

Chapter 1

Joint regulation and labour market policy in Europe during the crisis: a seven-country comparison

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1. Introduction

The sovereign debt crisis, which began in Greece in 2010 and then spread to several other euro-zone economies, is having profound consequences for the labour law and industrial relations systems of the debt-affected member states and for the role of social policy at EU level. As a result of the austerity measures stipulated in loan agreements and/or recommendations issued by the International Monetary Fund (IMF), the European Central Bank (ECB) and the European Commission (EC) – acting often together as the so-called ‘troika’ – essential features of national labour law and industrial relations systems in countries such as Greece, Ireland, Italy, Portugal, Romania, Slovenia and Spain, have been, or are in the course of being, radically revised. Driven by the perceived need to initiate a process of ‘internal devaluation’ in order to restore national economic competitiveness, public deficit reduction measures have been coupled with deep structural labour market measures. The latter are aimed not only at ensuring wage moderation but also at changing essential features of industrial relations systems by changing employment protection legislation and collective bargaining (Deakin and Koukiadaki 2013). While such measures have been implemented in a number of countries, the timeframes of the measures vary, with some entering their third stage since the development of the crisis (for example, Greece and Ireland) and others still at the beginning (for example, Slovenia).

Given that social dialogue has been one of the key institutional features of the European social model, it is crucial to provide a detailed comparative analysis of the process, content and outcomes of collective bargaining, as influenced by the measures taken and the EU’s 2020 Strategy goals of high levels of employment and social cohesion (EC 2010a). Earlier

comparative studies have illustrated the positive impact of social dialogue in periods of crisis (Ghellab 2009). However, most research on the impact of the crisis fails to address the specific question of the role of the structural labour market adjustments in ‘reconfiguring the space’ for articulating management and employee interests and the development of social dialogue in a fragmented context. An important issue, thus, is to understand how the policy and legislative changes influence the form of collective bargaining at different levels and shape the content and outcome of collective agreements with regard to specific issues, such as wages, employment conditions and prospects, quality of work, work/life balance and gender equality.

In focusing on a key sector of economic activity, manufacturing, the research project was based on three central pillars. The first was a critical assessment of the nature and scope of measures concerning collective bargaining. Building upon prior research by team members that stresses the processes through which the effects of the crisis, which began in financial markets, were transmitted to labour markets through the interventions of the ‘troika’ (for example, Fernández Rodríguez and Martínez Lucio 2013; Koukiadaki and Kretsos 2012; Trif 2013), the research addresses the contextual aspect of the labour market measures. Two key dimensions are investigated here: labour market dynamics, as influenced by the worsening of the sovereign debt crisis, and the national political and regulatory frameworks of the response to the crisis, as influenced by the approach taken by supranational organisations – for example, the ‘troika’ of creditors – and recent developments in European economic governance.

The second pillar comprised a critical assessment of the actors’ responses and the process and nature of collective bargaining. The introduction of wide-ranging measures in social dialogue had the potential to lead to radical rather than incremental forms of innovation (Streeck and Thelen 2005). In the manufacturing sector, this could involve the destabilisation of multi-employer collective bargaining and other forms of coordination, with negative implications not only for trade unions, but also for employers’ associations and central government/regional authorities. In this context, it would be useful to develop a typology of the character of measure-driven agreements with regard to their procedural provisions and the factors influencing the pattern of responses by social partners. It would also be interesting to assess whether a new model of bargaining is

emerging, with clear reference points for employers and unions – albeit different in nature – or whether the developments are ad hoc, with no clear ideological or isomorphic underpinning.

The third pillar concerned the impact of the changes on the content and outcomes of collective bargaining. The measures involve a radical shift of the regulatory boundaries between statutory regulation, joint regulation by the social partners via bargaining and unilateral decision-making by management. On the basis that the terms of trade-offs between the social partners may in turn shift as well, the research collected and analysed qualitative data, including case studies, at national, sectoral/regional and company levels. It then integrated the effects of changes in some key dimensions, including, wage setting, employment conditions and prospects, quality of work, work/life balance and gender equality.

The present chapter synthesises the findings from the national reports and provides an assessment of developments across the three pillars identified above. The structure of the chapter is as follows. Section 2 provides an overview of the research methodology for the study. In this context, the rationale for the selection of the manufacturing sector, as well as the chosen EU member states is provided. The chapter also outlines the main research questions and the research methods used for the conduct of the studies at national level. As will be seen, these included not only interviews with key actors, but also cases studies at company level and the organisation of workshops with the purpose of testing and validating the design/results of the research project. The state of collective bargaining before the crisis constitutes the focus of Section 3. In this way, the analysis provides a critical evaluation of changes and continuities in national bargaining systems up to the emergence of the crisis. Attention is also paid to conceptualising bargaining systems in terms of rigidities, inefficiencies and so on, as identified by supranational institutions but also domestic actors. Section 4 deals directly with the institutional response to the economic crisis. As the response evolved at different levels and different stages, the analysis focuses on developments at both European and national levels, including, respectively, the introduction of economic adjustment programmes and the operation of the European Semester, but also measures promulgated and adopted at domestic level. Following this, Section 5 provides a detailed analysis of the substance of the labour market regulation measures taken in the seven countries. In this way, the analysis pays attention not only to the labour market

measures targeted directly at collective bargaining, but changes in other areas as well that may indirectly influence the scope for joint regulation, including employment protection legislation and working time. The impact of the measures on the structure and character of bargaining is assessed in Section 6; the analysis provides a typology of the impact of the changes and identifies factors explaining the differences and similarities between the EU member states. Section 7 discusses the impact of the measures on wage determination and other terms and conditions of employment. It also evaluates how the measures impacted on the role of different actors in determining these developments and critically analyses their significance. Section 8 provides a reflective discussion of the measures and their significance, while section 9 concludes with a summary of the main findings and policy implications.

2. Methodology: comparing changes and developments in industrial relations measures

With the overarching objective of investigating the impact of the labour market measures implemented in Europe during the crisis, the research took a comparative approach to examine the process and outcome of these changes in collective bargaining in seven countries: Greece, Ireland, Italy, Portugal, Romania, Slovenia and Spain. These countries developed more coordinated systems of regulation (especially Greece, Portugal, Slovenia, Romania and Spain) at a time¹ when organised and more coordinated systems of labour relations were being challenged in the 1980s and 1990s. Hence, they represent a specific part of the Europeanisation project, which has attempted to develop more thorough and systematic approaches to regulation in more difficult circumstances. The national case studies were conducted by the following teams of academics: Ireland: Tony Dundon and Eugene Hickland (NUI Galway, Ireland); Italy: Sabrina Colombo and Ida Regalia (Università degli studi di Milano, Italy); Portugal: Isabel Távora (University of Manchester) and Maria do Pilar Gonzalez (University of Porto, Portugal); Greece: Aristea Koukiadaki and Charoula Kokkinou (University of Manchester, United Kingdom); Romania: Aurora Trif (Dublin City University, Ireland); Slovenia: Aleksandra Kanjuo Mrčela and Miroslav Stanojević (University

1. The project was completed in January 2015 and the findings discussed here reflect the developments up to that time. We would like to acknowledge that the research was funded by the European Commission (project number VS20130409).

of Ljubljana, Slovenia); Spain: Carlos Jesús Fernández Rodríguez and Rafael Ibáñez Rojo (Universidad Autónoma de Madrid, Spain) and Miguel Martínez Lucio (University of Manchester). Throughout the project, consultation took place with the Advisory Board. Members included the following: Stavroula Demetriades (European Foundation for the Improvement of Living and Working Conditions), Simon Marsh (European Chemical Employers Group), Guglielmo Meardi (University of Warwick), Phillippe Pochet (European Trade Union Institute), Jill Rubery (University of Manchester) and Jeremy Waddington (University of Manchester and European Trade Union Institute).

The rationale for the selection of the seven countries was twofold. First, they were among the European countries most affected by the economic crisis. They have borne the brunt of the austerity measures and are closest – in theory – to experiencing paradigmatic changes in their systems of industrial relations. In other words, this is the closest that Europe has come, so far, to a post-regulated situation, at least in theory, because our project-based research reveals more complex and curious outcomes from the point of view of social dialogue. Second, their labour market regulations had undergone substantial measures associated with assistance programmes or recommendations of European and other supranational institutions. These measures were extensive and reveal a challenging legacy and tendency within the European Union. They also, in the main, represent a key constituency within the ‘new’ Europe that have come into the European Community at later stages and have not been always at the centre of core decision-making, apart from Italy.

As an important sector for the business systems of the countries in question, manufacturing was the focus of the study. From a methodological perspective, this sector was also selected because understanding the effects of the relevant measures on the industry with the longest tradition of collective bargaining, enduring industrial-relations institutions and good practices of multi-level collective bargaining would be particularly insightful. If the measures were sufficient to destabilise the industry with the most robust industrial-relations institutions, that would give us an indication of their potential for disrupting the overall system of industrial relations in each national context. These institutions were spaces in which the social dialogue agenda – in particular, the collective bargaining agenda – would act as a benchmark for the rest of the country.

In effect, manufacturing is an important benchmark for establishing coordinated systems of industrial relations.

The research in each of the countries sought to address four main questions:

- What are the implications of the measures for collective bargaining arrangements at cross-industry, sectoral and company level?
- What are the government and social partner strategies and approaches towards the broad labour market measures in collective bargaining, as influenced by the structural adjustment programmes and/or the recommendations of supranational institutions?
- What is the extent and nature of changes in management policy and practice and trade union approaches at sectoral and company level concerning the process and character (conflictual or consensual) of bargaining in light of the measures adopted?
- What are the implications of the measures for the content and outcome of collective bargaining at sectoral and company level, especially for wages and working time, but also issues such as work/life balance and gender equality?

In order to address these research questions we established partnerships with universities in the various countries and organised a team of academic researchers for carrying out the research in each of them. In some cases, a member of the coordinating team was directly involved in national cases (Greece, Portugal and Spain), allowing the hub of the project to be involved directly in nearly half of the research.

The study took place in two main stages:

- First stage: From January to March 2014 each team conducted a systematic review of prior regulatory traditions, the process of implementation and substantive measures concerning the legal framework regulating employment and collective bargaining in each country. This phase, which was based mainly on secondary sources, also examined the potential implications of labour market measures for the national systems of social dialogue, especially collective bargaining.
- Second stage: This phase involved the collection and analysis of primary empirical data, focusing mainly on understanding the impact of the measures on collective bargaining in manufacturing

in each country. This phase took place between April and September 2014. It involved a range of activities and in each country data gathering included three components:

- (i) Research interviews with relevant labour market actors who would be key informants about the impact of the changes on collective bargaining; these included political and organisational leaders, officers and legal experts from employers' associations and trade union structures that were involved in policy and practice of collective bargaining at the national and sectoral level. In addition, in some countries government officials from the ministry of labour and other relevant departments were also interviewed: in some cases this involved former ministers. The data from interviews were complemented with reports and documents provided by the social partners and government interviewees and with the collective agreements, when these were accessible. Experts at the university and social partners were also interviewed in some cases.
- (ii) National workshops took place with representatives from social partner organisations and served as platforms for exchanging views and establishing dialogue between social partner institutions and the academic teams with a view to promoting learning about the impact of the measures on collective bargaining. Some of these workshops also involved government officials from the ministry of labour or other relevant departments. In most of the countries this workshop took place at the beginning of the empirical phase and fulfilled the additional role of opening up access to relevant interviewees who could be key informants and to companies that could constitute relevant case study organisations. In Slovenia and Ireland the workshop was conducted at a later stage and in these cases it provided an opportunity to obtain additional data, clarify issues and validate the findings from the earlier stages of the research. In the case of Spain, the workshop involved the presentation of competing employer views, which allowed the event to become a detailed focus group in its own right. Some workshops were recorded and provided rich empirical data.

- (iii) Company case studies in the manufacturing sector involved interviews with company representatives, including senior management and HR managers, as well as workers' representatives from trade unions and other representative bodies. The interview data at this level were complemented by documentary evidence, including collective agreements where they existed and were made available. In some cases, management and workers' representatives were interviewed in a particular company, while in others sometimes only one side was interviewed. Much depended on the extent of access, although the project yielded a substantial set of data overall.

In order to enable comparability of the research and to capture the issues particular to each country, we sought to combine one industry that was common to all country contexts, with other industries chosen by each academic team based on contextual relevance and accessibility criteria. The chosen common industry was metal manufacturing due to its strong tradition of collective bargaining. Table 1 displays information on the sectors of the case studies in each of the seven countries. These were, in the main, manufacturing sectors and had strong traditions of social dialogue and collective bargaining. There were strong sectoral bargaining traditions and highly organised social partners.

Table 1 Company case studies and industries in each country

	Metal/ automotive	Food and drinks	Chemicals/ pharmaceuticals	Textiles/ footwear	Medical devices
Greece	X	X			
Ireland	X	X	X		X
Italy	X		X		
Portugal	X	X		X	
Romania	X	X			
Slovenia	X		X		
Spain	X		X		

Based on these two phases of the research, the academic teams in each country produced a national report that summarised their findings on the process and substance of the regulatory changes and how these affected their respective collective bargaining systems in practice. The comparison carried out in this report is based on the data provided by each of these seven reports. These reports were based mainly on interviews with the different levels of actors outlined earlier. However, in some reports the cases were presented in a case by case manner, while in others the reports used the cases to outline key themes, outcomes and narratives with regard to the measures taken.

The qualitative approach, complemented with secondary quantitative data, allowed us to begin to outline some of the insights, calculations, risks and concerns emerging from the national cases. It provided an insight at a specific moment of time into some of the questions emerging from the measures taken, from a range of individuals in a variety of organisations. We were also able to frame the responses and views on collective bargaining in a more historically sensitive approach. This allowed us to generate a series of important insights and findings, which are presented in this report and the national reports. In this respect, how the measures were understood and how they were located in terms of different national issues and concerns in relation to industrial relations and labour market regulation generally was central to the project. We were able to map the ways in which questions of collective bargaining derogations and the manner in which agreements were applied or not in terms of the different traditions and the strategic responses to them of different actors. Throughout the project these were understood in terms of how the industrial relations legacies were framed historically in terms of their contributions and limitations. The work of Locke and Thelen (1995) was therefore an important inspiration for the project in terms of how institutions and relations were understood and associated with broader issues and problems by leading organisations and regulatory actors, as well as the national political concern with joint regulation. Throughout the study the meaning of different aspects of the measures and their significance were compared in terms of actual developments and the meanings associated with them by key actors. This was important in allowing us to map some of the problems and concerns with changes in industrial relations and the way previous practices were seen in more positive terms than one would have imagined.

3. The state of collective bargaining and industrial relations before the crisis

3.1 Trends in collective bargaining and industrial relations in the pre-crisis period

The nature of collective bargaining across the seven member states in question varied significantly in terms of their labour relations institutions, especially their collective bargaining systems. However, there were commonalities in the way collective bargaining played an active role in creating a discussion and purpose in changing and improving terms and conditions of employment. In particular – albeit in different ways – the manner in which the national and the industrial sectoral level of dialogue framed discussions and agendas is significant in most of the national cases studied.

These may not be some of the strongest or more articulated systems of collective bargaining in Europe compared with some of their northern European counterparts (contradicting some of the criticisms of rigidities in labour relations systems expressed in these seven national case studies). However, the systems do appear to have a positive and constitutional underpinning for collective bargaining processes, except for Ireland, which relies on a more voluntarist tradition, as does Italy to some extent. Still, even in such cases national dialogue managed to frame the existence of a social partnership tradition, even if, as in Ireland, strong legally based rights concerning trade union recognition are lacking due to the influence of the British colonial legacy (Hickland and Dundon 2016). Overall, however, most of the countries in the research exhibit significant activity with regard to joint regulation and their institutional systems reproduce some, at least, of the features of a coordinated market economy (Hall and Soskice 2001).

Trade union membership in these countries has not been among the highest in Europe, but overall one sees a significant workplace presence in sectors such as metal and chemicals. In general terms, Eurofound, in a study by Mark Carley based on data for 2008 (see below), puts the seven countries within the following categories:

Table 2 Trade union membership as an average of the national workforce in 2008

Country	Percentage
Finland	over 90%
Belgium and Sweden	80%–89%
Denmark and Norway	70%–79%
Italy	60%–69%
Cyprus, Luxembourg and Malta	50%–59%
Romania	40%–49%
Austria, Ireland and Slovenia	30%–39%
Bulgaria, the Czech Republic, Germany, Greece, Hungary, the Netherlands, Portugal and the UK	20%–29%
Latvia, Poland, Slovakia and Spain	10%–19%
Estonia and Lithuania	below 10%

Source: Mark Carley (2009), EIRO <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm#hd2>, accessed 28 October 2014.

The cases we are concerned with are clearly in the second tier of trade union membership levels in Europe. However, except for Spain they are all above 20 per cent and in some cases closer to 50 per cent, as in Romania. The data reveal two things:

- (i) In most of these countries there is also a tradition of state sanctioned works councils or workplace representative elections: through these mechanisms of representativeness and bargaining rights, trade unions are considered to be the legitimate voice for the vast majority of workers, even if membership is below 50 per cent, on average. Even in Spain, in which trade union membership is below 20 per cent, over 80 per cent of the workforce participate in workplace representative and works council elections. This means that trade unions are important state sanctioned and legally recognised representative bodies for the workforce, especially in relation to collective bargaining.

- (ii) In the seven countries under analysis we see that such membership figures are actually fairly high, in particular given the political background of five of these countries. Greece, Portugal and Spain emerged from authoritarian contexts in the 1970s and had to construct liberal democratic systems of government and governance in a short period of time. They had to move from state corporatism or the direct state control of labour relations to societal or liberal corporatism in a very short period of time (Schmitter 1974). In the case of Portugal and Spain, military authoritarian rule lasted from between a third to half a century. Hence trade unions had to create independent structures very quickly (Martínez Lucio and Hamann 2009). Independent trade union representation in Romania and Slovenia prior to 1990 was dominated by the state and state-oriented parties with very little autonomy and tradition of bargaining and trade union activism of an independent nature. Social dialogue was symbolic and compulsory in nature (Trif 2016). This is important for our purposes because these countries have had to build up a system of independent collective bargaining – and systems of social dialogue in general – in a brief period and in a context in which workers and employers have not had the time to create traditions of social dialogue and reciprocal relations. Furthermore, relatively lower levels of membership mean that the onus for organising the activity and resources of the worker side falls on much weaker and more vulnerable national and sectoral organisations. What is more, in relation to Spain it has been argued that the industrial relations actors had to construct a system of *organised* labour relations and state intervention in the labour market, work and society at the very point in time (the 1980s and 1990s) when these post-war systems were becoming *disorganised* due to neoliberal economic policies and changes in the notion of the ‘Keynesian’ welfare state (Martínez Lucio 1998). This argument is particularly relevant to those five national cases, too.

In this respect, the achievements of these countries are notable. The representation of worker interests, and even of employer interests, is much broader in terms of bargaining functions and this leads to the key issue of how joint regulation was structured in such contexts prior to 2008. In fact, in 2013 EIRO research pointed to fairly significant roles for coordinating sectoral bargaining in such countries as Spain,²

2. See: <http://www.eurofound.europa.eu/eiro/cwb>.

where higher tiers of social actors played an important role compared with other contexts. Even in Ireland we saw national negotiations prior to 2008 evolving to deal with national wage-related issues. However, while these traditions vary, all the countries studied had some element of sectoral and/or state coordination in terms of wage increases and collective bargaining activity during the 1990s and 2000s. In many cases there was state support for the regulatory coverage of workers through sectoral or national agreements, and higher tier agreements in most cases were extended beyond those firms with company or workplace agreements of their own. In some cases, there were national agreements on pay to frame the negotiations, while in others – for example, Portugal – national-level negotiations more recently have concerned broader social issues and the minimum wage, although they have tended not to deal with wages.

In terms of establishing minimum working conditions and wages the higher tier in Greece could be extended to all workers and this pre-crisis approach allowed unions to negotiate beyond their particular areas of strong and embedded representation. This extension principle meant that lower level agreements were underpinned and regulated by multi-employer agreements. In many respects, this was also the case in Spain and other national cases. Sectors such as metal and chemicals in particular were known for such forms of coordination. In Ireland, where multi-employer bargaining was more complex and less developed, independent Joint Labour Committees established minimum pay for a range of less organised sectors, although national negotiations were important. In Italy, sectoral agreements have been an important platform for regulation of wages and conditions, backed up by periodic engagement with social dialogue at the national level, depending on the political contingencies of the time (Colombo and Regalia 2016). The removal through dialogue of the *scala mobile* in 1992 and the move towards a more concerted attempt at social dialogue based on competitive economic criteria had generated, even during the volatile political period of the 1990s and 2000s, moments of social participation. However, in various countries – such as Spain – although wages were seen to be significantly regulated by this multi-employer focus, the rigidities in terms of employment and redundancies were being seen by the OECD and others as a major impediment to significant competitive change in terms of labour mobility.

The basic characteristics of collective bargaining at various levels are summarised in Table 3:

Table 3 Main features of collective bargaining systems before the crisis

Country	Inter-sectoral level	Sectoral level	Company level
Greece	National general collective agreement (EGSEE)	<ul style="list-style-type: none"> – Predominance of sectoral bargaining – Statutory extension procedure 	<ul style="list-style-type: none"> – Terms and conditions on top of those set at higher levels – Union representation in companies employing more than 20 employees
Ireland	Framework of a series of national agreements (National Social Partnership Agreements)	<ul style="list-style-type: none"> – Some industry level agreements (for example, construction) – Extension procedure (REAs) 	Single-employer model of bargaining with limited intervention by the state
Italy	National general agreement between the two sides of industry on the rules of collective bargaining	<ul style="list-style-type: none"> – Predominance of sectoral bargaining 	<ul style="list-style-type: none"> – Lack of substantial coverage by company agreements – Concentrated in medium and large companies
Portugal	Social pacts (mostly tripartite) on employment and social issues, but not on income policies since the 1990s, except the national minimum wage	<ul style="list-style-type: none"> – Predominance of sectoral bargaining – Quasi-automatic extension 	Such agreements relatively rare; if they exist, they improve on sectoral agreements
Romania	National general collective agreement laying down a floor of rights	<ul style="list-style-type: none"> – 32 branches eligible and 20 branches with collective agreements – Statutory extension procedure 	<ul style="list-style-type: none"> – Terms and conditions on top of those set at higher levels
Slovenia	Practice of social pacts and consensually accepted income policies	Implementation of income policies by sectoral agreements	<ul style="list-style-type: none"> – Several thousand collective agreements at company level – Possibility for derogation <i>in pejus</i> from higher agreements
Spain	Loose social pacts and general national agreements on pay	<ul style="list-style-type: none"> – Principle of statutory extension – Ultra-activity period 	Fairly articulated bargaining and sector level frameworks for company bargaining but questions of implementation

Among these countries we can identify a curious framing of lower level collective bargaining. It is located in and supported primarily through national and/or sectoral activity and the importance of sectoral trade union structures and employers' associations has been reinforced over the past thirty years or so. This southern European model reflects specific types of organisation and state traditions linked to the importance of sector level activity (Molina and Rhodes 2007). In some cases, they reflect previous state corporatist structures (Lehmbruch 1985; Schmitter 1975) in authoritarian contexts, in which higher tiers were established or activities focused on the sectoral level, mutating during periods of democracy after the 1940s or the 1970s, in some cases into more robust voice mechanisms and spaces in which workers could organise and coordinate.

In the case of Portugal such mechanisms developed, for example, in a similar way to Italy and Spain. The role of the social dialogue-driven national forums and the importance of establishing a national reference point for wage negotiations (even if wages were not always explicitly discussed) and basic working conditions underpinned the sectoral frameworks. However, what is notable in the case of Portugal – and to a great extent this is mirrored in Spain and some other cases, too – is the emergence of a politics of social dialogue and, in particular, stable collective bargaining policies through the increasing prevalence of more moderate trade unions with a social democratic heritage or inclinations towards social dialogue, and the steady institutionalisation of the more radical majority left-wing trade unions. This development was important in countries such as Portugal and Spain in creating a tradition of social pacts and discussion which, while contingent on specific themes and aspects of social measure, managed to create a less conflictual industrial relations system. One needs to recall the political contexts of Greece, Italy, Portugal and Spain in the 1970s to truly appreciate the extent of labour relations 'normalisation'. In fact, there is an irony in discussing the pre-2008 labour relations panorama in these contexts. While certain forms of labour market rigidity remained in terms of internal and external labour markets, and while wages were determined through relatively regulated systems, the extent of social dialogue and the manner in which social pacts and sector-level discussions took place evolved significantly – rightly or wrongly, depending on one's point of view – from the expectations of the 1970s and 1980s, when social conflict appeared a more likely outcome.

The role of social dialogue and increasingly coordinated collective bargaining cultures – albeit more strategic and contingent than structurally embedded in cases such as Spain (Martinez Alier and Roca 1987) – was fundamental in stabilising the newly emerging democratic regimes. The role of so-called labour market rigidities in terms of the cost of making workers redundant, or the processes utilised to restructure firms, continued to exist precisely because they allowed such social dialogue. First, at a time when a labour relations system was emerging, social actors – including state agencies – did not deem it wise to overload the measures implemented or the transitional agenda by putting too many rights – or their removal – on the table for discussion just as these systems were taking form. Second, many of these rights, in countries such as Portugal and Spain, were seen as hard-won from the previous authoritarian contexts, as noted earlier. To that extent these ‘rigidities’ allowed for a system of dialogue to emerge on less embedded issues, even if the more sensitive issues were dealt with and to some extent reformed to a great extent prior to 2008 (such as automatic pay increases in Italy, labour classification systems in Spain, and others). Third, these supposed labour market rigidities were in fact maintained not fully reformed because welfare systems in all seven countries – but especially Greece, Ireland, Portugal, Romania, Slovenia and Spain – were not systematically developed compared with the Netherlands or Finland. These forms of compensating workers for labour market change are seen as a way of balancing the absence of long-term and broadly inclusive state benefit systems. The absence of long-term and stable unemployment benefit in Spain meant that redundancy payments acted as a social cushion for workers, given this lack of state support. Hence, rigidities in terms of labour market rights can be understood only in historical context.

Throughout these national contexts, especially those in southern Europe, larger companies have been able to develop their own frameworks and structures with regard to setting wages and conditions, cushioned by the minimums established at higher levels through sectoral arrangements. Small and medium-sized enterprises have been able to rely on higher tier agreements, whether at the sectoral or sectoral/regional level, to assist in the process of regulation and labour management. In some cases this leads to local sectoral agreements, which are more relevant for such firms. This principle of extension of the contents of higher tier agreements was common in all these contexts, especially in southern Europe, within the

framework of the project. This has also been supported, as in the case of Spain and Portugal, by the development of agreements that cover training and make it possible to establish links with new collective bargaining issues framed by new tripartite commitments and structures.

In the case of Romania and Slovenia we saw these higher tiers play an important role, with sectoral agreements in the former existing in 20 of the 32 sectors eligible for collective bargaining (Trif 2016). In Romania, trade unions played an active part in sector level activity and there was statutory extension of such sectoral agreements to all workers. In fact, this is an important feature of the European context, where representativeness, be it through works council elections or membership rates, constitutes a formal and state-sanctioned basis for the regulation of working conditions through higher tier mechanisms. In fact, according to Stanojević and Kanjuo Mrčela (2016) Slovenia can be considered to have been a relatively coordinated market economy even before 2008, due to a number of factors that set it apart from other post-communist nations. The replacement of general agreements for the private and public sector with sectoral agreements in Slovenia, which previously had 90 per cent coverage, is indicative of how the sector has become the prevalent and accepted space for regulation in the European Union. While trade union membership fell from 43 per cent in 2003 to 26 per cent in 2008 due to changes in legislation – among other factors – collective bargaining in Romania and Slovenia is present in workplaces, but guided by national and sectoral dialogue.

