination in the EU, the European Commission issued non-binding country-specific recommendations. Third, the European Commission sought to dominate public discourse on the causes of the crisis in an effort to persuade the broader public that

there is no alternative to austerity and neoliberal structural reforms, including the decentralisation of collective bargaining, as a solution to the crisis.

With the exception of the Troika mechanism all the tools to intervene in national bargaining arrangements are still in place. What works in one direction to foster neoliberal change will also work in the other direction to reverse it. If European policymakers are serious about supporting strong collective bargaining institutions this should be reflected in the measures proposed in country-specific recommendations associated with the European Semester. Concrete measures to strengthen multi-employer collective bargaining could include the introduction or strengthening of existing extension mechanisms, the strengthening of the favourability principle and the introduction of collective bargaining clauses in the rules on public procurement, stating that contracts can be awarded only to contractors who respect the right to collective bargaining and collective agreements. In order to support Member States in building the structures needed for multi-employer bargaining, the EU could, furthermore, introduce a fund specifically dedicated to this purpose.

The fact that, at the time of writing in April 2019, this sounds utopian illustrates the scale of the task ahead for all progressive forces in the EU that support strong collective bargaining arrangements. Furthermore, developments at European and national level are interdependent. Developments at European level are strongly influenced by political constellations at national level. With centre-right governments in the majority of EU Member States at present it is difficult to mobilise political support for reversing neoliberal reforms at the European level. National governments propose the commissioners. In addition, as members of the European Council, national governments also play a decisive role in the European-level polity. This situation illustrates that the reversal of the decline of collective bargaining requires a multi-level approach, including measures at local, national and European level. The rhetorical commitment made by the European Commission and the various national governments in the EPSR to support collective bargaining and its strong link with the European Semester as an implementation tool, gives the EPSR the potential to provide a European impetus to developments at national level. In this sense the EPSR could be a strategic move in the endgame of collective bargaining in Europe.

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All links were checked on 25 April 2019.

## Abbreviations

EPSR	European Pillar of Social Rights
ILO	International Labour Organization
OÉT	Országos Érdekegyeztető Tanács (National Council for the Reconciliation of Interests)



## **Collective bargaining in Europe: towards an endgame** Volume III

Edited by  
Torsten Müller, Kurt Vandaele and Jeremy Waddington

This book is one of four volumes that chart the development of collective bargaining since the year 2000 in the 28 EU Member States. Although collective bargaining is an integral part of the European social model, it does not sit easy with the dominant political and economic discourse in the EU. Advocates of the neoliberal policy agenda view collective bargaining and trade unions as 'rigidities' in the labour market that restrict economic growth and impair entrepreneurship. Declaring their intention to achieve greater labour market flexibility and improve competitiveness, policymakers at national and European level have sought to decentralise collective bargaining in order to limit its regulatory capacity.

Clearly, collective bargaining systems are under pressure. These four volumes document how the institutions of collective bargaining have been removed, fundamentally altered or markedly narrowed in scope in all 28 EU Member States. However, there are also positive examples to be found. Some collective bargaining systems have proven more resilient than others in maintaining multi-employer bargaining arrangements.

Based on the evidence presented in the country-focused chapters, the key policy issue addressed in this book is how the reduction of the importance of collective bargaining as a tool to jointly regulate the employment relationship can be reversed. The struggle to fend off the neoliberal assault on collective bargaining in Europe is moving towards an endgame. The outcome is still open.

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