Prior to 2008 there were other changes in terms of the content of collective bargaining in the countries under consideration in this report. The notion that they were static (something the next section addresses) is questionable. In the case of Spain the emergence of equality legislation under the Zapatero government (2003–2011) meant that firms had to develop equality plans within collective bargaining frameworks. In many of the countries studied, we found examples of training and development entering the content of collective agreements in terms of rights to training and time off for training, for example, in Portugal. As in Italy and Spain this was normally sustained by national and regional social dialogue mechanisms on learning (for example, lifelong learning, new forms of skills and employability; Stuart 2007). In Portugal, there was a bipartite agreement on training in 2006 to improve qualifications and promote skills development and lifelong learning with a view to improving working and

living conditions, productivity and competitiveness. The social partners also committed themselves to making training a bargaining priority. All the union and employer confederations signed the agreement and invited the government to get on board (Social and Economic Council of Portugal 2006). In Greece, there were attempts – with mixed results – to widen the set of issues discussed within the framework of the National General Collective Employment Agreement (EGSEE). The driving force behind this was, in many cases, developments at EU level, either in the form of the recommendations made to Greece under the European Employment Strategy – for example, on employment and vocational training – or in the form of autonomous agreements concluded between the European social partners, for instance with regard to stress at work and teleworking.

What we therefore see is a degree of articulation and coordination in these seven countries, sustained by an element of renewal and change. The notion of a static system of collective bargaining prior to 2008 is an unfortunate and, in our view, incorrect stereotype.

3.2 The emerging political and strategic challenge to labour market regulation and collective bargaining before the crisis

What patterns or characteristics existed prior to 2008? Can we speak of an articulation of bargaining in these national contexts? The first context is the importance of multi-employer collective bargaining backed by varying degrees of social dialogue at the level of the state. In Ireland and Spain, for example, social partnership developed as a key feature of the national system of labour relations, although one could not argue that they mirrored Austrian or Finnish approaches. Second, agreements at the higher level were often extended to provide a cushion of support for the lower levels, which were more exposed or had less regulatory strength. The sector became the platform for organisation and regulation. In terms of manufacturing this was common in almost all the countries studied. The sector is the space within which the ‘common’ terms and conditions of work and the ‘shared’ experiences of work and activity can be coordinated. This has evolved steadily in these countries since the 1970s, forming a backbone of support for the ever diversifying and fragmenting nature of production.

Third, a culture of regulation and a sharing of expectations has emerged, albeit in varying ways, between the social partners. In many of the cases studied there was a sense of a shared history and struggle as different challenges – such as external competition, European integration and industrial change – have been addressed through formal and informal agreements. Whether these factors constitute a system of coordinated market economy is another matter. There is no doubt that the state has been helping trade unions to play these roles through training and institutional support, which in some cases has led to controversial experiences of proximity. However, by 2008 there was a system of flexible social dialogue and strategic corporatism responding to new social and economic changes and to an extent modernising to varying degrees (Martínez Lucio 2000).

There were gaps in this system and, in the first instance, critics pointed to the slow reform of labour market rights, for example, with regard to the costs of dismissal. To some extent, such labour rights were only partly open to negotiation. The sectoral level of bargaining was seen by the critics as a cover for the absence of a deeper discussion of and reflective approach to the role of social dialogue in relation to efficiency. Second, there was a concern that the space of medium and large firms was not being fully developed in terms of robust discussions on growing problems, for example, the competitive and productivity gaps with non-European competitors, such as China. Collective bargaining agendas appeared to be truncated and unable – or unwilling – to tackle deeper issues of workforce flexibility with regard to working time and practices. The ability to radically adjust wage rates in the face of economic shocks was seen by some as unachievable. However, this critique obscures the growing importance of learning and training, equality, and health and safety related issues within collective bargaining. Nevertheless, the inability to move away from a quantitative collective bargaining agenda, which emphasised minor or incremental changes (in whatever direction) in wages and working hours, and to adopt a qualitative one based on more substantive changes to employment practices and work routines through a much more flexible deployment of workers across space and time within a firm, began to be raised.

Third, critical voices to the right of the political spectrum began, even prior to the 2008 crisis, to undermine the partial social partnership consensus that had been generated on the European Union's 'periphery'.

In some respects, the critique of excessive institutionalisation was an emergent feature of countries such as Spain, although this sometimes came from new forums on the left, too, which were disillusioned with the proximity between the state and labour (see Fernández Rodríguez and Martínez Lucio 2013 for a discussion). There was a sense that organised labour was focusing its influence primarily on the sectoral and national levels, relying less on the workplace, as in Ireland and Spain. The debate in key parts of Europe was that trade unions were not present in a systematic way in various arenas and levels of the economy.

This concern emanated from various political quarters in the centre and on the right, which argued that the focus on the sectoral level was also a sign of growing weakness and lack of real and effective regulatory reach. Sectoral agreements allowed templates for discussion and local agreements to be developed locally, which did not bring to the negotiating table any significant measures on structural issues and labour market challenges. That is to say, it was argued that trade unions were using such regulatory processes to ensure some influence among a diversifying set of organisations and a workforce that was not always developing its own robust social dialogue and collective bargaining mechanisms and business-oriented involvement (see Ortiz 1998 for a comparison of the United Kingdom and Spain in the 1990s with regard to the presence of workplace systems of representation).

Finally – and unfortunately in the eyes of the authors of the present volume – much of this critique has been led by the Anglo-Saxon press, chiefly *The Economist* and the *Financial Times*, which have increasingly depicted the inflexibility of the countries with which we are concerned in terms of national stereotypes and even in a racist way. The term PIGS – to stand for Portugal, Italy, Greece and Spain – is racist, denoting undeveloped political systems (see Dainotto 2006 and, for a use of the term which raised formal complaints, Holloway 2008). Much of this discussion came at quite an early stage of the crisis and even before it in some instances. In the case of Spain labour market rigidities are seen as reflecting Spanish ‘laziness’ and immobility, a link to a darker Spain that plays on the notion of the ‘black legend’ (see Fernández Rodríguez and Martínez Lucio 2013 for a discussion).

4. The institutional response to the crisis at the European and national levels

4.1 European level

The Greek sovereign debt crisis of 2010, which since then has come to affect most peripheral economies in the European Union, exposed not only the structural weaknesses of certain EU member states, but also the weaknesses of governance of the euro zone. The structural problems of the Economic and Monetary Union (EMU) and their impact on the euro crisis are now fairly well understood (De Grauwe 2013): by joining EMU, member states lost both the external constraint of having to maintain a balance of payments and the capacity to respond to problems of inflation and unemployment through changes in the nominal exchange rate or the instruments of expansionary or restrictive monetary policy. Even though fiscal competences remained at national level, their use for expansionary purposes was severely restricted by the Stability and Growth Pact (Busch 2012). EMU membership generated structural strains because different types of political economy adopted a common currency: in this context, Portugal, Spain, Italy and Greece were often grouped together, as opposed to a group of northern countries led by Germany and including the Netherlands, Austria, Denmark and Finland (Hall 2012). Perceived characteristics of the former group included labour market rigidities (see Chapter 4) and a low administrative capacity for policy implementation, linking non-compliance with particular institutional and cultural deficiencies (La Spina and Sciortino 1993: 219–22).

From a labour law and industrial relations perspective, there is evidence to suggest that even with the gradual implementation of the EMU programme from the Maastricht Treaty onwards, and the deepening of single-market reforms, labour law at member state level did not undergo a fundamental change before the crisis.³ Part of the reason for this was a fundamental compatibility of labour law protection with the competitiveness agenda, which came to influence national and European policy-making at that time and which recognised the ‘beneficial constraints’ effect (Streeck 1997) of social policy on economic development and competitiveness. However, labour law regulation was unable to reverse the trend towards weaker collective bargaining systems and falling union density, and these developments, as they weakened

3. This paragraph draws on Deakin and Koukiadaki (2013).

the force of labour law protections on the ground, were responsible, at least in part, for the increase in inequality experienced in the large EU economies – as well as in the United States – during the period leading to the crisis. When the crisis of 2007–2008 emerged in the United States, connections between labour and financial markets meant that regulatory mismatches were transmitted from one market context to another, reinforcing and deepening the crisis (Deakin and Koukiadaki, 2013).

In the context of a deepening crisis affecting EU member states and challenging the European integration project, the institutional response at EU and member-state level evolved in different timeframes and in diverse ways. First, a number of EU member states received financial assistance programmes. The programmes can be divided into the following categories (Kilpatrick, 2014):

- (i) Non-euro-zone programmes: these have been introduced on the basis of Article 143 Treaty for the Functioning of the European Union (TFEU). This option has been used in the case of non-euro-zone member states, namely Hungary, Latvia and Romania.⁴
- (ii) Euro-zone programmes:
 - (a) bilateral (euro zone member states set up bilateral loans complemented by an IMF stand-by arrangement): provided financial assistance in the case of the first loan agreement for Greece (2010);
 - (b) European Financial Stabilisation Mechanism (EFSM) (on the basis of Article 122(2) TFEU):⁵ provided financial assistance in the cases of Ireland and Portugal;

4. Council Decision of 4 November 2008 providing Community medium-term financial assistance for Hungary (Decision 2009/103/EC). Council Decision of 20 January 2009 providing Community medium-term financial assistance for Latvia (Decision 2009/290/EC). Council Decision of 6 May 2009 providing Community medium-term financial assistance for Romania (Decision 2009/459/EC) amended by Decision 2010/183.

5. The EFSM was an emergency funding programme reliant upon funds raised on the financial markets and guaranteed by the European Commission, using the budget of the EU as collateral. Article 122(2) was used as the legal basis for Council Regulation 407/2010 ([2010] OJ L118/1), which stipulates the details of the mechanism.

- (c) European Financial Stability Facility (EFSF) (international agreement for the establishment of a private company under the control of the euro-zone member states):⁶ provided financial assistance to Ireland, Portugal and the second loan agreement for Greece;
- (d) European Stability Mechanism (ESM) (intergovernmental treaty):⁷ provided financial assistance to Cyprus.

On top of the financial assistance programmes directed towards individual states, the EU member states' coordinated response comprised a new set of rules on enhanced EU economic governance. These include the European Semester, the Six-Pack Regulations⁸ and the 2011 Fiscal Compact,⁹ denoting a new and challenging stage in the process of European integration and the direction of European social policy (Ioannou 2012). The European Semester – a mechanism by which the member states, after receiving EU-level recommendations, then submit their policy plans ('national measure programmes' and 'stability or convergence programmes') to be assessed at the EU level – constitutes a 'complex, multi-layered, multi-institutional process, which encourages, among other things, significant measures to labour law systems in some countries' (Barnard 2014: 7). This is because, within the framework of the European Semester, the Country-Specific Recommendations (CSRs) related to economic policy and employment under the European Semester procedure are adopted.¹⁰ As a result, EU member states become committed to economic policy coordination and are dissuaded from implementing policies that could endanger the proper functioning of EMU. In addition, employment comes at the centre of EU economic

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6. Decision of the Representatives of the Governments of the Euro Area Member States Meeting within the Council of the European Union, Council Document 9614/10 of 10 May 2010. The European Financial Stability Facility (EFSF) was created by the euro-area member states following the decisions taken on 9 May 2010 within the framework of the Ecofin Council.
 7. The ESM was preceded by an amendment of Article 136 TFEU to provide an explicit authorisation for the member states to have a funding mechanism. At present, the ESM is the main instrument for financing new programmes.
 8. European Council, 24/25 March 2001, Conclusions, 'Providing a new quality of economic policy coordination: the Euro Plus Pact'.
 9. European Council, 9 December 2011, Statement by the Euro Area Heads of State or Government, the aim being 'a new fiscal compact and strengthened economic policy coordination'.
 10. The recommendations referring to the Stability and Growth Pact are based on Council Regulation 1466/97 (OJ L 209, 2.8.1997) and those referring to the Macroeconomic Imbalance Procedure are based on Council Regulation 1176/2011 (OJ L 306/25, 23.11. 2011).

policy and member states are required to submit regular reports on their employment situation. Importantly, the Semester is underpinned by a Treaty-based system of surveillance and ex-post monitoring and recognises specific roles for the European Commission, the Council and the European Parliament. The European Semester mechanism was followed in 2011 by the so-called ‘Six-pack’ of five Regulations and one Directive, further reinforcing the Stability and Growth Pact. In March 2012, the intergovernmental Fiscal Compact (Treaty on Stability, Coordination and Governance in EMU (TSCG) was signed by 25 of the 27 EU member states, with the exception of the United Kingdom and the Czech Republic. The aim is to reinforce the Stability and Growth Pact and to introduce new control mechanisms. It requires national budgets to be in balance or in surplus and the rule has to be incorporated into national law within one year of the Treaty’s entry into force (Deakin 2014).

4.2 Implications of the EU’s institutional response for social dialogue and collective bargaining at national level

In the context of the financial assistance programmes received by member states, policies of ‘internal devaluation’ have been promulgated by supranational institutions. As we shall see in section 5, such policies involve, among other things, a set of structural measures in the area of labour law and industrial relations. In the absence of exchange rate flexibility, internal devaluation has been presented as the only feasible route to restore the competitiveness – in terms of unit labour costs – of the southern European member states in relation to Germany and other euro-zone states, including Austria and Finland (Deakin and Koukiadaki 2013). This competitiveness gap is in part the result of the social pacts that have depressed wage growth in the northern member states, as well as the high productivity achieved in part through the institutionalisation of workplace cooperation in those countries, but not so far replicated elsewhere (Johnston and Hancké 2009).

However, the focus of the reforms has been exclusively on labour market regulation issues. Indeed, an examination of the Council Decisions and Memoranda of Understanding (MoU) accompanying the financial assistance programmes received by the member states in crisis reveals that their provisions have been very intrusive in relation to national systems of labour law and industrial relations. An important aspect of

this intrusiveness is that they promulgate policies on a wide range of issues, including restrictions on social security benefits and cuts to state education and health care provision, as well as reducing minimum wages, extending the working week, removing legal support for multi-employer collective bargaining and encouraging fixed-term and temporary employment through changes to employment protection legislation. As Bruun (2014) has identified, the Troika has consistently focused not only on cutting wage costs but also on wage setting mechanisms and institutions. As we shall see in greater detail in section 5, a number of measures deal with extension mechanisms and derogations from higher level agreements.

With particular regard to wage determination and collective bargaining, DG ECFIN's report 'Labour Market Developments in Europe 2012' illustrates the objectives of the European Commission behind the structural measures imposed in return for financial support. Under the heading 'Employment-friendly Measures', DG ECFIN presented a long list of required 'structural reforms' which, apart from various issues of labour market deregulation (such as cuts in unemployment benefits, weakening of employment protection legislation and raising the retirement age) also has a subsection on the 'wage bargaining framework'. This includes the following suggestions: cut statutory and contractual minimum wages; reduce bargaining coverage; decrease (automatic) extension of collective agreements; 'reform' the bargaining system to make it less centralised, that is, by removing or limiting the favourability principle; introduce/extend the possibility to derogate from higher level agreements or to negotiate company-level agreements; promote measures that result in an overall reduction in the wage-setting power of trade unions (see also Schulten and Müller 2013). In a similar vein, the ECB noted in its 2012 working paper *European Labour Markets and the Crisis*:

More recently, the ongoing labour market reforms in countries such as Greece, Ireland, Portugal, Spain and Italy include some important measures to increase wage bargaining flexibility and reduce excessive employment protection, and constitute appropriate first steps to improve labour market and competitiveness performance in these countries and in the euro area as a whole.

The measures taken have been in line with the need to ensure wage moderation, but also to amend essential features of national collective labour law systems, setting a decentralised, company-based bargaining system as the benchmark. According to Schulten and Müller (2013), this is because it is believed that such a system allows companies to better adjust to varying economic developments. Early assessments of this rapidly changing regulatory framework for economic policy governance in the EU and the euro zone emphasised their crucial direct and indirect impact on labour law. According to Barnard, ‘the EU’s response to the crisis ... has presented a more pernicious threat to the workers: EU or EU/IMF sanctioned deregulation of employment rights at national level [risks] an EU-driven race to the bottom’ (Barnard 2012: 98).

From a procedural point of view, the degree to which due respect is paid to the outcomes of social partners’ agreements, if any, at domestic level is also significant. With particular regard to the role of the social partners, Article 152 TFEU reads ‘the Union recognises and promotes the role of social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.’ There is evidence to suggest that the conditionality required of member states does not respect the diversity of national systems, including the role ascribed to social partners and the principle of democracy. The lack of transparency and the conduct of dialogue in the MoU negotiations was recently criticised in a European Parliament resolution on the role of the Troika, which stressed the possible negative impact of such practices on political stability in the countries concerned and citizens’ trust in democracy and the European project (European Parliament 2014, point 30). This can be illustrated in relation to Portugal, Greece and Romania. On a positive note, the MoU in the case of Portugal stipulated that ‘measures in labour and social security legislation will be implemented after consultation of social partners, taking into account possible constitutional implications, and in respect of EU Directives and Core Labour Standards.’¹¹ In the case of Greece, no such provision was incorporated in the first programme, but the 2012 MoU that accompanied the second financial assistance programme included a similar provision to that of the Portuguese MoU. But while consultation rights were recognised with regard to Portugal and the second adjustment programme for Greece, the MoU in both cases fell short of explicitly stipulating that consultation

11. See: http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf, page 21.

should take place with a view to reaching agreement or that negotiation should take place between the social partners or with the government with regard to the extent and nature of the measures.

Furthermore, concerning social dialogue in practice, there is evidence to suggest that even where consultation provisions were included in the MoU – for example, that of Portugal – they were limited in some cases. In Portugal, discussions were held between a delegation of IMF, Commission and ECB officials with the employers' and trade union confederations soon after Portugal requested financial assistance. Two agreements with the social partners were reached but – notably – without the participation of the General Confederation of Portuguese Workers (CGTP). The first, entitled 'Tripartite Agreement for Competitiveness and Employment', contained a wide range of measures, including: the reduction of severance payments to 20 days per year of service; a 12-month limit on benefits with the maximum payment equivalent to 20 times the minimum wage and the creation of a fund to manage benefits. These measures were then included in the MoU concluded in May 2011. Importantly, the MoU introduced a number of additional measures on working time and industrial relations, including sectoral collective agreements and the conclusion of collective agreements by works councils. On 18 January 2012 and following extended negotiations, the Portuguese government reached a second agreement with the social partners, which addressed a series of structural measures; this was the so-called 'Commitment for Employment, Growth and Competitiveness'. The agreement contained a series of measures concerning revision of the Labour Code, as foreseen by the MoU, and substantially increased labour market 'flexibility', involving the reduction of severance pay, unemployment benefits and duration, loosening the definition of fair dismissal, making working hours more 'flexible' and facilitating collective agreements at company level. However, there is evidence to suggest that no social dialogue took place between the Portuguese government and the social partners with regard to the introduction of certain measures, notably the introduction of new regulations on the criteria for extension of collective agreements (Távora and Gonzalez 2016).

In the case of Greece, during the negotiations on the second financial assistance programme, the cross-sectoral social partners came to an agreement in February 2012.¹² In a letter sent to domestic political

12. Letter from the three employers' organisations (SEV, GSEVEE and ESEE) and the GSEE to Prime Minister Loukas Papademos, 3 February 2012, Athens.

actors, but also to EU institutional actors, they outlined their agreement concerning the preservation of the thirteenth- and fourteenth-month wage and minimum wage levels, as stipulated by the national general collective agreement, and maintenance of the after-effect of collective agreements. However, the Troika failed to pay the agreement due regard. On the basis that the outcome of the social dialogue to promote employment and competitiveness ‘fell short of expectations’ (Ministry of Finance 2012: 25) the 2012 MoU stipulated a number of further amendments to labour law that went against the agreement of the social partners. Similar to Greece, a protocol was concluded in Romania by the union leaders of the five confederations and the main opposition party in 2011 that involved a promise by the latter to reverse the labour market measures in exchange for the unions’ political support for the 2012 elections. But, as outlined in the country report on Romania (Trif 2016) the European Commission and the IMF objected to the draft law prepared by the union confederations on the basis of the process used to modify legislation and ‘strongly urged the authorities to limit any amendments to Law 62/2011 to revisions necessary to being the law into compliance with core ILO conventions’.¹³

Besides the substantive issues and the procedures for adopting these measures, an interesting feature is the inclusion – or not – of potential impact evaluation exercises or follow-up mechanisms in order to assess and correct any possible problems arising out of the measures. In the case of Portugal, a modification in the MoU was introduced in 2012, which provided that, in carrying out its monitoring duties, the Commission, together with the ECB and the IMF, was to ‘review the social impact of the agreed measures’ and to recommend necessary corrections in order to ‘minimise harmful social impacts, particularly on the most vulnerable parts of the society’.¹⁴ This provision was added, as it was not present in

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13. Joint Comments of European Commission and IMF Staff on Draft Emergency Ordinance to Amend Law 62/2011 on Social Dialogue (October 2012), at <http://www.ituc-csi.org/IMG/pdf/romania.pdf>. Among other things, the EC and the IMF opposed proposed changes concerning industrial action and the legal protection of employee representatives involved in collective bargaining, but agreed to the proposals on changes in the representativeness criteria for unions at local level and the number of members required to form a union.
 14. The paragraph reads: ‘In order to ensure the smooth implementation of the Programme’s conditionality, and to help to correct imbalances in a sustainable way, the Commission shall provide continued advice and guidance on fiscal, financial market and structural measures. Within the framework of the assistance to be provided to Portugal, together with the IMF and in liaison with the ECB, the Commission shall periodically review the effectiveness and economic and social impact of the agreed measures, and shall recommend necessary corrections with a view to enhancing growth and job creation, securing the necessary fiscal consolidation and minimising harmful social impacts, particularly on the most vulnerable parts of Portuguese society’ (emphasis added).

the original version, to Council Implementing Decision 2011/77/EU¹⁵ and Council Implementing Decision 2011/344/EU¹⁶ concerning Ireland and Portugal, respectively (Costamagna 2012). This kind of provision cannot be found in the decisions addressed to Greece in the first financial assistance programme. Neither was such a provision included in the Council Decision addressed to Greece on the second economic adjustment programme.

While Spain, Italy and Slovenia were not direct recipients of financial assistance programmes, there is evidence to suggest that other forms of intervention from supranational institutions – notably the CSRs under the European Semester procedure – have steered labour market measures in these countries as well.¹⁷ In the case of Spain, the ESM was the source of an assistance programme, provided only to the financial sector.¹⁸ Crucially, the programme was accompanied with a set of requirements regarding structural measures that was broadly similar to those of EU member states in receipt of financial assistance programmes.¹⁹ Furthermore, the insertion of limitations to public deficit levels in Article 135 of the Constitution was attributed to pressures from other EU member states and the ECB (Boto and Contreras 2012: 132). In this context, a secret letter by the ECB was sent to the Spanish Central Bank that outlined the nature and extent of measures, including in the labour market (De Witte and Kilpatrick 2014).

These developments highlight important issues with regard to the implications of the conduct of supranational institutions during the crisis for democratic dialogue and transparency in the process of adopting labour market policies. Furthermore, the 2012 labour law measures were precipitated partly by the European Semester Programme and the CSRs for Spain. These included, among other things, recommendations for decentralising collective bargaining by facilitating company-level derogations from higher labour standards, reducing the ‘after-effect’ period of collective agreements and introducing possibilities for concluding

15. Article 3(9).

16. Article 3(10).

17. It should be noted here that Greece, Ireland and Portugal did not receive any additional recommendations under the European Semester procedure but were in general recommended to implement their respective MoU (see Table 4).

18. The ESM disbursed a total of 41.3 billion euros to the Spanish government for the recapitalisation of the country’s banking sector. On 31 December 2013, the ESM financial assistance programme for Spain expired.

19. The structural measures were implemented under the Excessive Deficit and Macroeconomic Imbalances procedures.

company agreements by non-union groups of employees (Schulten and Müller 2013). But, as Barnard explains, neither the Spanish Parliament, nor trade unions were involved in the discussions, which were confined to civil servants and advisers (Barnard 2014: 7).

Similarly, despite the fact that Italy did not receive any financial assistance programme, there was evidence of significant pressures exerted by the ECB and the European Commission with a view to introducing similar measures in its labour market. First of all, Italy was also the recipient of CSRs for promoting labour market flexibility in individual labour law and changes were called for in the collective bargaining system in order to promote productivity. For example, recommendations were made for decentralisation of collective bargaining by facilitating company-level derogations and wage moderation in general. A number of policies introduced since 2011 also bear a strong resemblance to a ‘secret letter’ to the then Italian prime minister signed jointly by both the incoming and outgoing presidents of the ECB and outlining structural measures similar to those in the CSRs.²⁰ Finally, Slovenia, which was also struggling in the crisis, did not become the subject of a complete financial assistance programme but still received important EU instructions with a social focus. For instance, the 2010 exit strategy prepared by the Slovenian government was significantly influenced by the EC Recovery Plan (Stanojević and Kanjuo Mrčela 2016). On top of these, the CSRs included proposals on minimum wages and wage moderation. Consistent with the latter, the 2010 plan defined a set of structural measures, including with regard to labour law and social security.

4.3 Assessment of the role of supranational institutions in the national labour market measures

While one would expect that the crisis would halt, at least temporarily, the project of European integration, the evidence from the research project suggests otherwise, at least in the area of EU social policy and industrial relations. First, in terms of subject matter, the financial assistance programmes for those EU member states principally affected by the crisis touch upon ‘many key aspects of national welfare regimes in a way that seems to go far beyond the limits imposed by the Treaties on the EU’s

20. See http://www.corriere.it/economia/11_agosto_08/lettera-trichet_238bf868-c17e-11e0-9d6c-129de315fa51.shtml.

capacity to intervene in this field' (Costamagna 2012: 15). Importantly, Article 153(5) TFEU rules out any EU intervention with the intention of harmonising wages and collective bargaining. The exclusion of wage policy competence from the TFEU can be contrasted with the recurrent reference in the MoUs of the enforcement of wage moderation, imposed on national social partners in ways that sometimes constitute, as the ILO points out, an undue invasion of collective autonomy, as well as a violation of core labour rights (ILO 2012a). In a similar vein, the role of supranational institutions (mainly the ECB and the European Commission) has been instrumental in the adoption and implementation of labour market measures in the other countries (Italy, Spain and Slovenia). In response to these developments, which challenge the scope of EU competence in the area of social policy, 'legal mobilisation' strategies have been developed involving the EU Courts, albeit with no success so far.²¹

At the same time, the approach of the supranational institutions to the normative elements of the policies promulgated at national level challenges the pre-existing consensus on the European Social Model. The latter was traditionally characterised by its unique dual focus on economic and social principles, including a high coverage rate of collective agreements and a designated role for trade unions and employers. In its 2010 Industrial Relations in Europe Report, the Commission noted that voluntary collective bargaining plays a key role in industrial relations and is a defining element in social partnership within and beyond the EU (European Commission 2010). This can be contrasted with the view of ECB President Mario Draghi, who pronounced the European Social Model dead in a February 2012 blog for *The Wall Street Journal*: 'The European social model has already gone when we see the youth unemployment rates prevailing in some countries'. He later resurrected it in *Die Zeit*: 'Competition and labour markets have to be reinvigorated. Banks have to conform to the highest regulatory standards and focus on serving the real economy. This is not the end, but the renewal of the European social model' (Draghi 2012).

Equally important, in terms of regulatory instruments, there has been an increase in harder forms of intervention, including, for instance, placing

21. See, among others, Case T-541/10, *AEDY and Others v Council*, OJ C 26/45, 26.1.2013; Case T-215/11, *AEDY and Others v Council*, OJ C 26/45, 26.1.2013; C-128/12, *Sindicato dos Bancários do Norte and Others v BPN – Banco Português de Negócios, SA*, OJ C 151; C-434/11 *Corpul Național al Polițiștilor*, Order of 14 December 2011; C-134/12 *Corpul Național al Polițiștilor*, Order of 10 May 2012; C-462/11 *Cozman*, Order of 14 December 2012. For an analysis, see Kilpatrick (2014) and Koukiadaki (2014).

member states under the EU's 'multilateral surveillance procedure' and imposing sanctions in case of non-compliance. This marks a significant departure from the previous EU approach of largely limiting itself to making more or less non-binding recommendations on national wage and labour market policies as part of its economic and employment policy guidelines. In the past, as Busch *et al.* suggest, 'at most, it [the EU] sought to influence national developments within the framework of "soft" forms of governance, such as the "Open Method of Coordination", by propagating international best practices' (Busch *et al.* 2013). However, the decision-making and coercive sanctioning powers that the Commission has acquired in the context of the European Semester process and the fact that EU member states may face financial sanctions if they are made subject to the Stability Pact's Excessive Deficit Procedure (EDP) and the Excessive Imbalance Procedure (EIP) points to the adoption of 'harder' forms of regulation and governance with significant implications both for national systems of labour market regulation and for European integration. Nevertheless, in relation to issues of process, there was evidence of a lack of transparency and conduct of dialogue in the MoU negotiations. In a recent study, Eurofound (2014) also reported that the ongoing pressures of globalisation and the economic crisis have created a tendency for governments to decide on and implement interventions very quickly, often without properly consulting the social partners. This was recently criticised in the European Parliament's resolution on the role of the Troika (which we have already mentioned), which stressed the possible negative impact of such practices on political stability in the countries affected and on citizens' trust in democracy and the European project.²²

Based on these developments, it can be argued that the economic crisis has accelerated European integration and there is evidence of a transfer of decision-making on labour law and industrial relations from the national to the supranational level. At the same time, the normative goals of European social policy in the field of industrial relations have been re-orientated, moving away from the pre-crisis European Social Model to the postulates of neoliberalism, which demands labour market 'flexibility' to compensate for 'rigidities' elsewhere, including, in this case, the effects of a strict monetary policy (Deakin and Koukiadaki 2013).

22. European Parliament resolution of 13 March 2014 on the enquiry into the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries (2013/2277(INI)), point 30.

Table 4 Commitments and recommendations on wage policy in the EU member states, 2011–2014

Country	Euro Plus Pact commitments in 2011	European semester recommendations for 2011/2012	European semester recommendations for 2012/2013	European semester recommendations for 2013/2014	Financial assistance programmes
Greece	Wage setting mechanisms	Implement commitments under financial assistance programmes	Implement commitments under financial assistance programmes	Implement commitments under financial assistance programmes	Change annual update mechanism for minimum wage
Ireland	Wage setting mechanisms	Implement commitments under financial assistance programmes	Implement commitments under financial assistance programmes	Implement commitments under financial assistance programmes	Wages not directly addressed
Italy	Wage setting mechanisms	Ensure that wage growth better reflects productivity developments	Monitor and, if needed, reinforce implementation of the new wage setting framework	Ensure effective implementation of wage setting measures	No
Portugal	Wage setting mechanisms	Implement commitments under Memorandum of Understanding of 17 May 2011	Implement commitments under Memorandum of Understanding of 17 May 2011	Implement commitments under Memorandum of Understanding of 17 May 2011	Freeze wages in the government sector (nominal) 2012–2013; promote wage adjustments in line with productivity at the firm level
Romania	Wage setting mechanisms Public sector wage developments	Implement commitments under Memoranda of Understanding (June 2009 and June 2011)	Implement commitments under Memoranda of Understanding (June 2009 and June 2011)	Complete the EU/IMF financial assistance programme	Wages not directly addressed
Slovenia	Wage setting mechanisms	–	Ensure wage growth supports competitiveness and job creation	Ensure wage growth supports competitiveness and job creation	No

Source: Marginson and Welz, 2014.

4.4 The role of national-level social actors in the adoption of measures: undermining social dialogue and solidarity

The measures taken on collective bargaining and labour relations generally have been exhaustive. We shall look at the range of actors involved in the adoption of such measures and the extent to which social dialogue has influenced the extent and nature of the labour market changes. The process by which labour relations measures are adopted has been subject to all manner of direct and indirect influences and the role of social dialogue has been limited, to say the least. The social dialogue gains of previous years have been marginalised, despite a number of curious ironies.

Within the various contexts the social and political dimensions of labour relations have been recalibrated and destabilised by efforts to exploit the crisis to push through certain labour measures, as already mentioned. These were based on the narrative that labour market measures – both collective and individual – are necessary in exchange for financial support and supranational coordination. The question of economic ‘solidarity’ between and within nation states has been developed, or rather redefined, within a neoliberal framework, based on the argument that allegedly ‘antiquated’ labour systems have to be replaced. Labour, in other words, is portrayed as an obstacle to modernisation and measures designed to reduce general labour costs are presented as the only means of achieving long-term economic development and renewal. This is a basic productivity model approach to economic development, based on orthodox notions of competition. Hence, labour becomes the object of measures applied and of disciplinary processes, purportedly to ensure the future income generation capable of stabilising the European economy. It is very much a matter for debate whether labour is the source of the economic crisis and the EU’s financial difficulties, but it has certainly been taken as a target for intervention in the official response to the European crisis.

The role of the supranational institutions has been key across the board, although it is important to note that they have operated through national organisations and national ‘allies’ of the Troika. The manner in which political alliances are constructed for the purpose of implementing labour market measures and the ways in which traditional forms of social dialogue are engaged with need careful discussion. At the heart of these

developments is the formal discussion and negotiation of Memoranda of Understanding (MoU), which focus mainly on what nation states must do domestically in return for external support from international bodies. These are seen as mere political facades by some critics, disguising a further neoliberal shift in policy-making.

In the case of Greece, initial attempts at dialogue took place in response to the loans provided for the country. The Troika initially focused on pay freezes, as in Spain. The initial developments in terms of quantitative constraints, which did not undermine the basic form and content of collective agreements, were common. The use of direct cuts in public sector pay was also an initial point of departure for national governments in response to the Troika's demands. Public sector pay and minimum wages were a key target because of their easy accessibility and, in some cases, due to the distinctive collective bargaining traditions attached to them. In Ireland, cutting the national minimum wage was one of the first measures, which once more reflected the cost-based and short-term approach taken by the authorities. The MoUs were a focus for measures to be taken within the state, although initially measures applied to wage levels and wage containment, against the background of talk of panic and crisis. The state resorted to direct intervention in terms of the contents of collective bargaining. These changes were not, in the main, sought through national agreement. In some cases there were attempts to include a broad set of social partners in discussions on labour market measures, although in the initial stages these were influenced by the climate of national emergency and related discourses of national salvation.

The move to unilateral action on the part of the state was seen as a response to a specific set of conditions externally imposed on the nation, which enabled governments to shift culpability and legitimise the lack of social dialogue by means of the first wave of emergency measures. In Italy, the initial discussions focused on measures to support those effected by the crisis in the first instance and there were signs of social dialogue for a short while, in terms of labour market alleviation measures (Colombo and Regalia 2016). The crisis of the state in Italy linked to controversies surrounding Prime Minister Berlusconi compounded the problems affecting social dialogue and its diffusion.

In Portugal, the MoU was seen to require the support and legitimacy of the main political parties and political dialogue seemed to be extensive during the initial period, although concrete measures were not much in evidence at that stage. Central to the situation in Portugal has been a desire for a consistent cross-party response to the Troika and clear negotiations. This was required because the negotiations on the assistance programme took place under a caretaker government after the fall of the socialist government and before the elections, in order to secure implementation of the programme irrespective of which party won the elections (Távora and Gonzalez 2016). This led to agreements on the need for changes and revisions of the Labour Code oriented towards competitiveness in exchange for various social and employment provisions of support in 2012, although not all trade unions signed. What emerges in relation to Portugal is how the emergence of a divided labour movement facilitated a truncated form of social dialogue throughout the crisis. This could perhaps be explained by the ways in which the Portuguese state has created a more complex form of alliances and tacit agreements with most of the social partners and political actors through a *discourse of equivalence* (Laclau and Mouffe 1984), which claims that the nation is besieged and requires unity in the face of external threats. While the far left has not been central to this political process and discourse and thus the Portuguese situation contrasts with that of Greece, where many trade unions and social movements have exercised strong opposition to a state which has been less able to create popular alliances around labour market measures and change, and the crisis generally.

In central and eastern Europe we see a more extreme approach that basically questions and even denies the role of social dialogue. The two national loans for Romania in 2010 were based on a similar set of agreements. The centre-right government had already developed a discourse of antagonism towards labour relations and, similar to Spain (which we will discuss below), has adopted a more 'market'-oriented agenda. As with other countries the initial engagement with the crisis was based on cutting public sector wages by 25 per cent (Trif 2016) and making changes to a range of social benefits. This initial quantitative stage of the response, which focused on income, was premised on controlling those aspects of the labour relations system that are directly accessible. It required, as in Spain, the stigmatisation of public sector workers and their supposed privileged status in the labour market. Hence, the policies

rested on a political discourse of stigma similar to that of the New Right in the United States and the United Kingdom, which first emerged in the 1980s, with labour being portrayed as problematic and inward-looking (Hall 1988). Labour and 'government' are seen as barriers to progress and policy measures are legitimised by drawing an ideological line, excluding those who are seen as unable or unwilling to 'sacrifice' in the current context.

This antagonism towards labour relations was never really apparent in Romania in the past (Ban 2014, quoted in Trif 2016) and in the case of Slovenia has played less of a role, although the elements are present. However, as the crisis developed, the antagonism of political discourse towards the labour relations system also gained ground in Romania, very much fostered by the centre-right government, which called for a radical decentralisation of bargaining and the transformation of labour rights. This was done by means of amendments of the Labour Code and by making it easier to dismiss workers, as well as by undermining sectoral agreements in terms of union and employer representativeness. These changes to representativeness criteria mean that it is harder for legitimate sectoral agreements to be signed. The change in government in 2012 did not bring any major reversal of these measures and the extent of social dialogue has been seriously limited and weakened. The latter phases of the post-2008 period in the countries under examination appear to have followed the Romanian path, although within a context of some social engagement and public dialogue in Greece, Italy, Portugal and Spain. In general, one can see a pattern emerging which is important for understanding how dialogue on change has emerged, especially after the first stage of 'quantitative' responses.

The role of the social actors in the adoption of measures is complex. In some cases they have been reluctant to engage and even when they have, they focused on specific types of measures of a piecemeal nature, with very few concessions in terms of workers' rights or social support. First, there have been increasing provisions enabling employers to opt out of agreements on the basis of adverse economic circumstances. Generally speaking, national governments have driven this forward in explicit or covert alliance with employers. That is not to say that employers have wholeheartedly agreed with these measures or have not expressed concern about them (as we show in later sections). However, this aspect of the measures implemented has tended to involve the trade union movement

much less and has been based on using direct legislative means. As we saw earlier, in most cases public sector pay has been cut substantially, but in relation to the private sector government action has been most evident in relation to sectoral agreements. In Ireland and Spain, the ability to opt out of pay clauses, for example, was challenged in court, although unsuccessfully. In Portugal, some tripartite discussions in March 2011 did manage to achieve a level of agreement on decentralising bargaining and reducing dismissal costs, but this involved only one part of the trade union movement and reinforced divisions in Portuguese industrial relations. However, these agreements and the attempt at social dialogue were unable to create a general framework of support and consensus as further austerity measures came to be adopted. In fact, as previous measures that had been presented as temporary remained in place and the pursuit of austerity was intensified, the previous weak consensus collapsed. Much of this may be due to the fact that social dialogue requires stable processes and reciprocal arrangements over time. The manner in which measures have been implemented, compressed into such a short period of time, means that there are fundamental limits on establishing a more comprehensive approach to gains and concessions.

Many of these measures are in direct response to the paradigm shift in the contents of MoUs and in the Troika, which extol the decentralisation of collective bargaining as a panacea for both the crisis and the structural problems facing the European economy. Part of the liberal market approach is a belief that workplaces and firms need to develop more internally flexible labour markets and have greater flexibility to hire and fire. Hence, secondly, a range of major rights providing employees with some compensation for labour market changes and restructuring have been removed from systematic national dialogue in most cases. The fundamental policy shift with regard to resources and representativeness thresholds has not been the subject of any significant social dialogue and debate. In Italy, trade unions criticised the fact that they were not given an opportunity to debate the measures implemented by the Monti government in 2011–2012 and there was sense that the progress made in previous years in reforming the system of redundancy payments and pensions, for example, had not been built on, but instead had been pushed to one side.

Third, in addition to collective bargaining measures, trade union rights have been eroded. Representativeness thresholds for the purpose of

collective bargaining have been changed in various countries, such as Romania, as we will discuss later. What is more, there has been a systematic calling into question of labour representation, with campaigns in countries such as Spain, where, for ideological reasons, the trade union movement have been portrayed in highly negative terms and previous trade union legislation prohibiting limited picketing has been invoked, leading to the arrest of trade union representatives.

Fourth, this is not to say that there have been no government negotiations with the social partners across a range of issues. In Spain, we have seen partial agreements on pensions and there have been a number of training agreements and provision of funds. In Portugal, there have been partial negotiations on developing some forms of support for workers in relation to the effects of unemployment. The key issue there was that the social partners were involved in decision-making, although the two unions had different responses: UGT signed agreements that paved the way for the measures implemented, whereas CGTP opposed them and organised protests, strikes and demonstrations throughout the crisis period. As the government progressively reneged on elements of the agreements UGT joined CGTP in these protests. Employers at certain points also protested against excessive austerity and accused the government of reneging on agreements covering a range of issues, including measures to stimulate growth and commitments to support social dialogue and collective bargaining. In Greece the second loan agreement saw some attempt to involve the social partners but this was not as successful: although it was agreed to keep certain aspects of the wage system, such as the thirteenth- and fourteenth-month payments, and to maintain minimum wage levels, the pressure from the Troika continued and eventually there was a move towards legal mobilisation and pressure as social dialogue faded. Challenges to government decisions have led trade unions to resort to the ILO and other supranational bodies beyond the core reforming institutions: this has been done to obtain support for arguments that many of the measures implemented undermine basic ILO Conventions (this is addressed in more detail in later sections).

Fifth, the resources available for worker training and development have been limited in all cases, due to the nature of the crisis and the fiscal deficit. This means that the development role of the social partners in this area has been steadily eroded, although some funds have been targeted on younger workers in, for example, Italy and Spain, perhaps because of

the alarming levels of youth unemployment in those countries. However, negotiating specific types of ‘alleviating’ policies, which may be seen to legitimate national austerity policies, is a high-risk manoeuvre for many trade unions.

The political and social pressures on the trade union movement have emerged from various directions, not just the Troika or the national governments forcing measures through. As time has gone by, the effects of the measures implemented and the continuing inability of the trade union movement to respond to them effectively, both politically and in practice, has to some extent called the trade unions’ legitimacy into question.

5. The content of the measures in the area of labour law and industrial relations

One essential aspect of the economic crisis in Europe and its management is the making of wide-ranging – sometimes dramatic – amendments to labour market regulation, including national systems of collective bargaining and wage determination. All the EU member states included in the present study have adopted significant labour market measures since the start of the economic crisis. As illustrated in section 4, the majority of these EU member states have been subjected to specific conditions set out in loan agreements and the accompanying Memoranda of Understanding (MoU): Greece, Ireland, Portugal and Romania. While Italy, Slovenia and Spain have not been subject to such assistance (with the exception of the financial sector in the case of Spain), they have been subject to reinforced budgetary rules, reinforced Excessive Deficit Procedures and a Macroeconomic Imbalances Procedure. Moreover, the ECB’s ‘secret’ letters to Italy and Spain were instrumental in determining the nature and extent of labour market measures later promulgated at domestic level (see section 4).

In this context, in this section we identify the most important changes made to employment protection legislation and collective bargaining. Particular attention will be paid to measures with the potential to alter the existing configuration of managerial prerogative, joint regulation by management and unions and state intervention by, for instance, replacing contractually agreed terms with statutory ones. We then provide a

critical assessment of the scope of the measures, their nature and their potential implications for domestic systems of wage determination and collective bargaining.

5.1 Changes in employment protection legislation, atypical employment and working time²³

With a view to promoting a ‘competitive climate’ by increasing labour market flexibility, youth employment and creating new forms of work, wide-ranging changes have been introduced in national labour law. The measures in this area were consistent with the critique advanced against some EU member states concerning labour market rigidities, with particular emphasis on dismissal protection and atypical employment. This meant that the amendments targeted a number of issues related to employment protection legislation, including dismissal protection, flexible forms of employment and working time (see also Deakin and Koukiadaki 2013).

First, based on the alleged need to reduce labour costs, significant alterations have been made in the regulation of individual and collective dismissal. In Greece, Spain and Portugal the notification period for individual dismissals and dismissal compensation was reduced.²⁴ Furthermore, the grounds for dismissal were extended in Spain and Portugal.²⁵ In Italy, recent legislation provides for the replacement of reinstatement with compensation in the case of unlawful dismissals due to economic or other objective reasons; caps were also introduced with regard to dismissal compensation in certain cases.²⁶ With regard to collective dismissals, changes were introduced to thresholds in

23. The measures implemented in the public sector are not discussed, as the latter is outside the scope of the present research project.

24. In Greece, see Law 3863/2010. In addition, during negotiations in autumn 2012, the Troika demanded further changes, namely the reduction of the notification period from six to three months, and the reduction of dismissal compensation from 24 months to 12 months maximum. In Portugal, the amendments to dismissal legislation aimed specifically at aligning (by reducing) dismissal compensation to the average level in the EU and providing for a common legal framework for open-ended and fixed-term contracts alike (see Law 53/2011 and Law 23/2012). In Spain, see Royal Decree 10/2010 and Law 3/2012.

25. But in Portugal, within one year of these measures being implemented, the Constitutional Court partly revoked the changes facilitating dismissal of workers on grounds of unsuitability and job extinction (Acórdão do Tribunal Constitucional n.º 602/2013, 22/10/2013).

26. See Act 92/2012. The judge can still decide for reinstatement when the economic reasons were found to be ‘patently non-existent’.

Greece.²⁷ In other EU member states, amendments were made to the procedures governing redundancies by reducing advance notice (Spain and Portugal) and by removing the requirement for authorisation of redundancies by the public authorities (Spain).²⁸ In Slovenia, the 2013 Employment Relations Act (ZDR-1) reduced the notice periods for dismissals and simplified the dismissal procedure. In Ireland, the Social Welfare Act 2012 abolished the entitlement of employers to claim a redundancy rebate for any statutory redundancy payments made after 1 January 2013 (the rebate had been reduced from 60 per cent to 15 per cent in the Social Welfare Act 2011).

Furthermore, a number of changes were introduced with regard to atypical forms of employment. In Greece, the probationary period of open-ended employment contracts was increased from two to 12 months, which introduced a new form of fixed-term employment contract of one year's duration into the labour market.²⁹ In Spain, a new type of contract that provides social security benefits (tax breaks and reductions in social security contributions), as well as labour law benefits (one-year probationary period with the possibility to end the contract at will during that time) was created with the aim of encouraging companies to recruit certain categories of employees (unemployed and women).³⁰ In Romania, the probationary period was extended from 30 to 90 days for workers and from 90 to 120 days for managers;³¹ changes were also made with regard to fixed-term work.³² In Greece, the maximum duration of fixed-term contracts was extended from two to three years. In Portugal, the 2012 and 2013 measures provided greater scope for additional, extraordinary renewals of fixed-term contracts.³³

In Spain, Law 3/2012 stipulated the conversion of fixed-term contracts to open-ended ones if employment exceeds two years of service under successive contracts. In addition, Royal Decree 1796/2010 laid down provisions for the operation of private placement agencies. In Italy,

27. Law 3863/2010.

28. Law 3/2012 and Law 76/2013.

29. Law 3899/2010.

30. This type of contract can be used only by companies that employ fewer than 50 employees and provides the benefit of lower social security contributions for employers (see Law 3/2012). The possibility of concluding such contracts will remain in force until the unemployment rate falls below 15 per cent.

31. Article 31(1) of the Labour Code.

32. In Italy, Act 92/2012 aims to limit the improper use of flexible contracts.

33. Law 3/2012.

Act 92/2012 stipulates that there is no need for the specific indication of an objective business need in the case of first fixed-term contracts, for a maximum period of 12 months. In Romania, the maximum length of fixed-term contracts was also extended from 24 to 36 months.³⁴ Furthermore, as a result of the changes in Article 96(2) of the Labour Code, the minimum wages of temporary workers are no longer the wages received by the employees of the user, but the national minimum wage (Chivu *et al.* 2013: 29–30). In Slovenia, recent changes focused on limiting the use of fixed-term employment, although that was combined with the increasing (external) flexibilisation of ‘rigid’ forms of employment in terms of dismissal protection (Stanojević and Kanjuo Mrčela 2016).³⁵

Managerial prerogative was reinforced by amendments to the regulation of working time (Deakin and Koukiadaki 2013). In turn, this may imply a shift in the role of collective bargaining/consultation with employee representatives (whether unions or otherwise) on such issues. In Portugal, Law 23/2012 provided for the reduction of additional overtime by 50 per cent and the elimination of compensatory time-off and a number of public holidays. It also expanded the legal regime of ‘working time accounts’ by allowing the conclusion of agreements between the employer and individual employees and the application of the scheme to employees not covered by collective agreements.³⁶ In addition, the legal framework concerning the temporary reduction of working time and suspension of employment due to business difficulties was extended to allow more flexibility for the employer.³⁷ In Italy, the Stability Act 2012 provided for the possibility to include flexibility clauses in part-time contracts empowering the employer to modify the duration of working time or its distribution.³⁸ In Spain, Law 3/2012 introduced a number of measures designed to promote working time flexibility, including abolition of the prohibition of overtime in part-time work; the extension of the scope for flexible allocation of working hours over a year;³⁹ and

34. In addition, the list of accepted justifications for concluding fixed-term contracts was extended. For instance, the employer is now able to conclude such contracts not only in the case of increased activity, but also in the case of decreased activity, or indeed, of any structural modification to the activity (for an analysis, see Chivu *et al.* 2013).

35. Employment Relationships Act 2013 (ZDR-1).

36. For a discussion, see Canas (2012), 86.

37. See Law 23/2012.

38. Art 22(4).

39. Royal Decree 7/2010 had initially provided that collective agreements should identify a minimum and maximum limit of working time that could be distributed irregularly throughout the year.

the abolition of a requirement on employers to obtain permission from the public authorities in order to temporarily reduce working hours or to implement temporary lay-offs. In addition, employers acquired the right to move employees within occupational groups, if this can be justified for technical or organisational reasons.⁴⁰

In Greece, the period of short-time working was extended to nine months per year and the scope for concluding agreements between employers and unions on working time arrangements at company level was extended.⁴¹ In addition, new possibilities were provided for determining working time arrangements, including extension of the period for calculating working time from four to six months and the provision of compensatory time-off instead of pecuniary payment for overtime.⁴² In Romania, employers were given the scope to unilaterally reduce the working week and corresponding wages from five to four days.⁴³ Furthermore, the reference period for calculating maximum weekly working time, which cannot exceed 48 hours, has been extended. Until now, Romanian law has stipulated a reference period of only three months, which was a more favourable legal norm than that stipulated in Directive 2003/88/EC. Accordingly, the new law extends the reference time period to four months.⁴⁴ The employer is also now able to compensate for overtime not within 30 days (as it was before March 2011), but within 60 days. Finally, it has become possible to grant free days in advance, in order to compensate future overtime.

40. Law 3/2012.

41. It is important to note that so-called 'associations of persons' acquired the right to negotiate working time arrangements.

42. Law 3986/2011.

43. According to Article 52(3) of the Labour Code, 'in case of temporary reduction of activity, for either economic, technological, structural or any similar reasons, for periods exceeding 30 working days, the employer shall have the possibility to reduce working time from 5 to 4 days per week, and to reduce wages accordingly, until the cause that led to the reduction of working time disappears, after prior consultations with the representative union at company level or with the representative of the employees, as the case may be.'

44. The Labour Code provides that collective bargaining agreements can derogate by providing reference periods of time longer than four months, but not exceeding six months. With a requirement of complying with the regulations on employee health and safety, for objective reasons, either technical or related to work organisation, collective bargaining agreements can even derogate for longer reference periods than four months but not exceeding 12 months (Chivu *et al.* 2013: 32).

5.2 Changes in wage-setting and collective bargaining systems

Particular efforts have been made to alter existing wage setting systems, as well as procedures for collective bargaining, mediation and arbitration. The changes were in line with the need to ensure wage moderation but also to amend essential features of the collective bargaining systems.

In terms of wage moderation, the first changes were made to the contents of collective agreements and directly at statutory wage levels. In Greece, legislation was introduced in 2010⁴⁵ providing that arbitration awards issued by the Organisation for Mediation and Arbitration (OMED) would be of no legal effect in so far as they provided for wage increases for 2010 and the first semester of 2011. In 2012, an immediate realignment of the minimum wage level, as determined by the national general collective agreement, was introduced, resulting in a 22 per cent cut at all levels based on seniority, marital status and whether wages were paid daily or monthly.⁴⁶ Later, a freeze in the minimum wage was prescribed until the end of the programme period in 2015. In addition, clauses in the law and in collective agreements that provided for automatic wage increases dependent on time, including those based on seniority, were suspended, until unemployment falls below 10 per cent.⁴⁷

In Portugal, Law 23/2012 imposed restrictions on collective bargaining, prohibiting the provision of more favourable terms – for example, concerning overtime pay – through collective agreements for two years, but was partially overturned by the Constitutional Court.⁴⁸ In addition, the national minimum wage was frozen at 485 euros in 2011, breaching a historical tripartite agreement with all the social partners to increase the national minimum wage to 500 euros in 2011. In Ireland, the 2009 recovery plan included a suspension of the private sector pay agreement negotiated under the so-called ‘Towards 2016’ social partnership

45. Article 51 of Law 3871/2010 on ‘Financial Management and Responsibility’.

46. A further 10 per cent cut for young people, which applies generally without any restrictive conditions (under the age of 25) was stipulated as well, and with regard to apprentices, the minimum wage now stands at 68 per cent of the level determined by the national agreement.

47. Act 6 of 28 February 2012 of the Ministerial Council.

48. The Court found against the restrictions on collectively agreed pay rates for overtime work after the expiry of the two-year temporary period, which was due to end on 31 July 2014. Responding to employers’ demands, the government recently approved a new law (48-A/2014) in parliament extending the suspension period until the end of the year. It is useful to add that the 2009 and 2012 labour measures provided that collective agreements could only set more favourable conditions than legislation in certain specified areas, many of which concerned equality and discrimination.

agreement, except in certain circumstances. However, the 12.5 per cent cut in the minimum wage for new hires, which had become applicable in February 2011, was reversed when the Fine Gael/Labour coalition came to power in March 2011. In Spain, Act 3/2012 also introduced the possibility for employers to opt out from collective bargaining, if the enterprise records a drop in its revenues or sales for six consecutive months. In Romania, the tripartite agreement on the evolution of the minimum wage and on the minimum wage/average salary ratio over the period 2008–2014 was abolished.⁴⁹

A range of measures were also introduced with the objective of moving wage setting closer to the company level. In Greece, recent legislation provided that all firms have the capacity to conclude firm-level collective agreements that derogate *in pejus* from sectoral agreements.⁵⁰ In addition, during the application of the Medium-Term Fiscal Strategy Framework, there was a temporary suspension of the principle of favourability in the case of the concurrent implementation of sectoral and firm-level collective agreements. In Italy and in line with the ECB recommendations, as outlined in the ‘secret letter’, legislation for the first time provided the possibility for so-called ‘proximity agreements’ at company and territorial level to derogate from the statutory provisions on ‘all aspects of labour organisation and production’, including: working hours, fixed-term work contracts, part-time work contracts, temporary agency work, hiring procedures and dismissals.⁵¹ While the resulting agreements still have to conform with the Italian Constitution, EU norms and international requirements, the changes represented a radical shift concerning the role of legislation in laying down labour standards.⁵²

In Portugal, the government’s commitments to the Troika foresaw major changes in the collective bargaining system, including the creation of a possibility for collective agreements to define conditions

49. The agreement was signed on 25 July 2008 by the government of Romania with all 13 employer confederations and all five national trade union confederations that were representative at the time.

50. Law 4024/2011.

51. With some exceptions (such as discriminatory dismissal, pregnant workers, mothers with babies under the age of one, dismissal during maternity leave, or dismissal of employees who have requested parental or adoption leave). The 2009 agreement signed by Confindustria, UIL and CISL introduced the possibility of ‘opting-out clauses’ in relation to national agreements in order to cope with territorial or economic crises or to foster economic growth.

52. For an analysis of this, as well as the Fiat agreements that made use of this option, see Loi (2012), 268–270.

under which works councils can negotiate functional and geographical mobility, working time arrangements and remuneration. Similarly, in Spain, the government enacted a series of labour laws that modified collective bargaining rules. The most recent law decentralised collective bargaining to a greater degree than the measures brought in by the previous government. Similar to the previous legislation (Royal Decree 7/2011), the new legislation (Law 3/2012) gives precedence to company-level agreements over sectoral and provincial agreements in areas such as pay, working time, work organisation and work/life balance.⁵³ In Slovenia, the 2013 Employment Relations Act introduced possibilities for derogations from the statutory provisions via bargaining on a number of issues, including overtime work, working time organisation, minimum notice periods and employment conditions related to fixed-term and agency workers. The act does not define any time limits on such derogations or any particular justification that employers need to show when applying a derogation.

Besides promoting company-level bargaining, there were changes with regard to state support for extending collective agreements at sectoral level. In some EU member states, changes concerned the criteria for extension. In Portugal, changes were introduced in 2012 in the representativeness criteria used for the extension of collective agreements. In this case, a collective agreement could be extended only if the firms represented by the employers' association employ at least 50 per cent of the workers in the industry, region and occupation to which the agreement applied. In 2014, further changes were announced that were intended to reflect the national economy more accurately, paying attention to the nature of employers' associations' membership, that is, whether they include SMEs. The case of Greece represented a rather extreme case in this category, because extension of sectoral and occupational collective agreements was suspended during the application of the Medium-Term Fiscal Strategy Framework.⁵⁴ Similarly, in Romania, changes included the replacement of branches with economic sectors and the introduction of new criteria for the extension of sectoral agreements: under the new provisions, agreements can be extended only if the members of the employers' associations that signed the agreement employ more than 50 per cent of the labour force

53. Royal Decree 10/2010 provided that, in the absence of workers' legal representatives at company level and for the purpose of concluding collective agreements at that level, employees would be able to confer representation on a commission made up of a maximum of three members belonging to the most representative trade unions in the sector.

54. Law 4024/2011.

in the sector (Trif 2016). In Ireland, the Ministry for Enterprise, Trade and Innovation later carried out a review of the framework of Registered Employment Agreements (REAs) and Employment Regulation Orders (EROs).⁵⁵ On the basis of the recommendations of the ‘Duffy-Walsh review’⁵⁶ and the case-law developments, the Industrial Relations (Amendment) Act 2012 set stricter conditions for the establishment and variation of EROs and REAs.⁵⁷

Besides promoting company-level bargaining, changes were recorded with regard to the criteria for employee representation. In Greece, so-called ‘associations of persons’ were given the capacity to conclude enterprise-level collective agreements that can derogate *in pejus*.⁵⁸ In Italy, it was originally planned that ‘proximity agreements’ could be signed by ‘union representation structures operating in the company’. The ambiguity in the term used created the risk that weak enterprise-level unions could enter into agreements with employers, thus contributing to different levels of employment protection depending on the socio-economic situation of the region in which the enterprise was located (Loi 2012: 268). Article 8 of Act 148/2011 now provides that ‘proximity agreements’ should be signed by ‘trade union organisations operating in the company following existing laws and inter-confederal agreements’, including the national agreement of 28 June 2011.⁵⁹ In Portugal, the 2012 changes included decreasing the firm size threshold to 150 workers before unions can delegate power to conclude collective agreements to works councils. In Romania, the 2011 Social Dialogue Act introduced limitations in a number of collective rights, including the

55. In July 2011 the High Court declared sections of the legislation governing the ERO system unconstitutional.

56. Ministry for Enterprise, Trade and Innovation (2011). The review found that maintenance of the framework of the Joint Labour Committees and the REAs was necessary and justified, but concluded that the system needed a radical overhaul and made a number of recommendations in order to make it more responsive to changing economic circumstances.

57. JLCs will be more restricted in the extent to which they can award changes in rates of pay and companies will be able to derogate from EROs in cases of financial difficulty. The Act also provides for Ministerial and Parliamentary oversight of the ERO/REA system and for clarifying the definition of ‘participating parties’ (that is, employers and trade unions, or groups thereof).

58. Law 4024/2011.

59. The inter-confederal agreement of 28 June 2011 defined the criteria for union representativeness, provided for the generally binding character of company agreements approved by a majority of unions/works councils and extended the possibilities for company-level derogations from national collective agreements. In contrast to the 2009 agreement, the 2011 agreement provides that derogation *in pejus* can take place only if there are no restrictions in place in the national collective agreement (Loi 2012: 274–275).

right to organise, strike and bargain collectively. First, changes were introduced at company level, including a requirement that only unions with more than 50 per cent union density can negotiate company-level agreements and a minimum of 15 workers from the same company is required in order to form a union. Furthermore, only one trade union may be representative at unit level. In addition, the 2011 measures reduced the protection of union leaders against dismissal after the termination of their mandate, together with the suppression of the right to paid time off for performing union activities, and introduced obligatory conciliation before industrial action.

Substantial changes were also introduced in some EU member states regarding the length of collective agreements and their ‘after-effect’ period. Under the new legislation in Greece, collective agreements can be concluded for a maximum duration of three years. Collective agreements that have expired will remain in force for a maximum period of three months.⁶⁰ If a new agreement is not reached, after this period remuneration will revert back to the basic wage, as stipulated in the expired collective agreement, plus specific allowances until replaced by those in a new collective agreement or in new or amended individual contracts.⁶¹ In Portugal, the 2009 measures provided clarification regarding the expiry and after-effect period of agreements, limiting the latter to the period of conciliation, mediation and arbitration or a minimum of 18 months, after which any of the parties could require termination of the agreement; measures implemented in 2014 reduced the after-effect period even more. Law 3/2012 in Spain provided that the ‘after-effect’ period of collective agreements should be limited to one year.⁶² In Romania, collective bargaining agreements can now be concluded only for a period of between 12 and 24 months.⁶³

In some EU member states, measures concerning mediation and arbitration were also implemented. The 2012 measures in Greece for the first time allowed recourse to arbitration only if both parties consent

60. Act 6 of 28.2.2012 of the Ministerial Council.

61. The allowances covered include those based on seniority, number of children, education and exposure to workplace hazards.

62. Earlier legislation (Royal Decree 7/2011) had also introduced the requirement that all collective agreements should introduce specific time limits for the negotiation of a new agreement. Until then and according to Article 86(3) of the Workers’ Statute, a collective agreement that had expired would remain in force until a new agreement could be concluded.

63. Under the old law, a collective bargaining agreement could be concluded for a minimum term of 12 months; no maximum duration was provided for.

and arbitration is to be confined solely to determination of the basic wage/salary. However, the prerequisite for an agreement between the two sides was later declared unconstitutional by the Council of State.⁶⁴ In Spain, Law 3/2012 introduced compulsory arbitration regarding the application or modification of collective agreements in the absence of voluntary bilateral application by the parties concerned. In Portugal, the 2009 revision of the Labour Code created the possibility of ‘necessary arbitration’ (in addition to voluntary and compulsory arbitration), which can be requested by any of the parties when they fail to reach a new agreement 12 months after the expiry of the previous agreement.⁶⁵

More radical changes that affected the nature of national-level collective bargaining were also promoted. In the case of Greece, it was intended that the government, together with the social partners, would prepare a timetable for an overhaul of the national general collective agreement. Law 4093/2012,⁶⁶ which was adopted at the end of 2012, now provides a process for setting statutory minimum wages for workers employed under private law. The national collective labour agreement continues to regulate non-wage issues, which apply directly to all workers. However, if the agreement also stipulates certain wage levels, then these are only valid for workers employed by members of the contracting employers’ federations. In Romania, the 2011 Social Dialogue Act abolished the legal obligation of the representative employers’ associations and trade unions to get involved in collective bargaining at cross-sectoral level, which used to determine the national minimum wage. Finally, in Ireland, the consensus/corporatist approach embodied in social partnership was ended in 2010, as the government pursued unilateral policies rather than negotiated ones, signalling a shift from national to enterprise-level bargaining. In Slovenia, the so-called ‘Fiscal Golden Rule’ and measures to overhaul referendum legislation were adopted in 2013, with implications, as we shall see later, for the model of neo-corporatism in social dialogue (Stanojević and Kanjuo Mrčela 2016). In line with a principle adopted in many EU member states in response to the eurozone crisis, the general government budget will now have to be balanced, with exceptions possible only under ‘extraordinary circumstances’.

64. Council of State, 2307/2014 decision.

65. Law 7/2009 of 12 February, Articles 510 and 511.

66. ‘Ratification of Mid-term Fiscal Strategy 2013–2016 – Urgent Regulations relating to the Implementation of L.4046/2012 and the Midterm Fiscal Strategy 2013–2016’.

5.3 Critical assessment of the measures

Based on an analysis of recent developments in social legislation in Europe, there is evidence to suggest that some common trends have developed. Changes in national systems of collective bargaining are proceeding alongside significant amendments in employment protection legislation, including collective redundancies, flexible forms of employment, contracts for young workers and dismissal compensation. These measures not only modify the individual employment relationship but also have the potential to shift the boundaries between state regulation, joint negotiation and unilateral decision-making by management.

Following Gazier's (2009) conceptualisation of the impact of the crisis, it is possible to distinguish between three types of interaction between the crisis and labour market measures. The first is a *shock* effect: there was evidence that in some EU member states the measures taken have been against well-established norms and institutions of collective bargaining that were accepted and supported by the majority of stakeholders. The amendments in Italian legislation providing scope for derogations from statutory standards provide a good example of this. The second is a *revelation* effect: this is, where there is a broader affinity between the direction of labour market measures and the industrial relations context and approach adopted by at least some actors before the crisis. In this context, the changes in the systems for national inter-sectoral agreements in Greece and Romania represent an example of this. While such measures had not been publicly promulgated before the crisis by any of the stakeholders, there was evidence to suggest that they were consistent with the approach of some employers' organisations. The third is an *acceleration* effect: in this case, there is a direct relationship between the measures and the industrial relations context and approach adopted by the actors before the crisis. The most prominent example here is arguably the relaxation of rules on individual and collective dismissals in, among others, Spain and Greece and the collective bargaining measures in Portugal that in some ways were a continuation of those taken in 2003.

A second common trend was further identified in the nature and scope of measures implemented. The majority of EU member states concentrated during the initial stages of the crisis (2008–2010) on intervening directly in wage regulation, for instance by reducing minimum wage levels and

declaring void any collective agreements providing wage increases, the objective being to reduce labour costs directly. In conjunction with these, new ways for introducing greater flexibility in the organisation of work, including, among other things, working time and dismissal protection, were also introduced during the first period. In line with the conceptualisation of labour market regulation before the crisis, these measures were aimed at removing some labour market ‘rigidities’, such as high dismissal costs and lack of flexibility in employment contracts (see section 3). In this context, some of the measures, such as company subsidies for working time reductions and support for workers being made redundant, were temporary in nature (for instance, the measures in Slovenia and Romania).

In contrast, the second phase (2011–2014) was focused predominantly on more structural issues, including – importantly – the collective regulation of terms and conditions of employment by means of collective bargaining. According to Marginson (2015) it is possible to distinguish between three categories of measures. The first refers to the reduction of the coverage of collective bargaining, including restricting/abolishing extension mechanisms and time-limiting the period in which agreements remain valid after expiry. The second concerns bargaining decentralisation and includes any measures related to the abolition of national, cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle, and introducing new possibilities for company agreements to derogate from higher level agreements or legislation. The third category refers to weakening trade unions’ prerogative to act as the main channel of worker representation (Marginson 2015: 104). In most of these cases, the measures were permanent and paradigmatic in nature, as they sought to restructure the landscape of collective bargaining. But there were some measures that were temporary, such as the temporary suspension of the favourability principle and extension mechanisms in the case of Greece. However, the extent to which those are truly temporary in nature is questionable. In light of the new landscape of industrial relations in Greece (see Koukiadaki and Kokkinou, 2015), it is difficult to predict how the industrial relations actors will respond to the potential lifting of the suspension of the extension mechanisms once the Medium-Term Programme has been completed.

Another dimension of the measures implemented is the degree to which they were consistent with the commitments undertaken by national governments in the context of financial assistance programmes or other instruments of coordination at EU level, most notably the European Semester. There is evidence to suggest that a number of national measures were aligned with the policy direction of the supranational institutions. As discussed in section 4, a key objective of DG ECFIN's catalogue of 'structural reforms' has been the radical decentralisation of collective bargaining and reduction of the regulatory power of collective agreements and hence of the power of trade unions. In conjunction with this, the European Semester has been particularly influential in the area of wages and collective bargaining. As Schulten and Müller have pointed out, 'a comparison with the measures that have been implemented in the southern European countries suggests that DG ECFIN's catalogue served as the blueprint for the changes in the collective bargaining systems in Greece, Spain and Portugal' (Schulten and Müller 2014: 103). In addition, the rationale for introducing the measures at national level was influenced by the DG ECFIN's advocacy of promoting company-level bargaining on the basis that it best reflects the new economic and social circumstances of companies (see, for instance, the country reports for Greece and Romania 2015). A large number of these measure initiatives were also among the 'Going for Growth' policy recommendations of the OECD (2012a).

But related to this, there is evidence to suggest that in some cases these pressures were curtailed to some extent by joint initiatives between the social partners. The Italian case illustrates this succinctly. As analysed above, the government attempted to intervene in the regulatory framework governing collective bargaining by law.⁶⁷ In reaction to this, the social partners concluded an inter-sectoral agreement on productivity in November 2012, which further specifies the derogatory potential of decentralised bargaining and assigns 'full autonomy' to second-level agreements on specific and important topics, such as work organisation and working time. These positions were in line with the traditional voluntarism of Italian industrial relations, strongly based on the practices and customs of representative organisations. Similarly, in Ireland, there was some evidence to suggest that efforts were made to place safeguards on the extent of measures in the labour market. In this context, a national protocol for the orderly conduct of industrial

67. Article 8 of Law 148/2011.

relations and local bargaining in the private (unionised) sector was concluded by IBEC and ICTU in 2011, which has since been renewed in November 2012. The protocol was symbolic, and served as a mechanism to show the dispute resolution agencies of the state that ICTU and IBEC still recognised one another (Regan 2013: 15).⁶⁸ In contrast, in Portugal, two agreements were also concluded between the social partners, except CGTP, which strongly opposed the measures. However, as we saw in the previous section, both the MoU and national legislation went further than the scope of the agreements by the social partners.

From a legal perspective, what is certain is that ‘the measures have reached deep into the national systems’ (Barnard 2014: 25). It can be argued that in some respects they are inconsistent with previous judicial, legislative and constitutional acknowledgement of the right of freedom of association, collective bargaining and the role of trade unions in the ‘European Social Model’ (Koukiadaki 2014). An important aspect here is the recourse of different actors to legal mobilisation in order to challenge the measures. In some cases, there was evidence that the absence of processes of social dialogue led to increasing ‘legal mobilisation’. This was the case, for instance, with regard to Greece, Romania and Spain. However, legal mobilisation was not confined to EU member states without social dialogue. The case of Portugal illustrates this very well. Despite the fact that some of the measures relied on the agreements between the majority of the social partners, a number of those (especially those related to public sector workers) were challenged before the Constitutional Court. Broadly, legal mobilisation has taken place at two levels, national and international. At national level, applications for judicial review have been made against government decisions that provided for wage cuts and measures in bargaining systems, albeit with mixed results (see, for instance, the cases of Greece and Portugal). At international level, a number of international organisations have emphasised the non-compatibility of the austerity measures with fundamental rights, including the ILO Committee on Freedom of Association, the European Committee of Social Rights and the UN Committee on Economic, and Social and Cultural Rights. Other cases involving the European Court of Human Rights and the EU courts have been less successful.⁶⁹

68. See also national report on Ireland.

69. For an analysis, see Koukiadaki (2014).

From an industrial relations perspective, the changes are manifested in four main pillars of the employment relationship: (i) they challenge the role of full and open-ended employment and instead promote flexible forms of employment; (ii) they encourage working time flexibility that is responsive to companies' needs; (iii) they weaken employment protection, both individual and collective; and (iv) they modify the pre-existing configuration in the systems of collective bargaining and wage determination. In introducing these changes in the first three pillars (i–iii), the measures have substantially increased the scope for unilateral decision-making on the part of management. On top of these, the changes in the fourth pillar (iv) have intervened directly in the landscape of collective bargaining. In providing for new forms of representation, suspending/amending the system for the extension of agreements, abolishing the favourability principle, as well as the unilateral recourse to arbitration and introducing/extending non-union forms of employee representation, the measures are shifting the balance from joint regulation to state unilateralism and managerial prerogative, with significant implications for the role of the industrial relations actors. In light of these developments, it may be argued that the legislative changes in national labour law did not simply aim to restrict the level of wages and promote negotiated forms of flexibility but to increase managerial prerogative and dismantle, in some cases – in line with the policy of 'internal devaluation' – national systems of collective bargaining. It is to these issues, namely the implications of the measures for the structure and character of collective bargaining, that the analysis turns in the next section.

6. The impact of the crisis-related labour market measures on the structure and character of collective bargaining

As illustrated in section 5, all EU member states included in the project proceeded to implement extensive labour market measures which directly and indirectly affected their collective bargaining systems. The measures included restricting or abolishing extension mechanisms and time-limiting the period during which agreements remain valid after expiry. Other measures involved the abolition of national, cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle and

introducing new possibilities for company agreements to derogate from higher level agreements or legislation. Finally, trade unions' prerogative to act as the main channel of worker representation was weakened (Marginson 2015).

In this context, the implementation of such wide-ranging measures had the potential to lead to radical rather than incremental forms of innovation (Streeck and Thelen 2005). However, the degree of policy mismatch between higher formal levels and lower informal ones has been a longstanding feature of a number of EU member states affected by the crisis (Regini 1995). Thus, one critical issue concerns the extent to which labour market measures have actually initiated a process of systemic change in collective bargaining and what their – intended or unintended – consequences have been.⁷⁰ The analysis below will concentrate on how the labour market measures have affected the incidence, structure and character of collective bargaining during the crisis. The analysis distinguishes between collective bargaining at (i) national, central or inter-industry level, (ii) industry, branch or sectoral level and (iii) enterprise level. The analysis also assesses whether new bargaining models are emerging with clear reference points for employers and unions – albeit different in nature – or whether the developments are ad hoc, with no clear ideological or isomorphic underpinning. A typology of national systems in light of the measures implemented is then developed. In the course of this, a number of factors will be identified as influencing cross-country and cross-sectoral patterns in terms of the incidence, structure and character of bargaining, including the range of measures implemented, the pre-existing strength of the industrial relations systems and the extent of consultation with the social partners.

6.1 The state of inter-sectoral collective bargaining and social dialogue

In all EU member states, there was evidence of social dialogue at inter-sectoral level before the crisis (see section 4), albeit in different forms (for example, collective agreements, social pacts and framework or partnership agreements), and with different levels of articulation at lower levels of bargaining (sectoral and company levels). However,

70. For an analysis of the impact of the recent austerity measures on industrial relations in central public administration see, Lethbridge *et al.* (2014).

partly as a result of the economic crisis but partly directly because of the labour market measures implemented, the scope for consensual decision-making at national level has been reduced in a number of EU member states, as we shall see.

The extent of the reduction of social dialogue and bargaining at inter-sectoral level is varied. Greece, Romania, Ireland and Slovenia were among the EU member states most affected at this level. In the first two countries, the reduction was arguably the direct effect of the labour market measures. In Greece, the 2012 legal overhaul of the national collective bargaining system directly influenced the rounds for negotiations between the social actors for concluding a new agreement in mid-2012. On the basis that an agreement, under the new regulatory framework, would have no effect on the regulation of the minimum wage outside the group of workers employed by members of the contracting employers' federations, SEV refused to sign up to the agreement and called for the signing of a protocol instead. However, following social pressure and a continuing decline in consumer demand, SEV did sign up to the 2014 agreement. The 2014 national agreement provided some evidence of renewed support for the inter-sectoral social dialogue and bargaining, as it reaffirmed the intention of the social partners to support the institution of collective bargaining despite the crisis and the restrictive legal framework (Koukiadaki and Kokkinou 2016). Similarly in Romania and following the measures implemented in the Social Dialogue Act (SDA) in 2011, the collective labour agreement at national level was not renewed following its expiry in 2011 (Trif 2016), depriving all employees in companies with fewer than 20 employees of the protection afforded by the national agreement (Ciscu *et al.* 2013: 16). Furthermore, there was no evidence that the establishment of a new Tripartite Council under the SDA of 2011, whose membership is dominated by state representatives, stepped in to fill the gap left following the abolition of cross-sectoral bargaining.

Significant developments also took place in Ireland and Slovenia that destabilised the pre-existing configuration between management and labour at inter-sectoral level. In both cases, the situation was influenced by broad economic developments affecting other parts of the economy, for example, the public sector in Ireland, rather than by the labour market measures per se. In Ireland, wage setting had traditionally allowed a much larger role for central or national agreements, both in the

1970s and again between 1987 and 2009, when the central organisations negotiated eight social pacts or so-called partnership programmes. When during the crisis (in late 2009) the negotiations on a severe cut in public sector pay broke down, the employers, who had called for the agreed pay increases under the last agreement to be deferred, formally ended central negotiations. But in March 2010 IBEC and ICTU agreed a voluntary protocol ‘for the orderly conduct of industrial relations and local bargaining in the private sector’. This did not set any pay norms, but provided that both sides would encourage their members ‘to abide by established collective agreements’ and ensure that ‘local negotiations ... take place on the expiry of existing agreements’. The protocol was initially valid only during 2010 but was extended in February 2011 and again in October 2013 (Hickland and Dundon 2016). Similarly, in Slovenia coordination at national level was traditionally maintained before the crisis through social pacts at first and then through consensually accepted income policies. In this context, there were some attempts in 2009 to revive the institution of social pacts during the crisis, albeit with no success, due mainly to employers’ resistance (Stanojević and Kanjuo Mrčela 2016).

The three countries from southern Europe – Italy, Portugal and Spain – had each experimented in the past with (bipartite and tripartite) central bargaining (Visser 2013: 31). Building on these traditions, there was evidence of a willingness among the parties to maintain such structures at inter-sectoral level, albeit with varying levels of success. In Spain, there was traditionally a role for national framework agreements that established guidelines and norms for industry, provincial and company bargaining, linking pay rises to forecast inflation and productivity gains (Visser 2013: 32; Fernández Rodríguez *et al.* 2016). However, the negotiations on a new framework agreement that would set guidelines for bargaining broke down in 2009. Bipartite social dialogue was resumed and in January 2010 the peak organisations signed the 2010 bipartite Inter-confederal Agreement for Employment and Collective Bargaining 2010–2012, which dealt, among other things, with guidelines for wage developments (2010: 1 per cent; 2011: 1–2 per cent; 2012: 1.5–2.5 per cent), the use of opt-out clauses and the beginning of negotiations on measures concerning collective bargaining. The most recent agreement, concluded in February 2012 and lasting until 2014, reaffirmed the existing industry-based bargaining model but at the same time provided more scope for company bargaining on issues other than wages (Molina

and Miguélez 2013: 23). But it has to be stressed that the 2012 labour market measures actually bypassed the agreement on a number of issues between the two sides and introduced important modifications to certain areas covered by collective bargaining. The case of Spain provides a useful comparison with that of Portugal. As discussed in sections 4 and 5, two agreements were concluded at inter-sectoral level between some of the social partners in Portugal. But in contrast to the case of Spain, the agreements between the Portuguese social partners provided the basis for the majority of the measures taken (Távora and Gonzalez 2016).

Finally, Italy represents the clearest example of a continuing willingness of the parties to renew the pre-existing agreement at national level. The interest of the parties in maintaining social dialogue and good collective bargaining practices at the inter-sectoral level not only impacted upon the inter-sectoral level of dialogue per se but it also provided a framework for the conduct of bargaining at lower levels, with potential repercussions from the application of the labour market measures introduced by the Italian government. First, in 2011, Confindustria, CGIL, CISL and UIL signed an inter-sectoral agreement on representativeness and the criteria for making company-level bargaining binding on all organisations belonging to the signatory parties. On decentralised bargaining, the agreement provided that company-level agreements on economic and normative elements, including derogations from industry-wide agreements, would be valid for all relevant employees. Important in this respect was also the 2012 agreement on 'Guidelines to increase productivity and competitiveness in Italy'. As far as the collective bargaining structure is concerned, the agreement assigned to industry-wide collective bargaining the guarantee of homogeneous economic and normative conditions for all workers throughout the country. Second-level bargaining should operate to increase productivity through better utilisation of the factors of production and the improvement of work organisation, and by linking wage increases to such developments. The parties also recognised the need to support decentralised bargaining to introduce rules and conditions that better suit specific production contexts, including derogations from sectoral agreements. Finally, the 2014 inter-sectoral agreement was also instrumental, as it introduced rules on the minimum requirements for unions to be allowed to participate in bargaining and on the effectiveness of collective agreements reached by them, together with sanctions for negotiations and industrial action in the event that the rules were not complied with (Colombo and Regalia 2016).

6.2 The state of sectoral collective bargaining

As analysed in section 5, an important component of the labour measures implemented in a number of EU member states concerned the institutional arrangements for sectoral-level bargaining. With regard to measures restricting or abolishing extension mechanisms and time-limiting the period for which agreements remain valid after expiry, different countries before the crisis relied on different rules and practices and as such differed in terms of the significance of sectoral bargaining. In terms of the rules and practice of extension, in particular, Schulten (2012) identifies Greece, Portugal and Romania as countries that make widespread use of extension mechanisms. Italy and Spain also had functional equivalents that ultimately corresponded to widespread use of extension mechanisms. On the other hand, there was a group of countries in which extension mechanisms were available in principle, but their use in practice was uncommon or downright rare, often concentrated in a few sectors, such as in Ireland. The use of extension mechanisms was also uncommon in Slovenia, but in this case, this is because functional equivalents existed. In terms of the significance of sectoral bargaining, countries with a clear dominance of sectoral bargaining before the crisis included Greece (company bargaining accounted for 20 per cent of private sector coverage), Italy (<15 per cent), Spain (<15 per cent) and Portugal (declining from 15 per cent in 1985 to 7 per cent in 2005) (Visser 2013: 27).

Since the outbreak of the crisis and in light of the measures implemented in response, sectoral bargaining in different sectors, including manufacturing, has undergone fundamental change. The most extreme cases are Greece and Romania. In Greece, empirical evidence points to a significant decline in sectoral and occupational collective agreements overall. Overall, only 23 sectoral and occupational agreements and six local occupational agreements were registered in 2012 (in comparison with 103 sectoral and national occupational and 21 local occupational in 2010). The number of higher level agreements (sectoral and national and local occupational) was further reduced in 2013, with 14 sectoral and occupational agreements and 10 local occupational being concluded and during 2014 there were only 12 sectoral agreements, five occupational and 247 enterprise-level agreements. Developments in manufacturing reflected these broader trends in sectoral bargaining. Following the temporary suspension of sectoral agreements, the reduction of the

‘after-effect’ period and the abolition of the right to unilateral recourse to arbitration, employers’ federations in manufacturing became extremely concerned that sectoral agreements would expose their members to unfair competition from employers not covered by the agreements. As a result, bargaining stalled completely in metal manufacturing (with the exception of the agreement applying to SMEs in metal production and repair). Neither was any new agreement concluded in food and drinks manufacturing (Koukiadaki and Kokkinou 2016).

The case of Romania resembles the case of Greece in a number of ways. The replacement of economic branches by economic sectors for the purpose of bargaining, the resulting requirement for re-registration and the abolition of extension mechanisms under the Social Dialogue Act 2011 dramatically reduced the incentives for employers to participate in sectoral bargaining. Overall, while 57 union federations applied to re-register, only seven employers’ associations did the same (Trif 2016). As a result, trade union federations no longer have counterparts from the employers’ side to negotiate sectoral collective agreements. The case of the automotive industry indicated the strong disincentives of employers to be bound by sectoral agreements, which are not extended, even when the latter contain significant scope for company derogations. In addition, problems were reported regarding a lack of clarity regarding the new procedure for the extension of agreements (Trif 2016). In March 2014, there were 24 multi-employer collective agreements valid in March 2014 and out of those, seven were defined as sectoral collective agreements. Three of these agreements were in the private sector, all in manufacturing (glass and ceramic products; food, drinks, beverages and tobacco; electronics and electrical machinery). But it is important to note that all three agreements were originally negotiated under the previous regime and extended through additional acts until 2015. In contrast to the collapse of sectoral agreements, the number of collective agreements for groups of companies actually increased from four in 2008 to 16 in 2013.

Similar to the cases of Greece and Romania, statistical evidence in the case of Spain suggests that the number of higher-level collective agreements has collapsed in recent years. By 2013, the number of higher-level collective agreements across sectors had dropped to 706 (from 1,113 in 2012), with approximately 6,496,400 workers covered. In 2014, the decrease was even more pronounced and the number stood at

only 361 agreements with 3,620,000 workers covered. Arguably, much was due in some cases to delays and greater uncertainty in relation to local company agreements, but a trend of declining overall coverage was observed, especially as a result of a number of administrative and arbitration problems. The developments with regard to the favourability principle were interesting here. The 2011 law inverted the favourability principle between sector or provincial agreements and company agreements, according priority to the latter for negotiations on basic wages and wage supplements. However, employers and trade unions had the option of re-establishing the favourability principle under the relevant sectoral or provincial agreement, if they so wished. This possibility was removed by the subsequent 2012 law introduced by the incoming government, thereby also invalidating the intention of the 2012 cross-sectoral agreement. But employers and trade unions in some sectors, including chemicals, subsequently concluded agreements that reverted to the favourability principle (Marginson and Welz 2014).

Although the measures implemented in Slovenia did not resemble – with regard to their scope – those adopted in southern European countries, there was evidence of pressure on sectoral agreements, which had traditionally played a significant role in regulating terms and conditions of employment before the crisis. First of all, the change in status of the Chamber of Commerce and Industry (in 2006) and the Chamber of Craft and Small Businesses (in 2013) from obligatory to voluntary membership affected the membership rates of employers and led to a change in the direction of policy proposals towards greater flexibility in company-level bargaining. While the intensity of bargaining increased, the length of and scope for sectoral agreements was reduced. On top of this, certain agreements, including in the chemical and rubber industry, were terminated on the initiative of the employers (Stanojević and Kanjuo Mrčela 2016). In contrast to Slovenia, sectoral bargaining was not traditionally of much significance in the pre-crisis period in Ireland. There were few industry-level agreements, the most important being in construction. Since 2011, only three REAs, covering the construction industry, overhead power line contractors and contract cleaning, have been revised.⁷¹ However, there was evidence at the same time of an emergent sectoral strategy focussing on the coordinated activity of multiple and separate localised level bargaining units in key

71. In total, there are 75 REAs, although in the majority of cases the pay rates have not been updated.

parts of manufacturing (Hickland and Dundon 2016) (see section 7 for an analysis of the impact of this on company-level agreements).

Portugal, arguably, is situated somewhere mid-spectrum in terms of the impact of the measures implemented in response to the crisis on sectoral bargaining. Before the crisis, collective bargaining was dominated by sectoral bargaining but with low levels of articulation. The 2009 measures built on and expanded the scope of those taken in 2003 with regard to the expiry of agreements and in turn provided greater scope for flexibility in bargaining at sectoral level. Empirical evidence suggests that the blockages in most manufacturing sub-sectors were of fairly long standing and where agreements were reached these were concluded with UGT on the union side. The only exception was textiles and footwear, in which the blockages were attributed to the suspension in 2011 and subsequent re-introduction of representativeness rules for the extension of collective agreements. Overall, the number of industry agreements declined consistently and fell drastically in 2012, when only 36 agreements were published, in contrast with the 173 collective agreements reached in 2008. However, Távora and Gonzalez (2016) stress that, as not many agreements expired, the proportion of workers affected in terms of coverage may be overestimated. Interestingly, the declining trend of sectoral agreements was reversed in 2014 and the latest data suggest a degree of resilience on the part of sectoral bargaining. The data have to be read against the changes in the legislative framework, namely the lifting of the suspension of extension mechanisms and the introduction of new criteria for representativeness.

In contrast to the cases of collapse and corrosion discussed above, Italy's was an example of a bargaining system in continuity. Despite the acceleration in the pre-existing trend towards decentralisation from industry-wide bargaining and the increase in tensions between the sectoral social partners, the sectoral agreements in manufacturing still constituted the main reference point for regulating wage levels and other terms and conditions of employment, especially for SMEs. There was, indeed, evidence of increased bargaining coverage in the case of sectoral agreements, partially driven by the introduction of the possibility of derogations by the 2009 inter-sectoral agreement. While employers favoured greater bargaining flexibility, there was a shared understanding of the need to maintain sectoral bargaining as the key regulatory framework for determining terms and conditions of employment.

Notwithstanding the exit of Fiat from industry-wide bargaining, there is no evidence of significant spill-over or copy-cat effects (Colombo and Regalia 2016; Pedersini and Regini 2013).

6.3 Company-level bargaining and decentralisation trends

For present purposes, decentralisation means ‘a downward movement of placing the locus of decision-making on wages and working hours closer to the individual enterprise’ (Visser 2013: 23). From a legal-institutional point of view, it also means less state interference in the setting of wages and conditions, and allowing more flexibility in the application of legal norms, by allowing, for instance, derogations from legal standards and the favourability principle (Visser 2013: 24).

The decentralisation trend was particularly strong in Greece. During the period 2010–2013, there was a significant increase of company-level bargaining to the detriment of sectoral bargaining, although with some signs of a slowdown since 2014. The manufacturing sector had the highest percentage of enterprise agreements in 2012 (34.3 per cent), 2013 (32.2 per cent) and 2014 (30 per cent).⁷² Despite the lack of renewals of collective agreements at sectoral level, company case study evidence suggests that managements continued tacitly to respect expired agreements in some cases. However, this was the case only with regard to existing, not newly recruited employees, thus fostering the development of a two-tier workforce. On the union side, there was evidence that some local trade unions in the metal manufacturing sector tried to implement a policy of promoting the conclusion of, in effect, the same collective agreement in different companies, albeit with varying success. Besides an increase in company-level bargaining, there was also an increase in individual negotiations between management and employees, usually involving unilateral or ‘consensual’ wage reductions and/or short-time/part-time work or temporary lay-offs. This was especially the case in very small companies, from which trade unions are usually absent and associations could not be formed, as the companies employed fewer than five employees (Koukiadaki and Kokkinou 2016).

72. Company-level agreements were an established feature of the manufacturing sector before the crisis (Koukiadaki and Kokkinou).

Despite the similarities between Greece and Romania with regard to the objective of the measures implemented to promote company-level bargaining, the incidence of collective agreements at company level was more erratic in the case of Romania. The number of collective agreements declined rapidly, from 11,729 in 2008 to 8,726 in 2013. The biggest decline took place between 2008 and 2010, when the number of agreements was reduced by approximately 3,000. However, there was then an increase in 2013 and the number of company agreements rose to 4,659, to be sure still well below the pre-crisis levels of around 12,000. In the absence of national general and national sectoral agreements, there was no reference point for the negotiations at company level, which therefore impacted on the level of protection afforded to employees (Trif 2016). Thus, while the Romanian system can no longer be characterised as relying on multiemployer bargaining, there was no evidence that the gap left by sectoral bargaining in terms of coverage was filled by company-level bargaining.

In the case of Spain, while there were mechanisms before the crisis for organised decentralisation, in practice there were long-standing issues regarding articulation with regard to provincial and sectoral agreements. While the space for sectoral bargaining was maintained during the crisis, the scope to derogate in local agreements was increased. A significant number of companies were left without agreements or suspended arrangements, following the measures implemented in response to the crisis, concerning the ‘after effect’ duration of collective agreements and the possibilities of employers to opt out from higher-level agreements. The most dramatic effect was reported in 2013, with 2,515 cases of derogations, involving 2,179 companies and affecting 159,550 workers. In 2014, there were 1,627 cases of opting out from agreements, which involved 1,474 companies and affected 53,123 workers (Fernández Rodríguez *et al.* 2016).

Nonetheless, the requirement for an agreement on opt-outs with employee representatives acted as a break on introducing opt-outs in companies affected by the crisis, although not so much in SMEs (compare this with Greece, where a number of company-level agreements are concluded by ‘associations of persons’). In cases in which agreements were concluded, those did not stipulate in some cases any limit on the ‘after-effect’ period of the agreements or at least stipulated a longer period of ‘after-effect’ than the one set out in the legislation. There was also evidence that trade

unions still relied on sectoral/provincial agreements to underpin at least the basic terms and conditions of employment (Fernández Rodríguez *et al.* 2016).

In Ireland, company bargaining used to account for 92 per cent of coverage in the private sector (Visser 2013: 26). When national partnership ended many companies agreed to abide by the pay terms of the last agreement 'Towards 2016: Ten-Year Framework Social Partnership Agreement 2006–2015' (often referred to as 'T16'). Individual company agreements often covered periods of time different from the dates of the partnership agreements. It was not unusual in 2010 and onwards for companies to have finished T16, or opted out because of an inability to pay, and for there to be no agreements on pay generally in manufacturing sector companies. Despite this, there was some evidence of reliance on an informal network of social dialogue that allowed actors to preserve bargaining in some cases (for example, the 2 per cent wage increase strategy developed by SIPTU). In total, SIPTU estimate that the '2%+ campaign' has resulted in over 220 collective agreements (between 2010 and 2014), covering upwards of 50,000 workers (for an analysis of the 2 per cent strategy, see section 7). The success of this strategy also meant the return of localised bargaining for the first time in over 25 years in Ireland and sustained durability of robust collective bargaining in different parts of manufacturing (Hickland and Dundon 2016).

In Portugal, the option for company-level derogations has hardly been used, mainly because workers' committees still require a union mandate to be allowed to conclude such agreements. There was no evidence of a greater inclination on the part of firms to conclude company agreements, especially in metal and in textiles and footwear. But even if the total number of company agreements decreased since 2003, their relative importance increased due to the decrease in the bargaining coverage of sectoral agreements. Similar to the cases of Ireland and Greece, trade unions developed local initiatives with the intention of concluding agreements with different employers on wages and other terms of employment, which were then generalised to most firms in a specific cluster or area. In Slovenia, the inclusion of derogation clauses that can be invoked by companies in economic difficulties was a feature of agreements concluded in several sectors from 2009 onwards. In this context, changes were reported with regard to the role of certain companies as rule-makers in particular sectors.

In Italy, even though the measures implemented in response to the crisis and the approach taken by employers favoured the development of company bargaining, there was evidence of a trend towards a decrease in annual collective bargaining intensity. However, it has to be noted that the decline had actually started before the start of the crisis. In the metal sector, contractual intensity decreased from almost 30 per cent of companies in 2003 to 10 per cent in 2009, while in the chemical sector intensity decreased from 43 per cent in 2003 to 17 per cent in 2009. Even in the metal sector, where the relations between the two sides were considered conflictual, there was no evidence from the case studies of any increase in company-level bargaining. Where agreements were concluded, they were defensive in character (see section 7 for details). The case of the new plant agreements at Fiat, imposed unilaterally by management in 2011, stands out here. The agreements included provisions on working time, which went beyond the standards specified in the metalworking sector agreement (Colombo and Regalia 2016).

6.4 Changes in the direction of pressure and character of bargaining

Different trends were observed at different levels in terms of the direction of pressure and character of bargaining. In terms of the former, there was a common trend in all countries from the unions to the employer. For instance, in Portugal the changes introduced from 2003 changed the balance of power in favour of employers and severely constrained the bargaining position of unions. In Spain, bargaining continued but increasingly it was coerced by employers in many cases. In countries whose industrial relations systems have traditionally relied on the legal system for adjudicating labour disputes (for example, Greece, Portugal and Spain), the relevant measures were used as a kind of threat in the negotiation process, even if they were not necessarily invoked. In this context, the legal uncertainty arising out of specific measures was also used to frame the process of negotiation to the benefit of the employer side. Aside from this, the ‘after-effect’ period of agreements was seen as another tool for applying pressure in negotiations rather than something beneficial for employers. The role of legal measures as a means of putting pressure on the workers’ side was not confined to negotiations on collective agreements, but was also instrumental in challenging

industrial action and other forms of worker mobilisation (for example, Greece and Spain).

In relation to collective action, the research project confirmed some of the findings of the recent ETUI study on strikes in times of crisis.⁷³ In terms of strike volume, there was a marked increase in strike activity at the beginning of the economic crisis, between 2008 and 2010, in all the EU member states examined in the project. In terms of the nature of the action, a shift took place towards mass political strikes, either generalised public sector strikes or general strikes in certain regions or for the whole economy, often in the public sector. Importantly, a shift was observed in both single employer and multiemployer bargaining systems (for example, Ireland and Italy, respectively).

In terms of the character of bargaining, there was wider variation between the different systems. In a number of EU member states, the character of bargaining was adversarial at higher levels – inter-sectoral and sectoral – but cooperative at lower levels, in other words, that of the company (for example, Italy, Romania and Slovenia). In Italy, even where sectoral agreements continue to provide the basis for regulating the main terms and conditions of employment, there was still evidence of conflictual relations, resulting in increases in the average renewal time of collective agreements. This was, for instance, the case in the Italian metal sector, where CGIL refused to sign the sectoral agreement (Colombo and Regalia 2016). In a small number of EU member states, a rather opposite trend was observed, i.e. some cooperation at inter-sectoral level but adversarial at sectoral level. The case of Greece illustrates this: relationships were largely adversarial at sectoral level, leading to the complete breakdown of sectoral dialogue between the social partners in manufacturing. Further, at company level the renewal of collective agreements was in many cases an outcome of industrial action. In Portugal, industrial relations became also largely adversarial at sectoral level. In Ireland, the system of bargaining went through a process of ‘structural change’ with ‘process continuity’ (Hickland and Dundon 2016). Even though structural platform for social dialogue witnessed major change, from a national corporatist model to new local and enterprise-based bargaining, the ‘process’ of collective bargaining continued to add value by achieving agreement, consensus and wider

73. ETUI Strikes in Europe Infographic, <http://www.etui.org/Topics/Trade-union-renewal-and-mobilisation/Strikes-in-Europe-infographic>

understanding for change. In this context, differences between sub-sectors of manufacturing emerged. While in some EU member states, metal manufacturing was characterised by adversarialism, there was evidence of a more cooperative ethos in the chemical sector (e.g. Italy and Spain), indicating hence the preservation of pre-crisis differences between different segments of the manufacturing sector.

Finally, consideration should be given here to measures designed to weaken trade unions' prerogative to act as the main channel of worker representation. The most extreme example is that of Greece. The largest number of these company-level agreements have been concluded by 'associations of persons' (Ioannou and Papadimitriou 2013), raising issues regarding the independence and representativeness of such forms of worker voice. Similarly, in Romania, in instances where unions are not able to meet the new criteria at company level, employers can negotiate agreements with unspecified elected employee representatives. Even in countries in which such measures have not been introduced, such as Italy, there is evidence of an increasing trend of agreements being reached between managements and ad hoc forms of (unofficial) trade unions, so-called 'pirate agreements'. However, there is also evidence to suggest that, where the use of non-union employee representation structures depends on trade union approval, this procedural safeguard is able to limit the extent to which company-level derogations are exercised (see, for instance, Portugal, where the 2009 Labour Code introduced the possibility of workers' committees concluding collective agreements, but on the basis of a mandate from the trade union). In Romania, there was strong evidence of the use of the new measures as a basis for increased anti-union activities at workplace level, aimed at reducing the role of the unions.

6.5 Critical assessment of the impact of measures on the structure of bargaining

The above analysis indicates that the impact of the labour market measures on industrial relations and social dialogue has been a crisis of social dialogue and collective bargaining at different levels, not only national but also sectoral and company (see Table 5 for an overview of the changes). When assessing the impact of the measures on the structure of sectoral bargaining, a very important issue is that of bargaining

coverage. Traxler (1998) suggested that there are two sets of conditions that lead to high bargaining coverage. The first, which is found only in northern Europe, relies on sectoral or national bargaining and a high level of unionisation. The second, which is also the most relevant for the EU member states examined in the project, is based on a combination of three institutional variables, including sectoral or national bargaining, a high level of employer organisation and frequent use of administrative extension of agreements.

With regard to the first variable – sectoral or national bargaining – the empirical evidence points to a significant contraction of bargaining in a number of EU member states. The contraction of national bargaining was particularly prevalent in Greece, Ireland, Romania and Slovenia. At sectoral level, the countries most affected were Greece and Romania, followed closely by Ireland, Portugal, Slovenia and Spain. At both national and sectoral levels, Italy represented rather an exception, as collective agreements at both levels were largely maintained. The contraction of sectoral bargaining may be particularly problematic for the employers and employees in SMEs, which in many countries rely on sectoral agreements. While SMEs and firms operating in the domestic market and employing low-skilled employees still preferred sector or even national bargaining (for example, Greece), there was no clear indication that firms in export sectors employing high-skilled employees were more favourable to company bargaining (see, for instance, the cases of Italy, Spain and Portugal). In terms of the second variable – a high level of employer organisation – employers in a number of EU member states mentioned the lack of incentives for being members of their respective associations. Perhaps not surprisingly, this was the case where extension mechanisms were abolished or suspended. For instance, in Romania, a number of employers' organisations did not reapply to acquire representativeness status for the purposes of bargaining, while in Greece, employers' associations were concerned that members would exit the organisations if sectoral agreements were concluded. Slovenia was also affected significantly in this area, following the abolition of compulsory membership in professional chambers. In contrast, while there were concerns in the case of Italy that the exit of Fiat from Confindustria would weaken the associational capacity of employers, these concerns did not materialise.

In relation to the use of administrative extension of agreements, extension mechanisms have traditionally been seen as a means of supporting the collective bargaining system without interfering in the autonomous decision-making of the contracting parties (Schulten 2012). In this way, the state can increase its own powers of guidance without – as in the case of legal minimum wages (Schulten 2012) – having to take responsibility for the substantive content of the settlements. As Marginson (2015: 98) has also pointed out, ‘multi-employer bargaining arrangements bring benefits for the state, as well as advantages for the bargaining parties (Sisson 1987), delegating the regulation of key terms and conditions of employment to private actors and the maintenance of social peace’. In the majority of European countries, the most important variable explaining the high agreement coverage before the crisis was the existence of state provisions supporting the collective bargaining system (Traxler *et al.* 2001: 194). However, as analysed in section 5, a number of countries removed extension mechanisms.

On top of the implications for bargaining coverage, in all EU member states the measures taken accelerated the longer-term trend towards decentralisation. However, there were significant differences in terms of the type of decentralisation taking place. Traxler (1995) distinguished between organised decentralisation (increased company-level bargaining but within the framework of rules and standards set by sectoral agreements) and disorganised decentralisation (that is, the replacement of higher level bargaining by company bargaining). The country case studies here suggest that some member states have experienced a form of disorganised decentralisation (for example, Greece, Ireland, Romania and Spain). In some of these cases, the increase in collective bargaining at company level filled the vacuum arising out of the absence of cross-sectoral and sectoral agreements (for example, Greece and Ireland). But important questions arose concerning the capacity of the actors to negotiate successfully and implement agreements at company level effectively in the absence of experience and training, especially when non-union forms of employee representation were used (for example, Greece). In other countries, the degree of disorganised decentralisation was not as pronounced. In Portugal, disorganisation went less far, for instance, than in Spain: bargaining could only be delegated to works councils (and only in larger workplaces) with trade union agreement, the restrictions on extension were less severe than in Greece and Romania,

as were the restrictions on ‘after effects’, and while the favourability principle was suspended, this was time limited and did not extend to the relationship between different levels of collective agreements. Quite a lot depends on how one interprets the freeze in bargaining activity – that is, whether it is temporary or will prove to be more permanent – and hence the current sharp drop in coverage.⁷⁴ In conjunction with increased company bargaining, there was also, in some cases, a reduction in the substantive content of higher-level agreements, which were thus limited in many cases to establishing only a core of terms and conditions of employment (for example, Greece, Slovenia and Spain).

Based on these trends, we may suggest that three types of bargaining system emerged following the crisis and the labour market measures implemented in response: (i) systems in a process of collapse, (ii) systems in a process of erosion and (iii) systems in a process of continuity, though with elements of reconfiguration (see also Marginson 2015). These are not clear-cut types, but represent points in a spectrum ranging from systems in a state of continuity at one extreme and systems in a state of collapse at the other. On this basis, the most prominent examples of systems that are close to collapse are Romania and Greece. While other national bargaining systems are not affected to the same extent, they still face significant obstacles in terms of disorganised decentralisation and withdrawal of state support and thus experience erosion (Ireland, Portugal, Slovenia and Spain). Finally, the Italian bargaining system could be seen as being closer to a state of continuity but also reconfiguration, with changes in the logic, content and quality of bargaining.

What factors account for the different trajectories of bargaining systems following the crisis and the measures implemented in response to it? A first factor accounting for the similarities and differences in terms of impact was the extent of the economic crisis and, more importantly, the different nature and extent of the measures adopted in light of the crisis. While, as explained in section 5, most measures targeted both employment protection legislation and bargaining systems, how far-reaching and wide-ranging they were differed. To illustrate this, the amendments in the regulatory framework for bargaining in Greece and Romania were very different in terms of scope and extent, for example, from those in

74. The authors would like to thank Paul Marginson for his insightful comments regarding Portugal.

Ireland and Italy. The European Commission in fact recognised recently that ‘Greece was at the top of the countries in adopting measures that decreased the stringency of labour market regulations’ (European Commission 2014: 49). While decentralisation was promoted in the case of Italy and Portugal, the introduction of procedural safeguards – in the form of restrictions and controls if local agreements did not respect the favourability principle – meant that decentralisation was not completely disorganised. Ireland also faced enormous challenges due to the economic crisis, but the measures adopted were arguably not as wide-ranging as those in Greece and Romania. While the extent of the measures implemented in Slovenia was not extensive either, the changes in the cornerstone of sectoral bargaining – employers’ compulsory membership of chambers of commerce – contributed significantly to the erosion of the system.

A second explanatory factor was the pre-existing strength of bargaining systems. As Marginson recently suggested, before the crisis there were important differences in terms of articulation and coordination between different EU member states (Marginson 2015). With regard to articulation – that is, coordination at vertical level – well-articulated mechanisms were in operation in Italy and Slovenia but not in the rest of the southern European member states (Marginson 2015: 98). In terms of coordination by the peak organisations of employers and trade unions, again differences existed before the crisis between different EU member states in terms of the ‘capacity of higher-level employer and trade union organisations to act strategically and deliver comprehensive regulation of wages and conditions’ (Marginson 2015: 98). When faced with the economic crisis and measures directly concerned with patterns of articulation, the systems that were better articulated before the crisis fared better.

The case of Italy illustrates the importance of articulation in the collective bargaining system. In this case, the Italian social partners were able to manage decentralisation by providing safeguards at sectoral level. When Italy is contrasted with Greece and Romania (the systems most affected by the crisis), a related factor that emerged – and which could further explain the differences in impact – concerned the different extents of trade union reliance on the state for institutional support. In systems in which unions had taken for granted a certain level of institutional support

that, while desirable for an enabling bargaining environment, could be withdrawn at the government's will – for example, Greece and Romania – trade union attempts at union renewal and mobilisation were weaker. When state support in the form of extension mechanisms and the favourability principle were withdrawn, unions were not able to draw on other resources to rebalance the structure of bargaining.

Finally, the third explanatory variable was the extent to which measures were introduced on the basis of dialogue and agreement between the two sides of industry and the government or on the basis of coordinated attempts by employers and union to contain the impact of measures adopted unilaterally by the government. There was evidence to suggest that where measures were introduced – or their intended outcomes contained – on the basis of an agreement between the social partners, the effects were less destabilising rather than where measures were introduced unilaterally and no attempt was made by the partners at 'damage limitation' (for example, contrast Italy with Greece and Romania). By participating in the adoption of measures or attempting to contain their potential impact, social actors were able to limit how radical such measures were (Streeck and Thelen 2005).

In cases in which measures were rather incremental – Italy being one instance of this – the strengthening of decentralised bargaining was generally considered necessary to make the regulatory framework more adaptable to local conditions, in such a way that it could contribute to mutual gains and economic growth (Pedersini and Regini 2013: 22). As a result of the incremental nature of the changes, the risk of conflicts leading to a breakdown was minimised. Instead, in cases in which measures were not subject to consultation or where there was no attempt by the actors to coordinate a strategy to contain the impact of the measures by subsequent agreements – for example, Greece and Romania – the measures were radical, which increased the risk of breakdowns in bargaining.

Table 5 The state of collective bargaining following labour market measures

Country	Inter-sectoral level	Sectoral level	Company level
Greece	<ul style="list-style-type: none"> Limited cross-sectoral bargaining: withdrawal of SEV in 2013 No minimum employment standards across sectors 	<ul style="list-style-type: none"> Significantly reduced number of sectoral collective agreements (across different sectors) Reduction of length of collective agreements Arbitration mechanisms falling into disuse 	<ul style="list-style-type: none"> Rapid increase of company-level bargaining (especially in the first period) Increased use of 'associations of persons' Increase in individual negotiations
Ireland	<ul style="list-style-type: none"> Breakdown of negotiations at national level Later conclusion of a voluntary protocol 'for the orderly conduct of industrial relations and local bargaining in the private sector' 	<ul style="list-style-type: none"> No update of pay rates in majority of cases Only three agreements have been revised since 2011 	<ul style="list-style-type: none"> Clear decentralisation trends in manufacturing More direct process (no use of third parties)
Italy	<ul style="list-style-type: none"> Inter-sectoral agreements setting out the framework for bargaining, union representation criteria and limitations on derogations 	<ul style="list-style-type: none"> Renewal of most sectoral agreements No defection of employers from associations (with the exception of Fiat) 	<ul style="list-style-type: none"> Decrease of company agreements No increase in coverage Conclusion of 'pirate' agreements by non-representative employee bodies
Portugal	<ul style="list-style-type: none"> Tripartite agreements in 2011 and 2012 (with the exception of CGTP) 	<ul style="list-style-type: none"> Blockages to bargaining and reduced number of new Company agreements instead Reduced coverage of new agreements 	<ul style="list-style-type: none"> No evidence that firm agreements are replacing sectoral agreements No evidence of new agreements concluded by worker committees
Romania	<ul style="list-style-type: none"> Termination of cross-sectoral bargaining following the abolition of inter-sectoral bargaining by the 2011 Social Dialogue Act 	<ul style="list-style-type: none"> Employers opting out/threatening to opt out of associations Only five (out of 13) employers' associations were representative in 2013 Collapse of sectoral agreements Increase in multi-employer agreements 	<ul style="list-style-type: none"> 25% reduction of company agreements between 2008 and 2013 Lack of expertise of elected representatives, where union is not present
Slovenia	<ul style="list-style-type: none"> Attempts to conclude a new social pact but employers reacted strongly against social pact and agreement was not reached 	<ul style="list-style-type: none"> Termination of collective agreements in the chemical and rubber industries on the employers' initiative Reduction of scope of collective agreements Intensification of bargaining rounds 	<ul style="list-style-type: none"> Divergent views between different employers Replacement of old rule-makers with new Signs of cooperation between the two sides
Spain	<ul style="list-style-type: none"> Inter-confederal agreements between the social partners but overtaken by legislation providing great scope for derogations 	<ul style="list-style-type: none"> Steep decline in the use of sectoral agreements and bargaining coverage Conclusion in some cases of sectoral agreements (for example, chemicals) reverting to the favourability principle 	<ul style="list-style-type: none"> Adoption of more 'realistic positions' by the parties Use of after-effect measures to rush the revision of agreements without much dialogue

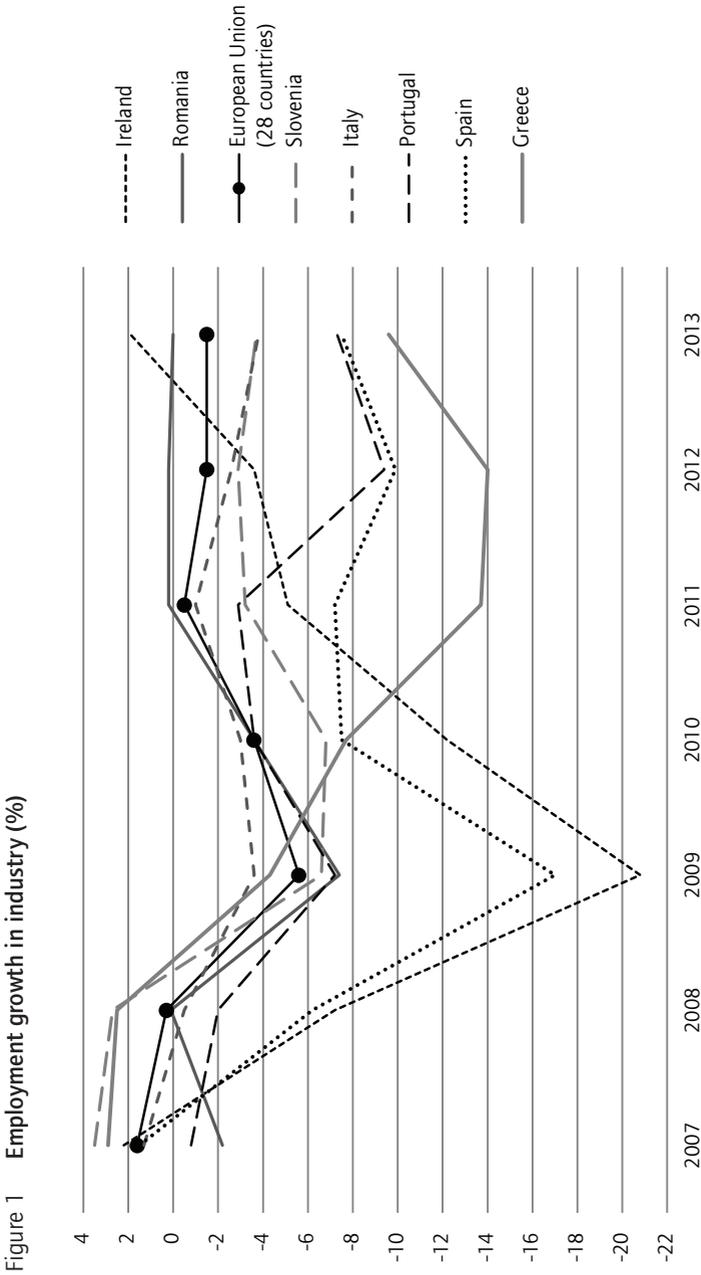
7. The impact of measures on the content and outcomes of collective bargaining

When the economic downturn hit the manufacturing sector in 2008, faced with the reality of mass redundancies, the prospect of increasing unemployment and company closures, trade unions became increasingly concerned with minimising job losses. While these circumstances led to downward pressure on wages in the seven countries dealt with in the research, the trade unions' bargaining position and their ability to protect the terms and conditions of workers vis-à-vis employers' responses to the crisis varied significantly from country to country and were inextricably linked to the specific labour market measures implemented during the crisis. In this section we first analyse how the measures led to developments in wages and working time and other employment outcomes in manufacturing and the extent to which these developments were subject to collective bargaining processes. In the second subsection, we consider the implications for trade unions, employers and the state in their roles with regard to employment regulation and wage setting. We finish with an analysis of the significance and implications of these developments.

7.1 Emerging patterns of collective bargaining in wages and working time

The responses of employers to the crisis in all the seven countries included restructuring and redundancies to different degrees as well as working time adjustments. However, while industry employment decreased in all the seven countries during the crisis (as shown in figure 7.1 below) the extent of job losses varied from country to country, with these being more pronounced in Ireland, Greece and Spain than in Italy, Portugal Romania and Slovenia.

While all the countries reformed their labour market regulations and wage setting mechanisms during the crisis, the severity and impact of the changes varied. Overall, real wages fell in all seven countries but nominal wages also fell, especially in Greece and Ireland, as a result of either wage cuts or working time adjustments (OECD 2014). In manufacturing, nominal wages fell in Greece, Ireland and Romania (Figure 2).



Source: Eurostat Labour Force Survey; Eurostat online database: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database (data accessed on 05 November 2014)

The impact on wages appeared milder in Italy and Slovenia than in the other five countries, where the changes have to varying degrees undermined joint regulation at national, inter-sectoral and/or sectoral levels and have led to a process of disorganised decentralisation (as discussed in the previous section). This process led to a decline in collective bargaining coverage, with detrimental effects for the wages and working conditions of those not covered. In turn, the measures also had a negative effect on the ability of trade unions to protect wages and working conditions through collective bargaining at the sectoral and firm levels (see also Broughton and Welz 2013). Indeed, data gathered by Eurofound also indicate a decline in bargained real wages for the total economy in 2011 and 2012 in a number of the European countries for which data are available, including Italy, Portugal and Spain (data for Greece, Romania and Slovenia not available) (Aumayr-Pintar and Fric 2013). Nevertheless, in manufacturing, at least in the case of the chemical and metalwork industries, an analysis by Schulten and Müller (2014) suggests that the impact of the crisis was less severe on real bargained wages than real actual wages.

To start with the less dramatic cases, while the initiative to introduce changes to labour law in Italy came from a unilateral move by the government, the social partners reacted with bargained responses, setting their own rules that limited the impact of the legal measures (Colombo and Regalia 2016). Case-based evidence from manufacturing in Italy suggests that firms refrained from taking advantage of the measures to evade the wage standards set in the sectoral agreement, although derogations were activated to enable greater flexibility in the management of labour, especially with regard to working time (Colombo and Regalia 2016). Nevertheless, even in Italy, where the overall capacity of collective bargaining to regulate employment and wages has been mostly maintained, trade unions found very difficult to negotiate improvements on wages and productivity rewards at the firm level (Colombo and Regalia 2016).

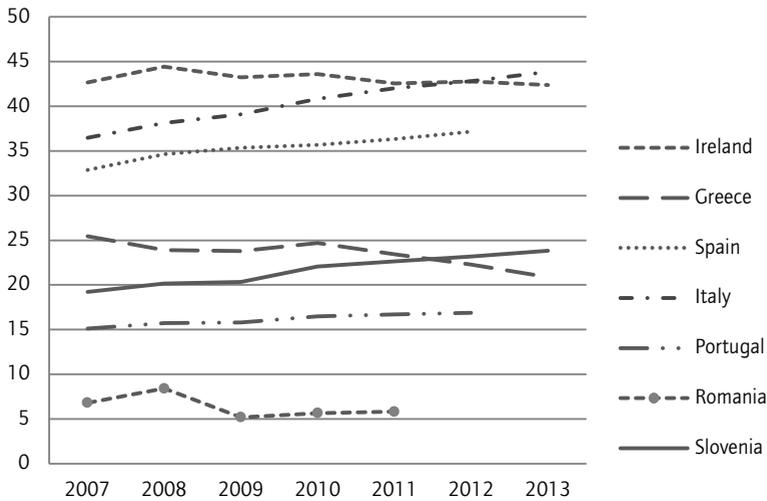
The national report for Slovenia indicates that, similar to what has happened in Italy, the impact on wages has been limited by employers' apparent tendency to respect statutory and jointly agreed wage standards, with the use of derogations confined mainly to working time flexibility (Stanojević and Kanjuro Mrčela 2016). However, employers' unilateral termination of sectoral agreements – in chemicals, as discussed in

section 5 – and reported cases of informal firm agreements temporarily reducing pay in order to save jobs may signal a lesser degree of resilience of sectoral bargaining in this case. However, the effect on workers of the vulnerabilities of collective bargaining in Slovenia may have been cushioned by developments in the statutory national minimum wage, which was increased by 18.6 per cent between August 2009 and March 2010 and continued to be subject to more modest increases throughout the crisis (Stanojević and Kanjuo Mrčela 2016). This extraordinary increase – which came about in response to workers’ discontent and a rise in industrial action in 2009 and met with significant employer dissent – had an influence on bargained wages as it legitimised union demands for sectoral wages to be set above the statutory minimum. This effect is well illustrated by the steel and electronics industries, in which after a strike called by the sectoral union in 2013, the pay for all job grades in the sector was set above the minimum wage. Nevertheless, the number of employees receiving the minimum wage increased from 20,000 before the crisis to 50,000 in 2013 (Stanojević and Kanjuo Mrčela 2016), indicating that the national minimum wage has also had a direct effect on wages during the crisis, or that collective bargaining has lost some of its capacity for setting floors for wages above the statutory minimum. While employers’ calls and government attempts to constrain the impact of the minimum wage on firms through opt-outs have so far been successfully resisted by unions, they also reveal the pressures facing this mechanism for protecting workers from low pay.

Compared with Italy and Slovenia, the effects of the measures appear more severe in the other five countries, of which the most dramatic case is Greece, particularly with regard to wages (see Figure 2). The breadth and magnitude of the measures imposed on wage setting mechanisms enabled Greek firms to make widespread use of wage cuts in response to the crisis. The wage reductions have been driven mainly by enterprise agreements, the great majority of which were concluded by the new non-union worker representation structure, ‘associations of persons’ (Koukiadaki and Kokkinou 2016). Wage reductions were also made possible by legal changes introducing the possibility of derogations from sectoral agreements at firm level and the temporary suspension of the favourability principle and of extensions of sectoral agreements. These developments in Greece were also greatly influenced by, initially, statutory wage freezes that spilled over into the negotiation of the 2010–2012 national agreement and also, in a second stage, the

extraordinary 22 per cent reduction – by government decree – of the national minimum wage, which was no longer to be jointly agreed and became statutory from 2012 (Koukiadaki and Kokkinou 2015). Research in Greece revealed that manufacturing employers took advantage of the new legal tools to introduce wage cuts unilaterally and through collective agreements with workers’ union and non-union representative structures. While firm-level agreements gained relevance during the crisis and were the main vehicle for introducing wage reductions, these have also been attempted – though unsuccessfully – at the sectoral level. As unions in metal and in food and drinks did not accept the wage cuts proposed by the sectoral employers’ federations, sectoral bargaining stalled. As sectoral agreements expired, many employers introduced, with even greater ease, wage reductions at the firm level (Koukiadaki and Kokkinou 2016).

Figure 2 Nominal wages per employee in manufacturing (‘000 euros)



Note: Nominal compensation includes employees’ wages and salaries and employers’ social contributions.

Source: Ameco, European Commission (online database), accessed 07/11/2014 at http://ec.europa.eu/economy_finance/ameco/user/serie/SelectSerie.cfm

A direct reduction in the national minimum wage also took place in Ireland, in February 2011, where wage reductions were an important part of the repertoire of manufacturing employers' strategies for dealing with the economic downturn (Hickland and Dundon 2016). While the reduction of the minimum wage in Ireland was temporary and the previous rate was reinstated only four months later, the introduction of possibilities for derogation based on employers' 'inability to pay' and the collapse of national bargaining enabled firms to cut wages. While the main approach has been to cut the variable components of pay, there was also evidence of a large minority (25 per cent) of firms cutting basic pay in 2009 (IBEC 2009, cited in Hickland and Dundon 2016). Although this was introduced in some firms with the agreement of unions in an effort to minimise job losses, the strategy of union concessions is progressively giving way to a new coordinated strategy of 'adapted bargaining'. The 2 per cent strategy, as it became known, appears to be leading to sustained wage increases in a growing number of manufacturing companies (Hickland and Dundon 2016).

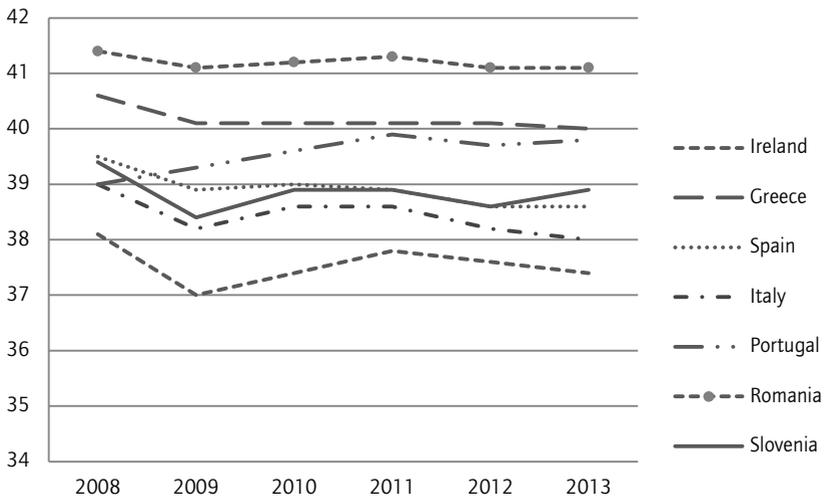
The research conducted in manufacturing in Spain revealed that wage reductions were also taking place in Spanish companies (Fernández Rodríguez *et al.* 2016), although this is not (yet) visible in comparative data on manufacturing nominal wages (Figure 2). From the beginning of the crisis the measures created a downward pressure on wages, namely by reducing the after-effect period of collective agreements, introducing possibilities for opt-outs and giving priority to firm agreements. Subsequent legislation in 2012 introduced 'wage flexibilisation', giving employers the prerogative to reduce wages unilaterally, though subject to arbitration (Fernández Rodríguez *et al.* 2016). Case study work conducted in Spain revealed that employers' organisations in the metal and chemicals sectors strategically used the new rules limiting the ultra-activity periods of agreements to extract concessions from unions, whereas at the firm level, employers are using opt-outs, company agreements and managerial prerogative to introduce wage cuts (Fernández Rodríguez *et al.* 2016). Romania has seen some of the most radical changes in its pay setting system and, after the measures (discussed in the previous section) that undermined national and sectoral bargaining, only three sectoral agreements remain valid in manufacturing, all of which were negotiated before the legal changes in 2011, but due to the suspension of extensions these only cover the employers who are members of the signatory associations (Trif 2016). The research in Romania also shows how the sectoral agreements that are still valid have

lost much of their relevance. This is illustrated by the collective agreement for food manufacturing. Although it is still valid, the pay rates set for the lowest grades have been surpassed by the minimum wage. Also, in the automotive industry, the employers' association and union negotiated an addendum to the 2010–2012 sectoral agreement providing for more flexible arrangements at the local level, but this did not prevent many firms from opting out of the association to avoid having to increase wages. In 2012 the employers' association negotiated a multi-employer agreement that applies to 40 firms (less than 10 per cent of the firms covered by the sectoral agreement in 2010). Even though specific cases of direct cuts to basic wages were not reported in the Romanian national report, aggregate data indicate a decrease even in the nominal compensation of manufacturing workers (as shown in Figure 2). Case-based evidence from Romania indicates that the labour market measures had a very negative impact on the ability of trade unions to negotiate pay increases for manufacturing wages in a country in which wages were already extremely low (Trif 2016). Under the circumstances of pronounced decentralisation and fragmentation of bargaining, the terms of employment at the firm level became contingent on three interdependent conditions: (i) industrial relations in the firm, (ii) managers' attitudes to union representation and participation and (iii) the local labour market and bargaining developments in neighbouring companies.

While the changes to collective bargaining were not as radical in Portugal as they were in Greece, Romania and Spain, they contributed to the emergence of stalemates in bargaining that prevented wage increases in manufacturing during the crisis. The non-extension of agreements affected pay in two ways: (i) it led to a reduction in bargaining coverage and (ii) it contributed to blockages due to the reluctance of employers' associations to conclude sectoral agreements in some industries, which also happened in Greece and Romania. This reluctance was, reportedly, related to concerns that non-extension might lead to unfair competition from employers who did not belong to the signatory association and might thus foster the disaffiliation of existing members, particularly in the case of low wage sectors, such as textiles, clothing and footwear in Portugal. As a result of these blockages, the majority of textile workers did not receive pay increases between 2011 and 2014 (Távora and González 2016). In addition, the restrictions on the after-effect period of collective agreements introduced in Portugal increased employers' leverage with regard to the unions, similar to what happened in Spain. As revealed by

what happened in metal and automotive manufacturing, the restrictions on after-effect periods meant that, under threat of the expiry of existing agreements, Portuguese manufacturing unions felt pressured to agree to terms that they had hitherto not considered acceptable, particularly with regard to flexibility arrangements. Even though bargained real wages decreased in metalworking in Portugal during the crisis (Schulzen and Müller 2014), the reduction of labour costs in manufacturing was, to a great extent, achieved through a statutory reduction of overtime premium pay that superseded jointly agreed higher rates and through the introduction of new systems of working time flexibility (time banks) that reduced the need for overtime work paid at premium rates (Távora and González 2016). As reported in interviews with social partners, this resulted in a significant cut in the total earnings of many manufacturing workers for whom overtime pay had become an important way of topping up their relatively low wages (Távora and González 2016). The freezing of the minimum wage between 2011 and 2014 further contributed to reduce the real wages of workers at lower grades and in manufacturing and low-paid sectors, such as food manufacturing and textiles.

Figure 3 Average number of actual weekly working hours of manufacturing employees



Source: Eurostat Labour Force Survey database, http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database (accessed on 5 November 2014).

Figure 3 shows that, except for Portugal, working time decreased in all countries, especially between 2008 and 2009, which suggests that arrangements to reduce working time, such as short-time working and temporary lay-offs, were widely used by firms in their initial response to the crisis. As such schemes are often associated with a loss of earnings, their use also helps us to understand the fall in nominal compensation presented in Figure 2 for Greece, Ireland and Romania.

The national reports confirmed that employers in manufacturing made extensive use of working time adjustments to respond to the initial fall and subsequent fluctuation in demand during the crisis. These adjustments included short-time working schemes, such as a reduced working week and temporary lay-offs, which were reported in the cases of Greece, Ireland, Portugal and Romania; increasing use of part-time workers and conversion of full-time into part-time contracts in the case of Greece (Koukiadaki and Kokkinou 2016); reducing overtime pay was a major strategy in Portugal, while in Greece this strategy was observed along with reducing overtime (Koukiadaki and Kokkinou 2016; Távora and González 2016); the use of time banks was reported as being used by some Slovenian employers and emerged as a widespread strategy in manufacturing in Portugal (Távora and González 2016). The widespread use of time banks, the variation of overtime work to respond to demand fluctuations and the reduction of the cost of overtime work may help understanding why, in contrast with the other six countries, working time did not decrease in Portugal during the crisis. While working hours were reduced as a measure to deal with the crisis, a more flexible approach to working hours and management demands for more time flexibility increased not only in Portugal but also in Spain, where, despite the overall fall in working hours, management's ability to raise them has increased. The extent to which these working time adjustments were negotiated at the sectoral or the firm level, or whether they were implemented by managers unilaterally, varied widely and was not always clear. In Italy and Portugal there was evidence of these schemes being introduced in industry agreements, although in the case of Italy they included dispositions for greater flexibility at the enterprise level. While in Portugal time banks were introduced in sectoral collective agreements from 2009, there was evidence of informal time banks in manufacturing firms even before they were regulated and of working time regimes that were not aligned with the dispositions of the applicable industry agreement (Távora and González 2016). These informal

arrangements at the firm level were also reported in the case of Slovenia (Stanojević and Kanjuo Mrčela 2016).

Even though increased working time flexibility can potentially have negative consequences for work/family reconciliation, the only cases in which these were considered came from Italy. In this country, two enterprise agreements – one in chemicals and one in metal – included work/life balance issues and, in the sectoral agreement for metalwork, greater working time flexibility to meet the employers' needs was balanced with flexible options to respond to those of employees, particularly working parents (Colombo and Regalia 2016). Though not related to working time, there have also been positive developments concerning equality and work/family reconciliation in Greece and Portugal. In Greece the national agreement of 2013 for the first time stipulated a right to paternity leave (Koukiadaki and Kokkinou 2016), whereas in Portugal a sectoral agreement concluded in 2014 in textiles extended childcare subsidies to fathers (Távora and González 2016). This development in Portugal may have been influenced by recent legal dispositions that require the prior inspection of all collective agreements by the national commission for equality in order to ensure compliance with equal opportunities legislation and to prevent discriminatory provisions. Indeed, a number of agreements were amended during the crisis due to these new legal requirements in Portugal, where equality policies appear to have been ring-fenced from austerity (Távora and González 2016). This was not the case in Slovenia, however, where parental benefits were temporarily reduced during the crisis and trade unions expressed concern about the lack of openness of employers to equal opportunities and work/family balance issues (Stanojević and Kanjuo Mrčela 2016). The Spanish report also revealed concerns that fewer resources were being devoted to equality, that the emphasis on defending core conditions was rendering trade unions unable to be proactive on equality matters and leading to an interruption of the process of extending the bargaining agenda (Fernández Rodríguez *et al.* 2016).

The crisis and the measures taken to address it also created or exacerbated other inequities and divisions in the workforce, namely between existing workers and new entrants, with the latter in some cases being excluded from certain benefits and offered lower wages than those stipulated by collective agreements for existing workers, as reported in the cases of Greece and Ireland. With regard to Greece, inequities in pay based on age

are also enabled by national policies, namely the significantly lower rate of the minimum wage for younger workers (Koukiadaki and Kokkinou 2016). Another source of inequality was increasing in Slovenia, where temporary agency workers are not covered by collective bargaining and therefore their wages and working conditions are below the collectively agreed standards (Stanojević and Kanjuo Mrčela 2016). Even though equal opportunities and work/family reconciliation policies in Portugal have been safeguarded during the crisis, the implementation of austerity and labour market measures without consideration for their potential impact on equality led to negative outcomes from a gender perspective (Távora and González 2016). In particular, the freezing of the minimum wage in the context of bargaining blockages resulted in no wage increases for many workers in the lowest paid manufacturing sectors where women are overrepresented, such as textiles and some food subsectors. This may certainly have contributed to the increase in the gender pay gap that was observed during the crisis in Portugal (Távora and González 2016). More generally, evidence from the different countries suggests that the measures have particularly weakened the protection of the most vulnerable workers, particularly the low skilled and those in low-wage sectors.

Trade unions' focus on defending jobs and wages has also led to a narrowing of the bargaining agenda. This was particularly the case in the metal industry in Slovenia, where a whole section on education was dropped from the sectoral agreement, and in Spain and Italy, where a decline in attention to skills development was also reported (Stanojević and Kanjuo Mrčela 2016; Fernández Rodríguez *et al.* 2016).

Collective bargaining at the firm level during the crisis focused to a great extent on company responses to the crisis, including restructuring and flexible adjustments to prevent relocations and company closures. Where these proved unavoidable, the negotiations focused on the terms of these processes, which affected large numbers of workers (Stanojević and Kanjuo Mrčela 2016). The national reports provided some examples of collective bargaining contributing to identify solutions that avoided relocations and minimised job losses. In Italy, solidarity contracts have been a way of supporting flexibility in firms while at the same time preventing or minimising job losses. In one case, industrial action and collective bargaining helped to prevent a white goods manufacturer from relocating, even though the process of bargaining was supported by local and national government mediators (Colombo and Regalia 2016). In

Ireland, social dialogue over an 18-month period at a drinks manufacturer avoided job losses and, although fringe benefits were abolished, there were no wage cuts and the union had moved its bargaining agenda towards the 2 per cent strategy (Hickland and Dundon 2016). In another Irish manufacturing company producing medical devices, collective bargaining managed to find cost savings and minimised – though it did not prevent – wage cuts; it also improved the redundancy compensation of the 200 workers that were let go (Hickland and Dundon 2016).

In Slovenia, while in many cases collective bargaining and the involvement of unions did not prevent job losses, these processes improved the terms of redundancies (Stanojević and Kanjuo Mrčela 2016). In Portugal in one of the case studies, a large automotive multinational, the workers' committee was actively involved in designing the company response to the crisis, which avoided job losses and instead included working time flexibility, temporary posting of employees to the parent company in Germany and skill development (Távora and González 2016). In Greece, in one of the company case studies in food and drinks manufacturing, collective bargaining also managed to find joint solutions that minimised job losses and avoided compulsory redundancies (Koukiadaki and Kokkinou 2016). However, case-based evidence from Greece and Ireland shows that agreeing to wage reductions was not always sufficient to prevent job losses. Of the seven Greek companies studied that introduced wage reductions, four also dismissed a number of employees, particularly the smaller firms. Nevertheless, some of these cases illustrate that social dialogue can help to provide improved solutions that are acceptable to both parties. In particular, Irish employer interviewees emphasised the pivotal role of collective bargaining in the success of firms' responses to the crisis (Hickland and Dundon 2016). As noted by Marginson *et al.* (2014), employers can benefit from collectively agreed solutions because even when these involve negative outcomes for workers, their involvement in the design of the solutions can help prevent the decrease of trust, morale and commitment that unilateral decisions by management can generate.

Table 6 summarises the key bargaining outcomes in terms of wages, working time, skills development and equality and work/life balance related to the labour market measures implemented during the crisis in the different countries studied.

Table 6 Summary of bargaining outcomes in manufacturing related to labour market measures

Country	Wage reductions	Working time and other forms of flexibility	Skills and training	Equality and WLB
Ireland	Yes, including basic wages	Short-time working and temporary lay-offs		
Greece	Yes, including basic wages	Short-time working and temporary lay-offs Reduced use of overtime Increased use of part-time work Greater flexibility in contracts with lower security for workers		Extension of parental leave to fathers in national agreement
Spain	Yes, including basic wages	Cases of longer hours with the same pay and in some cases option of time banking	Less training	Fewer resources for equality purposes
Italy	No	Different forms of working-time flexibility widely used by firms as key responses	Less training in enterprise agreements	Work-life balance and equality covered in two firm and one sectoral agreements
Portugal	Mainly overtime pay	Time banks and other flexible arrangements as major responses Short-time working and temporary lay-offs in metal and automotive industries		Childcare subsidy for fathers in textile agreement but wider gender pay gap
Romania	Not specified	Different forms of working-time flexibility widely used by firms as key responses Greater flexibility in contracts with lower security for workers		
Slovenia	No	Different forms of working-time flexibility widely used by firms as key responses	Dropped from some agreements	Temporary reduction in parental leave pay Equality excluded from the bargaining agenda

7.2 Interaction between developments in the content and outcomes of bargaining and the role of the social partners and the state

In all countries the state has sought to intervene in areas that were traditionally left to the social partners to reach agreement freely. In Italy and Slovenia these attempts were confined to changing some bargaining rules to promote greater flexibility at the firm level. In the case of Italy, the government's unilateral intervention was counteracted by the reactions of the social partners, reasserting their collective bargaining roles in alignment with the voluntarist tradition of industrial relations there. However, even in the cases of Italy and Slovenia, where encompassing employer and union organisations have retained much of their influence in the regulation of employment and wage determination, individual firms increased their prerogative to set their own terms, at least with regard to the organisation of work and working time. As discussed in the previous section, the increased regulatory role for the state and the rise of managerial prerogative of individual firms to the detriment of trade unions and employers' organisations were more pronounced in the other five countries. Where unions retained a role at the sectoral level, as in Portugal, they have had to temper their demands and standards. Increased scope for managerial unilateral decision-making also led to a reduced role for unions in firms. In the context of lower institutional and legal protections for unions and lower state support for collective bargaining, the role of unions and the maintenance of their influence during the crisis to some extent depended on employers' willingness to engage with them. Therefore, the unions that were prepared to engage in concession bargaining and avoided a confrontational stance appeared in some cases more successful in retaining a role during the crisis even if, at least at first, this involved accepting wage cuts or freezes and greater flexibility, particularly with regard to working time. This is well illustrated by the case of Ireland where, after the initial shock of the crisis and the collapse of national partnership, trade unions recalibrated their stance from concession bargaining to a call for modest wage increases by approaching employers individually in a low-profile, non-confrontational but well-coordinated approach (Hickland and Dundon 2016). This '2 per cent strategy', as it came to be called, appears to be achieving success and is leading to sustained wage increases in manufacturing, enabling unions to reassert their role as 'a player in the economy' (as articulated by a union respondent cited in Hickland and Dundon 2016).

Another example of a successful non-confrontational union approach is provided by the metal industry in Portugal, where a more collaborative union structure gained ground in relation to another one that was more representative, but confrontational. The former thereby became the most prominent union actor in sectoral bargaining in this industry, despite having to agree to terms that had hitherto been considered unacceptable. However, this process also intensified the resentment between the two union factions in Portugal. Indeed, except for Ireland and Italy, there was little evidence that the crisis and the associated threats to the labour movement contributed to a greater cohesiveness within trade unions. While in Portugal the aggravation of fragmentation was expressed mainly by the continued competition and resentment between the two ideologically divided union structures, in Romania this was manifested mainly by increasing tensions between local and central union structures (Trif 2016). In the absence of a sectoral agreement that provided a framework and a basis to negotiate from, Romanian local unions enhanced their status within the union structure and started claiming and actually retaining a higher proportion of membership fees. In turn, this led to financial difficulties in federations and strained relations between union structures at the different levels of the union hierarchy. The case studies in Romania also provided two examples of company unions that disaffiliated from the union federation and created a regional structure to better coordinate bargaining at the local level (Trif 2016).

While cooperative approaches emerged as relatively successful in some instances of sectoral bargaining in Portugal and in a context of union coordination such as in Ireland, in Slovenia militant trade unions at the national level were able to protect and improve on workers' minimum standards. However, there was evidence of Slovenian trade unions losing some ground at the sectoral level because they were unable to prevent employers from denouncing agreements, while at the firm level union structures lost much of their capacity to protect members and were adopting flexible and cooperative approaches in relation to management responses to the crisis. Nevertheless, in general, union strategies at firm level varied widely and the extent to which these led to positive outcomes when defending wages depended on equally variable factors both within and across countries. In addition to the economic situation of the firm, two common themes were identified across countries and company case studies as important determinants of union success in defending workers and wages.

A first common theme was management attitudes to unions, although a positive management stance was normally associated with a cooperative approach on the union side, which also made the unions' gains for workers to some extent dependent on management willingness. The second common theme was, not surprisingly, the membership basis and mobilisation capacity of trade unions in firms. Examples from Italy, Portugal and Romania show how worker mobilisation and industrial action – despite legal constraints in the case of Romania – continue to be effective tools available to unions to increase their leverage in bargaining and protect workers' pay. In turn, the case of a large automotive multinational company in Portugal, which is a model of good employment relations, illustrates how a pro-union stance on the part of management and a cooperative approach from the workers' structures (both union and non-union, in this case) do not always guarantee protection of workers' pay. In this case, it did not prevent management from using the new legal provisions to unilaterally reduce overtime pay, thereby breaching the company agreement with the workers' committee.

Irrespective of the character of industrial relations, the case studies in the different countries showed that, despite the pressures put on unions by implemented measures, they were still involved in and to some extent able to influence the processes of firm restructuring. Though they were not in many cases able to prevent job losses, there were examples where their involvement prevented compulsory redundancies (Greece), reduced the number of potential redundancies (Ireland and Spain) and helped to improve on redundancy terms and packages (Slovenia and Ireland). In addition, there was evidence of successful union organizing in Italy through involvement in helping workers to make unemployment benefit applications after being laid off by crisis-hit manufacturing firms, and this appeared to be leading to membership increases.

A greater role for individual firms in setting the terms and conditions of employment was the common denominator when it comes to the implications of the measures for employers. In Italy and Slovenia this mostly meant greater flexibility in work organisation and working time and, due to the changes in employment protection legislation, also – at least to some extent – in staffing levels and contracts. In the other countries, this also involved greater managerial prerogative in pay setting, particularly in Greece, Spain and Ireland where the labour market measures enabled employers to reduce basic wages. Greater

managerial prerogative made possible more flexibility in responses to the crisis, mostly through cost savings. As reported by the employer side in the interviews in the different countries, this enabled some firms to restructure or readjust and cope with the international crisis, particularly the sudden fall in demand in 2008–2009. However, there was some evidence of opportunistic use of the new legal tools to reduce costs or implement changes in firms that were not under significant pressure. This is exemplified by the generalised adoption of the reduced overtime pay rate by Portuguese firms, which was viewed by unions and workers as a breach of the collective agreement (Távora and González 2016) and by the fact that in Slovenia some collective agreements were cancelled by employers in sectors that were in a good economic situation (Stanojević and Kanjuo Mrčela 2016).

As individual firms increased their role in setting employment rules in the workplace, employers' associations may have lost some of their status and relevance, but only in Romania was there evidence of a significant trend. In this country, with the dismantling of national and undermining of sectoral bargaining, employers' associations lost much of their ability to influence the regulation of employment at those levels and the suspension of extensions led to disaffiliation and fragmentation of employers' organisations (Trif 2016; see previous section for a more detailed discussion). Even though some of the measures, particularly the changes to the extension processes and criteria, were not favourable to employers' associations and were implemented without their involvement in Greece, Portugal, Romania and Spain, other measures clearly favour them in bargaining with trade unions, such as more limited after-effect periods of collective agreements in Portugal and Spain. In addition, many of the changes that reduced employment protection legislation and increased the scope for flexibility corresponded to long-standing demands made by employers through their associations, but these had previously been resisted by the trade unions. To the extent that the crisis provided an opportunity to introduce labour market measures that had long been desired by employers and their associations it is difficult to argue that these reduced their influence, except in Romania due to the exceptional circumstances that led to the disintegration of employers' organisational capacity.

Table 7 Significance and implications of measures implemented for the state, employers and trade unions

Country	State	Employers' associations	Individual employers	Trade unions
Ireland	Withdrew support for central collective bargaining Intervention by reducing the national minimum wage	Reduced role due to the collapse of national bargaining	Increased role Greater managerial prerogative in work organisation and pay setting.	Reduced influence but emerging coordinated 'adaptive bargaining' strategy
Greece	Increased state unilateralism and intervention in employment regulation and wage setting Withdrew support for sectoral and national bargaining	Some loss of influence due to state unilateralism and the undermining of national and sectoral bargaining	Increased role Greater managerial prerogative in work organisation, contractual arrangements and pay setting	Reduced role and influence
Spain	Increased state unilateralism and intervention in employment regulation and wage setting Questioning systematic support for sectoral and national bargaining	Continued role but greater internal differences in employer interests	Increased role Greater managerial prerogative in work organisation and pay setting	Reduced influence and challenges to regulatory influence
Italy	Increased state unilateralism and intervention in employment regulation counteracted by social partners	Continued relevant role	Increased role Greater managerial prerogative in working time but not so much in pay setting	Some loss of influence but role in manufacturing was mostly maintained. Union involvement in unemployment benefit applications leading to membership increases
Portugal	Increased intervention by reducing support for sectoral bargaining, greater regulation and freezing the national minimum wage	Continued relevant role despite pressures related to non-extension of sectoral agreements	Increased role Greater managerial prerogative in working time but not so much in pay setting except overtime pay	Loss of influence but maintained bargaining role at sectoral level
Romania	Increased state unilateralism and intervention in employment regulation and wage setting Withdrawing support for sectoral and dismantling of national bargaining	Reduced influence and non-extension of sectoral agreements leading to disaffiliation and fragmentation	Increased role Greater managerial prerogative in work organisation, contractual arrangements and working time	Loss of influence and increased fragmentation
Slovenia	Increased state unilateralism and intervention in employment regulation to some extent counteracted by trade unions	Continued relevant role	Increased role Greater managerial prerogative in working time but not so much in pay setting	Some loss of influence at firm and sectoral level but maintained capacity to protect workers at national level

Under pressure from supranational institutions, the state's increased role was expressed mainly in the implementation of legal measures concerning employment regulation, which led to profound changes in the structure of bargaining. As discussed in section 6, this enabled decentralisation and downward flexibility in wages in firms. The state also intervened more directly to reduce private sector wages – either by freezing or even reducing the national minimum wages, as in the case of Greece and Ireland, or by reducing the legal pay rates for overtime work while suspending clauses in collective agreements that set higher rates, as in Portugal.

While governments' aim of providing firms with downward flexibility in labour costs may have been achieved, disorganised decentralisation led, in a number of cases – namely Greece and Romania – to unintended negative outcomes, such as growth of the grey market and undeclared payments, which reduce state revenue from taxes and social security contributions. Indeed, the extent to which the measures helped to resolve the problems of the countries most afflicted by the sovereign debt crisis is contested and will be discussed in the next section. Table 7 summarises the key implications of the labour measures for the role of the state, employers and trade unions.

7.3 A critical analysis of the impact of the measures on the outcomes of collective bargaining

The crisis and the labour market measures, while providing tools for employers to respond to the crisis with flexible time arrangements and cost reduction strategies, led to negative developments in the wages and employment conditions of workers in manufacturing in all the seven countries included in our research. However, the severity of these negative outcomes appeared associated with a number of factors. These included, first, the breadth and magnitude of labour market measures and how they affected the structure of collective bargaining, namely the extent of decentralisation and reduction of coverage. A second factor was the pre-existing system of collective bargaining and the way the social partners responded to the measures. Thirdly, these outcomes were somewhat mediated by developments in other wage-setting institutions, such as minimum wages. In this section we discuss these effects and their consequences.

Marginson *et al.* (2014) have shown that collectively agreed responses to the crisis can help in mitigating externalities both for workers – by limiting job and income loss – and for employers, by retaining skilled employees and avoiding negative effects on commitment and morale. There are a number of firm-level examples of this in the different countries studied. However, Marginson *et al.* (2014) show that collective bargaining is better equipped to mitigate market externalities when it takes place under encompassing multi-employer arrangements, especially when these are well articulated and provide a procedural framework for firm-level adjustments. Italy can be regarded as, to some extent, representing such a bargaining system and, consistently, it was where the actors were better able to respond collectively and contain the negative impact of the crisis and the measures taken through negotiated decision-making at different bargaining levels. The main reason why Marginson *et al.* (2014) argue that sectoral agreements are better placed than those at the firm level to reduce market externalities is that they are more inclusive. Furthermore, the bargaining power of workers and employers is more balanced at this level and, if vertically articulated, can provide a procedural framework for firms' responses that avoids putting most of the burden on workers.

Consistently, in the countries in which sectoral bargaining arrangements were less robust and/or that were significantly disrupted by state intervention – particularly Greece, Romania and Spain, but also to a lesser extent in Portugal and Slovenia, despite some vertical articulation in the latter case – the responses to the crisis became increasingly decentralised and therefore more likely to produce outcomes less favourable to workers and more dependent on local imbalances. The same applies to Ireland where, especially after the collapse of the national agreement, crisis responses were designed entirely at the enterprise level. As predicted by Marginson *et al.* (2014), this left more and more workers outside the scope of collective bargaining. These included not only the unemployed, but also workers in different types of non-standard employment arrangements, as well as those in firms and sectors not covered by a collective agreement. Also Visser (2013) argues persuasively that, even in cases of relatively organised decentralisation, these processes are likely to involve a shrinking core of workers, mostly in large firms, and lead to an increasing labour market dualism due to firms increasingly opting out of agreements, the lower number of workers covered and increasing numbers of workers in non-

standard employment. Our research provides some evidence that where decentralisation is mostly disorganised, these effects are likely to be even stronger. The legal measures that reduced employment protection legislation and facilitated different atypical contractual arrangements further aggravate these dualisms.

The extent to which the changes in collective bargaining affected its outcomes – particularly pay – was also associated with developments in other wage-setting mechanisms, especially minimum wages. Minimum wages provide a floor for wages and are designed to protect workers from very low and exploitative pay, but they also influence overall wage developments and collective pay bargaining, particularly in countries with relatively weak coordination of bargaining (Grimshaw and Bosch 2013; Grimshaw and Rubery 2013). In the context of decreasing union bargaining power, increasing bargaining blockages and shrinking coverage, minimum wages become even more crucial to protecting the pay of vulnerable workers, especially the lower skilled and those employed in low-wage sectors. However, freezes or even reductions in minimum wages mean that this mechanism failed to fulfil this function during the recession and this aggravated a downward trend in both bargained and individually contracted wages, with Greece the most extreme example. Slovenia was the exception to this rule; while this country also experienced considerable pressures on collective bargaining, a significant increase in minimum wages played a protective function that limited the impact of these pressures.

An OECD analysis shows that real wages during the crisis lagged behind labour productivity, which resulted in a higher profit share for firms and a lower share for workers (OECD 2014). This is consistent with AMECO data that reveal that the wage share in manufacturing decreased during the crisis in all the countries under study except Italy.⁷⁵ Even though the OECD argues that this is typical and part of firms' recovery path after a period of labour hoarding (OECD 2014), labour's income share had been decreasing long before the crisis in most developed countries, including Ireland, Italy, Portugal, Slovenia and Spain, though not in Greece (data are not available for Romania) (OECD 2012b). These trends were explained in the OECD (2012b) analysis by technological development

75. Adjusted wage share in manufacturing industry (compensation per employee as a percentage of nominal gross value added per person employed). Accessed 24/11/2014 at http://ec.europa.eu/economy_finance/ameco/user/serie/SelectSerie.cfm

and increasing international competition, but also by the erosion of collective bargaining institutions and of trade union bargaining power. Unless there is a change in the trajectory of erosion of collective bargaining institutions, these trends are unlikely to be reversed.

Despite the high social costs and unfair distributional outcomes of the reforms, the extent to which they contributed effectively to resolving the economic troubles of the countries concerned was questioned by the social partners in our study. Their concerns echoed the analysis by Schulten and Müller (2013) that suggests that not only is the interventionist focus on reducing labour costs ineffective in correcting macroeconomic imbalances in Europe, but it even aggravates the debt and competitiveness problems of deficit countries. Their argument is based mainly on the fact that wage freezes and cuts can depress domestic demand more than they increase exports. Moreover, while austerity contributed to the increase in unemployment (Schulten and Müller 2013) wage cuts did not necessarily translate into more jobs because, while they may have helped restore the profitability of troubled firms, they did not help to overcome their lack of competitiveness in product markets (OECD 2014). For similar reasons, the ILO Global Wage Report (ILO 2012b) argues that the path to economic recovery should move away from wage cuts and instead promote a better link between wage developments and productivity that not only promotes fairness but also stimulates domestic demand. In turn, this would involve a more enabling and supportive environment for collective bargaining and the strengthening of wage-setting institutions that protect the most vulnerable workers. Additionally, the report calls for increasing efforts to raise levels of education and to develop the skills needed for a productive transformation likely to lead to labour productivity growth (ILO 2012b). Though not without challenges, raising labour productivity would be mostly beneficial for the different parties: the employers, because it would lead to increased output and profit; the workers, because it would improve firms' ability to raise their wages; and the government, because it would increase tax revenues and social contributions from firms and workers. Therefore, productivity growth is a theme likely to unite rather than divide the social partners. Moreover, evidence from our study indicates that employers— and not only trade unions — support collective bargaining and understand its role in obtaining workers' cooperation for implementing change. A policy shift towards productivity-based growth coupled with the re-establishment or reinforcement of national

social dialogue and of a supportive environment for collective bargaining would furnish a better alternative path out of the crisis. Employers and trade unions are well placed to contribute to the design of such a strategy at national, sectoral and firm level and their involvement in an issue likely to benefit both sides would in turn contribute to industrial peace and social cohesion.

8. Employers, trade unions and the state in the new panorama of labour relations: responses and perspectives

The response of trade unions and employers to the changing landscape of collective bargaining reveals a range of issues and tensions in terms of the decentralisation and other aspects of collective bargaining. The responses illustrate that there has been no clear paradigm shift in the manner in which collective bargaining change is being engaged with. Instead, what we are seeing is a process of change and fragmentation that is uneven and ambivalent in terms of its outcomes and which will be discussed in this section.

In terms of their responses, one could argue that employers and the state have been the main protagonists and that trade unions have found themselves isolated, engaging in either minimal concession bargaining or a broader strategy of political mobilisation (or both) to reverse the measures implemented with regard to labour market regulation. However, on closer inspection, our research reveals greater uncertainty and ambivalence among many social and regulatory actors, not just trade unions.

The measures implemented with regard to collective bargaining in the seven countries can be characterised as a substantial attempt to transform the panorama of labour rights as they have existed since the mid-to late twentieth century. They form the basis for a major re-landscaping of employment regulations, systematically undermining the voice of trade unions and the reach of collective bargaining as a joint form of regulation. Many see these developments as an extension of the neoliberal project of the New Right in the United Kingdom and the United States which, since the early 1980s, has limited the voice of trade unions and removed much of the legislative support for collective

bargaining (Howell 2005). Critics of these labour relations measures see them as driven by a range of transnational regulatory actors who are using the crisis to impose more labour market ‘flexibility’ and mobility, but on the employers’ terms. The current climate of anti-trade unionism, which is apparent in such countries as Greece, Romania and Spain for example, is seen to be a direct result of the efforts of right-wing political networks and the neoliberal-oriented elites of those countries with their interest in privatisation and ‘free markets’.

However, we need to draw on our research to fully understand this broad ‘project’ in the seven countries and to fathom the extent of these changes and the nature of the shifts taking place. What we have encountered are more complex readings and interpretations from all sides – especially trade unions and employers – and a growing concern about the failure to understand and defend the importance of social dialogue.

8.1 Employers and collective bargaining change

In terms of employers and their organisations, we have seen in all the national cases a desire to exploit crisis measures for the purpose of reducing labour costs and the supposed burden they impose on corporate innovation and development. The decentralisation of bargaining and the ability to opt out of agreed procedures and outcomes is seen as a way of reducing wages. In all the countries we have seen significant wage erosion brought by the indirect use of unemployment and draconian social policy, but also through more direct reductions in labour costs in the form of new types of collective bargaining agreements based on what many see as more coercive employment legislation. Employers have not been slow to use the legislation to – in the words of one Spanish employer – ‘correct’ the balance between labour and capital, allowing for pay to be linked to the ‘reality’ of the firm and the economy and not some ‘political criteria’ (Fernández Rodríguez *et al.* 2016). The notion of exceptional economic circumstances allows employers to by-pass agreements and to directly lower or change some of the key aspects of collective agreements. The notion of automatic increases through links with inflation, automatic adjustments to pay and the extension of agreements across time and across groups of workers is being challenged. The question in many cases – such as Spain and Portugal – is whether some employers see this as an interim measure, a short-term

corrective to the ‘imbalance’ against them that they consider emerged in the previous years. The other question is whether, after a period of time, this will give way to a resumption of organised labour relations and the return to more negotiated bargaining arrangements. As things stand it is unclear what the longer term engagement with such practices will be: in Greece, for example, it is not clear whether such suspensions of extension mechanisms will be long-term.

In terms of substantive worker rights, we have also seen legislation in countries such as Greece and Spain being used to reduce the amount of compensation a worker receives when dismissed for ‘economic reasons’. This has emerged from the pressure exerted by supranational institutions that view the labour market in Spain as ‘rigid’ and unable to correct itself efficiently. In the Italian labour market the cost of labour market exit has been an ongoing target for the liberal market politics of the OECD, as pointed out by Colombo and Regalia (2016). Many current national measures appear to indicate that there is a push to less ‘costly’ forms of labour market exit for employers: the question of whether they are easier, however, will be discussed later due to the fact that the legal dimension of the state increasingly plays a central role in overseeing redundancies and dismissals and attempting to ensure some degree of consistency.

These employer strategies have sometimes involved a more critical attitude towards the trade union movement as a whole, using legislation to undermine worker representation and voice. This can be clearly seen in Romania, where the representative basis for trade union recognition has been changed: the thresholds are much more onerous for trade unions seeking to play a role in collective bargaining. This is also the case for employers’ organisations, which also have to represent a larger constituency for the purpose of collective bargaining. In Greece we have seen the development of ‘associations of persons’ as an alternative to trade unions, which breaks with broader forms of worker representation. In Spain, draconian legislation has been re-invoked to curtail certain forms of strike action, as already mentioned. In some of the cases studied in Spain, this dormant legislation on picketing and collective action, from the Franco dictatorship, has been used to curtail and arrest trade union activists during disputes, one of which was the subject of an interview conducted by the Spanish research team. The extent, nature and environment of union activity is thus being challenged in one way or another.

We are seeing not just a reduction in labour standards but a calling into question of the nature and form of the labour movement. In this respect we see that employers have not been slow to exploit the changing measures and laws on labour relations. The cases of Greece, Romania and Spain are clear examples in this respect, while in Ireland the employers have pointed to a new strategy – ‘a future way’ – that sees non-unionism as a preferred feature of any future strategies (see Hickland and Dundon 2016), although the extent to which it is taken up will depend on the labour relations traditions of different firms. The employers’ response has been to engage with legislation to substantially weaken trade unionism and social dialogue.

However, this is only part of a more complex spectrum of employer strategies. One could argue that Romania lies at one extreme, followed by Greece and Spain, with Ireland coming next, although this is in part due to the voluntarist legacy of regulation derived from the colonial British past, which allows for non-unionism to be more prevalent, as is clearly the case in some parts of the economy. In fact, in Ireland there have been various critiques of the previous form of social partnership, according to which it was closer to micro-level concession bargaining than a robust Nordic system of regulation. Hence there is ample scope, presumably, for more ‘accommodating’ labour relations strategies and that much has been learned about social dialogue and economic efficiency since the 1990s.

While trade union decline has been at its most extreme in Slovenia in the past ten years, trade unions have not been straightforwardly subjected to targeted measures, unlike those in the other countries. In some respects, there appears to be a legacy and living culture of social dialogue in various aspects of the local labour relations systems. Turning to Italy and Portugal, the state and employers’ critique of trade union rights has been less profound. The role of trade unions at the level of the state in both these countries appears to have been greater and the social consensus in the past twenty years more significant. The labour market measures have brought change to the process of collective bargaining, but not quite the direct political challenge seen in other cases. This may be due to the way trade unions have engaged with the state and social dialogue. This is important for our study because it reveals that no systematic liberal market project is being developed and much depends on the extent of the crisis, the correlation of political forces and the culture of negotiation

and coordination within and between trade unions. The strategic and occasional bypassing of trade unions through labour market measures does not always mean a systematic political and ideological undermining of them. This was the case in national contexts with a more embedded tradition of social dialogue in terms of collective bargaining and a different national consensus on the role of organised labour. It was also the case where ‘Anglo-Saxonisation’ and neoliberal practices were less common.

This diversity of responses allows us to reveal more complex developments in terms of employer responses. On close inspection the national case studies reveal some inconsistencies in the use of legislation and policy measures. Many cases have not simply undermined or removed the trade unions, even when they have attempted to bypass them in terms of pay agreements. In many cases we found that social dialogue and collective bargaining processes had been sustained despite the politicised and changing regulatory environment. Even in Romania and Slovenia there remains a commitment in the larger firms to social dialogue, albeit with provisos concerning the need to change certain types of working conditions in terms of hours and wages. There has been no systematic shift away from the format of bargaining as both sides worked on the basis of the need to keep some channels of communication on a formal and informal basis. In one leading metal firm in Spain a social dialogue-oriented human resource manager did acknowledge that it was more the threat of using legislation to bypass the unions and lower wages that created an element of compliance, not actual use of such legislation and other basic labour relations measures.

There appeared to be a *quid pro quo* running through larger Spanish firms – and even in organisations dealing with smaller firms – that changes to substantive terms and conditions of work could be made provided the basic elements and structures of collective bargaining were sustained and not wholly bypassed. To this extent it was often clear that while various firms did not automatically implement sectoral agreements they did use the measures implemented and the potential to do so as an instrument in their negotiating armoury. In Greece, the use of ‘associations of persons’ in small – but sometimes also large – firms enabled management to reduce wage levels substantially, while use was also made of new forms of legislation promoting functional and numerical ‘flexibility’. In Ireland there were cases in which the changes

were used and the economic circumstances referenced to enforce quite systematic forms of restructuring, but this was not generalised and the collective bargaining structures remained to some extent. The real irony was that in Italy, Portugal and Spain, for example, there was a real demand among the employers' organisations in the metal sector and other sectors, such as chemicals, to preserve sectoral bargaining and its remit. This was seen as essential for various reasons.

First, it was felt that the agreements had been underpinned by robust dialogue and that the forums in and around bargaining processes did not just result in better agreements but helped to smooth the differences between the social partners. Strategic issues could be developed and discussed and problems confronted informally, too. In many respects it allowed for a shared history of problem-solving between different players. It formed the basis of more intense relations that could sustain most challenges to the firm and which had been reforming labour market structures sometimes ahead of government policies.

Second, there was a sense in which any change to existing agreements and any further decentralisation would risk shifting the burden of regulation and negotiation to smaller firms. For the larger multinationals this was not a problem. Many of the larger companies in metal and chemicals were clear they would be able to sustain the more complex bargaining changes and could forge a way ahead in terms of how they worked with trade unions. In some cases their systems of social dialogue were robust enough to ignore the legislation and the political resources it offered the firm. This applied in Greece, Portugal and Spain, for example, where discussions about works councils and other established forums continued, and where the health and safety committees, for example, still operated. However, for smaller firms there was a risk that going beyond implementation pacts and actually bargaining directly with the workforce could upset workplace relations. The argument was clear: decentralisation could politicise labour relations further and create a new era of instability, which had to some extent been overcome during the past twenty years (this echoes the debate in Fairbrother 1994). There was a sense in which the memory of social dialogue and the manner in which agreements had been made would be lost. This reflects a growing tension in employers' organisations. In Slovenia it was apparent that there were growing signs of a lack of consistency among employers in their relations to social dialogue: there were competing points of view

and no shared ‘neoliberal’ consensus about change. In Portugal and Romania legal changes to employer representativeness criteria led to real concerns about how employers were meant to organise and represent the broader and longer term interests of their constituencies. Indeed, some employers had joined in mobilisation against laws and proposals on this matter.

We must therefore be cautious of assuming that there is a simple neoliberal path to a post-labour relations agenda and context as employers begin to realise the risks of the measures implemented for representation and the safeguarding of social consensus within industry. In many respects there were clear signs that in manufacturing there was a gap between the employers’ organisations and the new market-leaning think tanks and consultancies that were emerging and propagating further change. In Spain this was explicit in many forums and may reflect the emergence of a new business school-led management culture, crowding out previous traditions.

8.2 Trade unions and their responses

Turning to the trade unions, the responses also reveal the complexity of the measures implemented, which in all seven countries have presented the most serious challenge to the DNA of employment regulation since the mid to late twentieth century. Trade unions have also found themselves in a broader crisis of legitimacy arising because a large part of the workforce is outside the regulatory reach of collective bargaining and trade union representation. The differences in the workforce in terms of generational and gender factors have meant that in Greece, Italy and Spain nearly half the younger workforce is unemployed. Trade unions have thus found themselves in a difficult position in seeking to balance the defence of their core representatives and the structures of joint regulation, on one hand, and the need to create some kind of bridgehead for the more excluded workforce outside those structures. The governments of Italy and Spain, for example, have made no bones about their belief that reduced labour dismissal costs would provide younger people with increased opportunities as employers are induced to hire more staff. The argument is that removing the barriers to employment dismissal on the grounds of cost will foster employment. This has created a new set of tensions which both the right – and the new

left that is not linked to the mainstream labour movement – have not been slow to exploit. The way trade unions are seen to defend ‘insiders’ has compromised their ability to generalise opposition to collective bargaining measures.

In the period 2008–2012, in the seven countries we looked at – especially Greece, Italy, Portugal and Spain – there were mass mobilisations in response to the labour market measures and deep cuts in state expenditure. Collective bargaining was an issue in this context, but only part of an overall tapestry of trade union responses to much wider issues.

To that extent, the national cases show a more realistic strategy – rightly or wrongly – within the trade union movements, especially those with a social democratic and centrist heritage. The objective has been to maintain and sign agreements where possible, even when conditions have changed for the worse. There has been an objective – sometimes unwritten – to maintain bargaining and sustain the rituals and processes linked to it so that trade unions remain involved in some way in enterprise decision-making in the longer term. In Italy, Portugal and Spain, for example, this has given rise to a great deal of criticism from smaller and/or more radical trade unions, which have accused their larger confederations of complicity. At small to medium-sized firms in Spain the strategy has been to maintain the body of rights and relations at any cost so as not to lose access to firms that could easily isolate their individual representatives. This could be called process-focused concession bargaining. This has put some trade unions, which deal with bargaining, in a compromised position in relation to competitor trade unions. Over time, trade union and works council elections may lead to a further fragmentation of organised labour. The more ‘progressive’ employers are concerned about this issue because it may result in a more complex bargaining process.

While many of the legal measures require that firms justify any non-implementation of agreements or bypassing of them in economic terms – through the legal sphere of the state – this is all premised on the assumption that they will be challenged by trade unions: the reality is that this is unlikely to always happen as trade unions are increasingly stretched in terms of personnel and general resources. There has been systematic restructuring in many trade unions, which have had to scale back on legal services and field staff. Challenging decisions to bypass

or change agreements in legal terms requires a highly resourced and trained body of trade unionists.

Many sections of the trade unions dealing with local, regional and sectoral bargaining have had to focus more on monitoring and data gathering to ensure they understand where it is that employers are abusing the new measures or simply avoiding trade unions: once more, however, their lack of resources undermines this strategy in many cases. The ongoing political critique of the support given to trade unions to enforce workers' rights has added to this challenge. In the case of Greece, the development of 'associations of persons' represents a direct attempt to rethink the presence of organised labour within such firms.

Smaller firms have been using the services of consultancies and legal firms to draw up new templates for agreements that include more flexible working time, a greater degree of temporal flexibility and constraints on or reductions in wage increases. These firms, for example in Spain and Ireland, have also been using the services of such other actors to undermine labour representation. The anti-union lobby has grown in international terms and has become a more important player in what were once regulated labour relations contexts (Dundon and Gall 2013). Trade union displacement strategies have become more sophisticated.

In the case of Slovenia, while some of the terms and conditions may still be partially regulated by trade unions through social dialogue there is the problem of 'self-exploitation' (Stanojevic and Kanjuo Mrčela 2016). This builds on the studies of labour relations which point to the myriad of practices management have developed that have intensified work and employment relations through quality management, direct surveillance, and outsourcing (Stewart et al, 2008). That is to say workers are working more hours and more intensely to keep their jobs, and in such a way that their work is nominally regulated but in fact much of what they do undermines those regulations. This becomes a problem as the trade unions try to sustain the core and the visible aspects of regulation as part of a defensive strategy and response to the crisis and the subsequent measures, but fail to control the actual workplace and working activities of the workforce (partly due to the weaker presence of trade unions but also the more difficult challenge of negotiating these types of new working practices). What workers are doing to sustain employment and within more authoritarian workplaces will be breaching many collective

agreements in relation to wages and working time. The trade union movement will be in a more vulnerable position in terms of being able to enforce agreements and monitor them.

One risk for the trade unions is that they may lose not just the physical and resource-based capacity to control and regulate the labour market and work through bargaining systems, but also the necessary knowledge and relationships required to sustain a strategy of regulation (see Martínez Lucio *et al.* 2013). This issue of organisational memory is fundamental for any understanding of collective bargaining processes and the manner in which firms operate.

This leaves trade unions increasingly policing the terms and conditions of workers in established large workplaces, where they already have a presence. In countries such as Italy and Spain there is a real sense of uncertainty concerning how to work in the new framework. The pressure is on training as a vehicle to prepare trade unionists for the new complexities of joint regulation and more antagonistic employers.

However, responses are emerging. Alliance building with more 'progressive' employers and employers' associations in many cases may occur only in the more organised and already stable sectors, but it is already visible in some contexts. In Ireland, the trade unions are positioning themselves around national political and bargaining campaigns to raise workers' income levels, the focus on the '2%' campaign (see Hickland and Dundon 2016). There is a growing awareness of workers' falling real living standards and the unfair way the crisis has fallen on and hit the salaried and waged classes. The need to use concerted mobilisations and focused demands around bargaining issues extends an existing strategy (an 'organising' strategy, as in Ireland). In countries such as Ireland these strategies, prior to 2008, were focused mainly on reaching difficult and hard to organise workplaces, which employed migrants and vulnerable workers. More recently, such strategies have been deployed among wider groups of workers. The development of previously targeted strategies to encompass the wider population shows how unions are drawing on what they have learned from organising vulnerable workers before 2008. In Spain, the highly acclaimed focus on information centres for migrants in the CCOO and UGT trade unions is now being broadened to include all workers, such that we can now see how, since the 1990s, organisational learning with regard to minority workers has become a template for

broader trade union renewal strategies. There are also internal reflections concerning how trade unions need to maintain a balance between social dialogue and a broader social role. That is to say, how they maintain a broader set of roles that underpin their independence and legitimacy.

8.3 The question of the state

It is tempting to see the state as a simple transmission mechanism for the supranational interests that have been driving national measures. In many respects, the role of the state is changing and we need to focus on the role it has played hitherto. However, to appreciate this we need understand that the state plays many roles and that these do not form a consistent whole or unity. Jessop (1982) points to the state as an institutional ensemble of forms of representation and intervention. The state at the national level of the seven countries we looked at has, due to the nature of the economic crisis and financial context, undermined its resource base to the point at which it has seen its autonomy from dominant socio-economic interests (relative or otherwise) fundamentally compromised. The window of opportunity for intervention has been shrunk, as we pointed out earlier. In the context of Greece and Romania there have been significant interventions to halt any autonomous social and labour market policy of a progressive nature: the governments have been transmission mechanisms for supranational interests. Some of these interests were shaped by and reflected the interests and prerogatives of domestic actors, such as the American Chamber of Commerce in Romania and certain large companies in Greece.

However, before we endeavour to understand the role of the state in the new labour relations terrain we need to remind ourselves that various – though not all – agendas concerning the measures discussed in this report have, to different degrees, been contemplated by various factions of the political elites in the seven member states. In the case of Romania and Spain, there is clearly a legacy that considers labour relations to be problematic in their more organised and centralised forms, while in Ireland the social partnership agenda and moment never deepened into a broader politics of industrial democracy. One could argue there is a more embedded social democratic consensus but the right has been steadily shifting in terms of its horizons in other countries, such as Romania, Slovenia and Spain.

In substantive terms measures implemented in response to the crisis have been developed by national governments in close cooperation with external supranational forces and linked to monetary and financial support for the nation-state. They have managed to push the more liberalising technocrats to the forefront of policy-making. The question of economic development has focused on labour costs and a quantitative understanding of productivity. Inward investment has become an even more important feature of policy in Ireland and Portugal as a form of economic progress. However, this has had the effect of undermining the more proactive features of the state in terms of infrastructural development and labour supply policies, such as training programmes. In Greece, Portugal and Spain there have been ongoing concerns that the internal programmes for development in terms of the pre-2008 period have not always focused on research and development, or on indigenous capital growth. Since 2008 this has become an even bigger problem as innovation and qualitative state policies have been further subsumed by a logic of labour-cost containment. Thus the agenda of states has moved from the demand side from the 1950s to the 1980s to the supply side from the 1980s to around 2008, and subsequently to a cost reduction paradigm in the current period. This means that the politics of labour market regulation are fixated with short-term labour market policy and the emergence of a new set of technocrats and IMF-leaning individuals who are increasingly reconfiguring the language of labour relations. In Romania, this has become a prevalent problem.

This means that the state is focusing much less on propagating social dialogue and consensus generating processes. The role of the state is not just to represent and intervene in quantitative or legal terms but to also establish benchmarks of good practice (Martínez Lucio and Stuart 2011). The emergence of the 'benchmark' or 'organisational learning' state is important to the generation and extension of social dialogue, yet within all seven cases this kind of activity has become almost non-existent. Conciliation services focus mainly on resolving problems and not on engaging proactively with changes and new ways to bargain. Training budgets for collective bargaining, labour law and consensus-generating activities have been reduced to the extent that there is little public investment in longer term social dialogue issues. This means that the measures implemented are very much in the hands and ideological frameworks of the social actors. The state has withdrawn from a consulting role and in effect has not guided such measures with

any proactive ideas. This will contribute to even greater fragmentation within regulatory processes, and SMEs will increasingly rely on external organisations, including consultancies. This may politicise relations and tensions even more. The reduction of public sector budgets means that public employees are under enormous pressure simply in trying to perform basic state functions, never mind more strategic ones. It is likely that we will see a more neoliberal management mind set emerge with a declining appreciation of regulation.

This problem is clearly also relevant in terms of the enforcement of labour standards. All seven countries have seen a significant decline in how the state monitors the implementation of collective agreements and how it deals with non-implementation. This has imposed a further burden on trade unions, who in some cases – such as Italy and Spain – have worked closely with the labour inspectorate in the past, even in areas such as housing (Martínez Lucio *et al.* 2013). The emergence of a more inclusive and social partner-based approach to labour inspection in the face of a fundamental shift in the nature of work in major sectors due to the use of undocumented workers and harsh employment measures is being undermined. In manufacturing, smaller firms are being inspected less, and health and safety issues appear to be increasingly ignored. This brings a new set of challenges as monitoring the nature and implementation of collective agreements declines, giving rise to unregulated spaces within the workplace and the labour market in which workers are routinely exploited to an increasing degree.

Furthermore, in most of the seven national cases we are seeing the erosion of resources for the state's judicial and legal apparatus. There is an increasing crisis in how labour cases are dealt with in terms of time and quality of decision-making. This is ironic in that the labour courts are more active and there is greater reference to labour inspection. The perversity of the political push away from joint regulation is that it leads to more individual conflict and direct state intervention through the labour courts. This engenders a low-trust environment and a more direct role for the state. The state is thus drawn into labour relations in a more systematic yet primary (cruder) manner.

The question of how the state responds cannot be understood unless we view it as an ensemble of institutions. Such an ensemble does not respond in a coherent manner to what are elite-driven labour measures.

Instead, the onus will fall on different features of the state to resolve and respond to issues as they emerge. What we are seeing is that the longer term strategic dimensions of the state are declining in significance as its shorter term and more immediate aspects are drawn directly into employment relations. In fact the increasing use of the police and coercive strategies have become an important feature of the state's repertoire of action in collective disputes (which are also creating serious employment issues within these structures), as in Greece, Portugal and Spain. In Portugal, for example, this has begun to worry the police trade unions with regard to the effects on their terms and conditions of service. Constitutional labour rights have become a major area of contention and concern, a curious outcome of the 'liberal' nature of the measures.

8.4 Summary

The measures implemented in response to the crisis are being used in many labour relations contexts to undermine and change the role of joint regulation. There is a growing pattern of employer strategies that are premised on bypassing the roles of collective worker voice. There is also a state role that has facilitated this at various levels. To a great extent the seven national cases have seen some of the most serious challenges to their traditions of social dialogue. There is to some extent a discourse which is questioning the role of collective regulation and independent worker voice itself.

However, the extent of these changes varies. There are signs that in some cases there is greater caution in undermining the legacies of social dialogue and proactive collective bargaining cultures and the roles they have played. We saw how Italy and Portugal are examples of this even if there are also very serious national issues. It does not always follow and mirror the extent of sovereign debt either and seems to have an element of path dependency and regulatory tradition. In cases such as Greece and Romania, at the other extreme, there has been a fundamental rethinking of the nature of voice. Hence we need to be cautious. In Ireland we can see dual developments depending on existing labour relations traditions. Thus the manner in which dialogue – albeit truncated and limited – sustains itself varies.

There are also visible signs of unease from many employers. There is concern about the risk of greater fragmentation in collective bargaining and the ability of personnel managers to cope with these issues. There is also the risk of growing politicisation and change, especially the undermining of unions with a proclivity towards social dialogue and 'realistic' bargaining. As for trade unions they have been increasingly constrained in their ability to regulate and reach policy agreements. The culture of bargaining has changed and there is less legitimacy for written texts and negotiated conditions. However, trade unions have begun to formulate strategies for sustaining their role in core sectors, raising awareness about low pay and sustaining a combination of mobilisation and negotiation strategies. However, the real problem is the growing dysfunctional features of the state and the failure of the state to work in tandem with social partners on questions of implementation of workers' rights. This lack of synergy between the social actors may ultimately be the major challenge as the labour relations field fragments further.

9. Conclusion

The role of social dialogue and bargaining has been fundamental in the economic and political development of the EU member states but also that of the EU. It has been essential in creating a relatively democratic dialogue and stability in societies characterised by high levels of class conflict and in ensuring some degree of common interest. It has also created a common set of labour standards, meaning that competition was directed to longer term forms of investment and organisational considerations. So-called labour market 'rigidities' in terms of the cost of making workers redundant – or the processes used to restructure firms – continued to exist precisely because they enabled such social dialogue to operate.

More specifically, and first, when the system of labour relations was emerging, social actors – including state agencies – did not deem it wise to overload the transitional agenda by putting too many rights (or their removal) on the table for discussion. Hence, these political imperatives are important for understanding why industrial relations developed as they did. Second, many of these rights in countries such as Portugal and Spain were hard-won victories or concessions in the previous authoritarian contexts, as noted earlier. This historical act seems to

be widely ignored in the political sphere. Third, these employment protections have been maintained in order to compensate for the lack of a systematic and inclusive welfare protection in the seven countries studied in the project. Hence, ‘rigidities’ in terms of labour market rights can be understood only in their historical context. The absence of Nordic or German-style welfare arrangements means that workers’ rights in labour relations are needed to balance some of the gaps.

However, in these national cases, we saw that prior to 2008 some further changes took place in terms of the content of collective bargaining. The notion that they were static, as argued by the proponents of labour market ‘deregulation’, is thus questionable. In the case of Spain, the adoption of equality legislation under the Zapatero government (2003–2011) meant that firms had to develop equality plans within their collective bargaining frameworks. In many of the national cases studied, colleagues found examples of training and development entering the content of collective agreements in terms of rights to training and time off for training, as in Portugal. What we therefore see is a relative degree of articulation and coordination in these seven countries, sustained by an element of renewal and change. The notion of a static system of collective bargaining prior to 2008 is an unfortunate and – in our view – incorrect stereotype.

When assessing the emerging political and strategic challenges to labour market regulation and collective bargaining before the crisis, there were indeed fissures in this system. In the first instance, critics pointed to the slow changes in labour market rights, for example, with regard to dismissal costs. There was a sense in which such labour rights were only partially open to negotiation. In this context, the sectoral level of bargaining was seen by the critics as a cover for the absence of a deeper discussion and reflective approach on the role of social dialogue in relation to efficiencies. There was also growing concern that the space of the medium to large firm was not being fully developed in terms of robust discussion of growing problems, for example, the competitive and productivity gaps with non-European competitors, such as China. The question of collective bargaining agendas appeared to be truncated and unable – or unwilling – to tackle deeper issues of workforce time and functional flexibility. Furthermore, the ability to radically adjust wage rates and levels in the face of economic shocks was seen by some as unachievable.

Critical voices on the right of the political spectrum began – even prior to the 2008 crisis – to undermine the partial social partnership consensus that had developed on the European Union’s ‘periphery’. This was a concern emanating from various political quarters on the centre and the right, which argued that the focus on the sectoral level was also a sign of growing weakness and lack of regulatory reach in real and effective terms. Finally – and unfortunately in the eyes of the authors – much of this critique has been led by the Anglo-Saxon press in the form of *The Economist* and *The Financial Times*, which have increasingly depicted so-called ‘inflexibility’ in such countries in terms of national, even racist stereotypes. Much of this discussion came at quite an early stage in the crisis and even before it in some instances. In the case of Spain the labour market ‘rigidities’ are seen as related to Spanish ‘laziness’ and ‘immobility’, a link to a darker Spain that plays on the notion of the ‘black legend’ (see Fernández Rodríguez and Martínez Lucio 2013 for a discussion).

When the economic crisis emerged, the response at European and national levels was multi-faceted. At European level, measures aimed directly at the EU member states most affected by the crisis were developed, mainly in the form of economic adjustment programmes. These were supplemented by a new set of rules on enhanced EU economic governance, including the European Semester, the Six-Pack and the 2011 Fiscal Compact. As illustrated in the analysis, all instruments were informed by the objective of promoting a series of structural measures in labour and product markets. From a procedural point of view, the project findings illustrated both the limited scope for dialogue with the social partners in promoting such responses at EU level, as well as limited impact evaluation exercises or follow-up mechanisms in order to assess and correct any possible problems arising from the measures promoted by the EU institutions (see also Eurofound 2014). From a substantive point of view, the promotion of structural labour market measures became associated with a radical shift in collective bargaining policy, from support during the 1990s and even later (in Central and Eastern Europe) to dismantling long-established collective bargaining structures. As a result, there has been a reorientation of the normative goals of European social policy with regard to industrial relations, moving away from the pre-crisis European Social Model to a neoliberal logic, which requires labour market ‘flexibility’ to compensate for ‘rigidities’ elsewhere, including, in this case, the effects of a strict monetary policy

(Deakin and Koukiadaki, 2013). In doing this, the process of European integration has actually accelerated, as there has been first an ad hoc expansion of the nature of social policy issues dealt with at EU level, as well as an increase in harder forms of intervention. Moreover, the focus of economic renewal has been crude concepts of economic and labour costs without really understanding and engaging with a more qualitative agenda that critically assesses the impact of the measures on living and working conditions.

At the national level, the role of the social actors in the adoption of measures was complex. In some cases they have been reluctant to engage and even when they have focused on specific types of measures of a piecemeal nature with very few concessions in terms of worker rights or social support. In some cases, some of the questions were discussed through various tripartite arrangements, but these were short-lived. The manner in which the measures took place, in such a compressed and short period of time, meant that establishing a more comprehensive approach to gains and concessions was structurally limited due to this panic-driven process. Political and social pressure on the trade union movement emerged from various sources and not just the Troika or national governments forcing measures through. As time went by the effects of measures and the trade unions' ongoing inability to effectively respond to them politically and in practice meant that their legitimacy was called into question.

When examining national labour market measures, it becomes apparent that they were consistent with the commitments undertaken by the governments in the context of financial assistance programmes or other instruments of coordination at EU level, most notably the European Semester. These provisions were indeed very intrusive, albeit to varying degrees (compare Greece and Romania with Italy and Slovenia), in national labour law and industrial relations. Looking specifically at wage determination and bargaining, the measures concerned all aspects of institutional arrangements, including restricting/abolishing extension mechanisms and time limiting the period agreements remain valid after expiry. Second, measures were implemented concerning the abolition of national cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle, and introducing new possibilities for company agreements to derogate from higher level agreements or legislation; and,

finally, weakening trade unions' prerogative to act as the main channel of worker representation (Marginson 2015: 104). In doing this, the measures had the potential to shift the regulatory boundaries between state regulation, joint negotiation and unilateral decision-making by management, with significant implications for the role of industrial relations actors. They could also generate greater uncertainty with firms and with the economy concerning regulatory responsibility and purpose.

In this context, the impact of the measures on industrial relations and social dialogue has consisted of a crisis of collective bargaining at different levels, including not only national but also sectoral and company levels. However, the degree to which different EU member states have been affected at different levels is not the same. The research findings from the project suggest that three types of collective bargaining systems have emerged in the wake of the crisis and the implementation of labour market measures: (i) systems in a process of collapse, (ii) systems in a process of erosion and (iii) systems in a process of continuity but also reconfiguration (see also Marginson 2015). Rather than these being clear-cut types, they represent points in a spectrum, ranging from systems in a state of continuity at the one extreme and systems in a state of collapse at the other. On the basis of this, the most prominent examples of systems that are close to collapse are Romania and Greece. While other national bargaining systems are not affected to the same extent as Romania and Greece, they still face significant obstacles in terms of disorganised decentralisation, withdrawal of state support and erosion of experience (Ireland, Portugal, Slovenia and Spain). Finally, the Italian collective bargaining system could be seen as being closer to a process of continuity but also reconfiguration, with changes in the logic, content and quality of bargaining.

Three key factors may explain the differences and similarities in terms of the impact of the measures on bargaining systems. The first factor accounting for the similarities and differences in terms of impact is the extent of the economic crisis and in particular of the measures adopted in light of the crisis. While the measures targeted both employment protection legislation and bargaining systems, the extent to which they were far-reaching and wide-ranging differed (compare Greece and Romania with Italy and Portugal). The second explanatory factor is the extent to which the measures were introduced on the basis of dialogue and agreement between the two sides of industry and the government.

Where the measures were introduced on the basis of consultation with the social partners and were less influenced by the Troika, the effects were less destabilising than where the measures were introduced unilaterally (compare Italy and Portugal with Greece and Romania, where the approach has been much more impositional). As Meardi also stresses, the differences in this respect between some of the southern EU member states challenge stereotypical visions of an undifferentiated 'Mediterranean model: 'associational governance is still much stronger in Italy, while state influence and government power are more powerful in Spain' (Meardi 2012: 75). Hence, we see a variety of approaches to the question of regulatory change, even if this is all contained in a relatively negative scenario. The third and equally important factor is the pre-existing strength of the bargaining systems, including how well articulated and coordinated they were before the crisis (compare Italy with Spain, Greece and Romania). In this context, the corrosive/destabilising effects of the measures were greater in cases in which unions had not failed to address issues of membership, inclusiveness and renewal (compare Greece and Romania with Italy).

In terms of the impact of the measures implemented in response to the crisis on the content and outcomes of bargaining, evidence from the project suggests that the crisis and the labour market measures have been associated with negative developments in wages and employment conditions in all the seven countries. They have also resulted not only in a fall in real wages in all the countries (and in nominal wages in Greece, Ireland and Romania) but also in increasing dualism, divisions and inequities in the workforce, such as differences in pay and working conditions between existing and new employees, along gender and age lines and between those on permanent contracts and those in atypical employment. These effects were stronger in countries where existing national and sectoral bargaining arrangements were most disrupted by state intervention, especially Greece, Ireland, Romania and Spain as crisis responses became more decentralised and dependent on local imbalances (see also Marginson *et al.* 2014). The negative impact of measures was less pronounced in Italy where encompassing institutions counteracted state intervention and vertically articulated bargaining helped to contain adverse effects, such as shifting most of the burden onto workers. Minimum wages also emerged as an important wage-setting institution. However, while supposed to protect workers from low pay, freezes or even reductions, they failed to fulfil this function during

the recession and aggravated a downward trend in both bargained and individually contracted wages, with Greece being the most extreme example. Slovenia was the exception; a significant increase in minimum wages played a protective function that limited the impact of the crisis and of collective bargaining measures.

Overall, the measures were used to undermine and change the role of joint regulation. From the employers' point of view, there was a growing pattern of strategies premised on bypassing collective worker voice. The role of the state in facilitating and supporting such patterns at various levels was significant. However, as our research suggests, the extent of these changes varied. There were signs that in some cases there was greater caution in undermining the legacies of social dialogue and the roles they have played. There were also visible signs of unease from many employers. There was concern about the risk of greater fragmentation in collective bargaining and the ability of personnel managers to work through these issues. There was also a risk of growing politicisation and change, especially the undermining of unions with a proclivity towards social dialogue and 'realistic' bargaining. The trade unions were increasingly constrained in their ability to regulate and policy agreements. The culture of bargaining changed and there was less legitimacy for written texts and negotiated conditions. However, trade unions began to formulate strategies of sustaining their role in core sectors, raising awareness about low pay and sustaining a combination of mobilisation and negotiation strategies. But, the real problem was the growing dysfunctionality of the state and its failure to work in tandem with social partners on implementing workers' rights. The state was unable to directly manage and intervene and there was no tradition of mediation and arbitration to support many of these measures. This lack of synergy between the social actors may ultimately be the major challenge as the labour relations field fragments further. There are serious risks and dysfunctional qualities emerging in these new regulatory frameworks.

In light of these developments, it is necessary to reconsider policy objectives in the area of industrial relations and collective bargaining at both European and national levels. First, our country case studies support the idea that the measures implemented in response to the crisis have helped to improve firms' adaptability, mostly by upgrading their ability to adjust working time and employee numbers and, above all, to reduce labour costs quickly and drastically. In this sense, governments' objective

of greater wage flexibility at the firm level has been achieved. However, the extent to which they have helped to resolve the competitiveness problems of the countries most afflicted by the crisis is contested. This is, first, because the path of crisis exit focused on internal devaluation and downward wage flexibility rather than productivity gains. In relation to this, there are concerns that this is not leading to long-term competitiveness and sustainable economic growth (for example, Schulten and Müller 2013; ILO 2012b; OECD 2014). Instead, significant externalities emerged, ranging from increasing social divisions and inequalities, lower tax revenues due to high unemployment, growth of the grey market and undeclared payments to increasing discontent, social unrest and the rise of extremist political movements. From a labour process point of view, the measures also contrast with core features of production systems in all the EU member states studied in the project, increasing transaction costs for SMEs and undermining the core informal resources of logic production systems that relied on informal trust (Meardi 2012: 77).

As the first signs of exit from the global crisis have begun to emerge (or so it currently appears) and a number of EU member states have exited – or hope to exit soon – from the assistance programmes, it is crucial that better links should be developed between wage and productivity growth, promoting fairness and boosting domestic demand. This in turn would involve a more supportive environment for collective bargaining and the strengthening of wage-setting institutions that protect the most vulnerable workers. Hence, the role played here by multi-employer collective bargaining is crucial in acting as a mechanism of ‘beneficial constraint’ (Streeck 1997) minimising the externalities of market and policy-driven adjustments. At European level, there needs to be a move away from the current promotion of ‘regulated austerity’ under the current institutional conditions of the ‘Six Pack’ and the Treaty on Stability, Coordination and Governance, which comes at the cost of depressed growth in EU member states. Instead, measures for promoting an alternative approach to European ‘solidaristic’ wage policy (Deakin and Koukiadaki 2013; Schulten and Müller 2014), which is based on strong collective bargaining institutions and equitable wage developments, should be promoted by both EU institutions and EU social partners. As Marginson (2015) has argued, rather than undermining the coordination capacity of multi-employer bargaining arrangements in parts of southern Europe, European and national authorities need to recognise

the macroeconomic benefits associated with effectively coordinated bargaining, and adopt measures that promote the development of such capacity at cross-border level.

At national level, central to this should be a readjustment of public policies in the area of labour market regulation towards viewing social dialogue and collective bargaining as part of the solution, steering EU member states out of the crisis, and not as part of the problem. To that end, the evidence of continuing support for social dialogue and collective bargaining by employers in a number of EU member states is significant. This was particularly the case among sectoral employers' associations, which saw industry bargaining as a means of regulating terms and conditions of employment that would meet the specific requirements of the sector and prevent unfair competition and unfair labour practices, while promoting simultaneously social peace. On the union side, the crisis exposed the risks of taking for granted a level of institutional support that, while desirable for an enabling bargaining environment, can be withdrawn at the government's will. Therefore, efforts to improve the coordination of the unions' bargaining strategies within their respective organisations and movements could be considered (see, for instance, the unions' 2 per cent strategy in Ireland). Strategies towards re-asserting their role in national economies could also be developed. In this context, the development of new strategies for organising atypical groups of workers through, for instance, a focus on service provision – for example, managing unemployment benefit applications for workers in Italy – could be considered. The development of broader alliances in defence of bargaining (Meardi 2012) would also have a beneficial effect on the scope for deliberation and consensual agreements on terms and conditions of employment. In turn, these policies would not only counteract but also reduce any incentives for unwarranted intervention on the part of the state.

From a procedural point of view, it would be vital to consider the introduction of a requirement to establish more rigorous impact assessments, especially in the context of macroeconomic adjustment programmes and bail-outs (see also Barnard 2014). The recent European Parliament resolution that criticised the role of the Troika and pointed to its significant lack of transparency is also important as it stressed the possible negative impact of such problems on political stability in the countries concerned and the trust of citizens in democracy and the

European project. In this context, there are signs of support from the new President of the European Commission concerning the introduction of social impact assessments for support and reform programmes and replacing the Troika 'with a more democratically legitimate and more accountable structure, based around European institutions with enhanced parliamentary control both at European and at national level' (Juncker 2014: 8). In this respect, attention should be paid to the involvement of a wider set of EU actors and institutions in the design, implementation and monitoring of assistance programmes and other forms of supranational intervention (for example, through Council-Specific Recommendations) in national social policy issues. With regard to the European social partners, compliance should be sought with the explicit requirement in the TFEU for consultation (Articles 152 and 154 TFEU). The participation of social partners in the ESM advisory board would also provide a counter-balance to the pursuit of an obsessive policy of austerity that does not consider issues of living standards and long-term sustainability of national economies. With regard to the European Parliament, greater attention should be paid to monitoring measures that may contravene the EU social *acquis* and to ensuring that the Commission and the ECB act in accordance with their duties. The involvement here of other non-EU international organisations, such as the ILO and the Council of Europe, would be significant in emphasising the social dimension in issues of national and European competitiveness.

At national level, the participation of all key actors and social partners increases the likelihood of bringing about sustainable solutions, especially in times of crisis (Eurofound 2014). In particular, social dialogue provides the institutional means to manage conflicts triggered by a crisis and to facilitate consensus on programmes of measures to contain the economic and social consequences. Much also depends on the way the questions of enforcement and state involvement in defending working conditions within a framework of rights and social justice are developed. As the space outside collective bargaining increases, more attention needs to be paid to the social dimension and capacities of the social partners in overseeing a broader and more complex industrial relations space. Greater attention to detail regarding representation and organisational capacity is required in this new context.

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