Chapter 6
Collective bargaining reforms in Southern Europe during the crisis: impact in the light of international standards

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1. Introduction

The objective of this chapter is to compare the reforms of collective bargaining regulations implemented in a number of Southern European countries during the Great Recession. We focus on Greece, Portugal and Spain, three countries subject to financial assistance programs, all of which have implemented regulatory changes in collective bargaining. However, while in Greece and Portugal those changes were explicitly included in their Memorandum of Understanding (MoU) with international creditors, in Spain the corresponding memorandum was limited to the financial sector. Nevertheless, the Spanish government also implemented important changes in collective bargaining. A comparison between the three countries sheds light on the similarity of the changes (promoting decentralized collective bargaining), although the specific changes affected different institutions at national level. The most expected impact would have been an increase in the use of company-level agreements and a decrease of sector and any other multi-employer collective agreement (CA). However, the available statistical information does not uphold this prediction and impacts even differ by country. In addition, we will also discuss the role of tripartite social dialogue on implementing changes in the legal regulation of collective bargaining.

The regulatory changes will also be analyzed in light of the framework set by international law, namely the ILO Conventions and Recommendations concerning freedom of association and collective bargaining. The ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the corresponding Recommendation set framework conditions on collective bargaining that emphasise its voluntary nature and the auton-

1. This research dwells on work developed jointly with Johanna Silvander. Nevertheless, she is not responsible for any analysis or opinion included in this text.

omy of the negotiating partners to freely determine the level at which bargaining takes place: national, sectoral, branch or enterprise level.

2. Legal changes to collective bargaining regulation in Greece, Portugal and Spain

2.1 Major changes

An inventory of all changes to collective bargaining legislation in Greece, Portugal and Spain is beyond the scope of this research.[2] Yet a general pattern emerges when considering the major changes introduced in these three countries. Table 1 summarizes the most important legal changes implemented during the last crisis. The changes were intended to promote a more decentralized organization of collective bargaining, with new rules giving precedence to company-level agreements, limiting extensions of agreements between certain employers and unions to whole sectors[3], and

Table 1 **Major changes in collective bargaining (CB) regulation in Greece, Portugal and Spain during the Great Recession.**

Greece	Portugal	Spain
(i) Precedence given to company-level agreements.	(i) Drastic limitations to extensions of CAs.	(i) Legal precedence of company CAs.
(ii) Changes in recourse to arbitration.	(ii) More facilities to works councils to bargain CAs.	(ii) Derogation of 'ultraactividad' (permanent post-expiry effects of main clauses of non-renewed CAs). [Supreme Court sentence: 'ultraactividad' remains at individual contract level].
(iii) Right for 'associations of persons' to bargain at enterprise level.	(iii) 'Organized decentralization' of CB [Law 23/2012]: Bringing CB closer to the enterprise level.	(iii) More room for unilateral decisions of employers on working conditions.
(iv) Temporary limitation to automatic extensions of CAs.		
(v) Limits to the duration and post-expiry effects of CAs.		
(vi) New minimum wage setting mechanism.		

Note: CA corresponds to 'collective agreements', CB to 'collective bargaining'.
Source: ILO (2014a, 2014b, 2014c).

2. For specific details of regulatory changes to collective bargaining and other aspects of labour law in the three countries, see, for example, ILO (2014a, 2014b, 2014c).

3. There are only six EU Member States with no legal procedure in place for extending agreements, notably Cyprus, Denmark, Italy, Malta, Sweden and the UK (Eurofound 2011). The objective of the different national types of extensions is the same, avoiding gaps in collective bargaining coverage and fragmentation.

restricting the effects of agreements after expiry. In general, this is in line with an international wave of recommendations from international organizations such as the OECD or the IMF (Cazes *et al*. 2012). Nevertheless, there were also important country-specific differences, as the rest of the section will show.

2.2 Greece[4]

The Greek collective bargaining system was highly centralized until the changes adopted during the crisis. Minimum wages and working conditions at the basic level were set by the National General Collective Agreement (NGCA), a central element of the collective bargaining system in the post-war period. Under this system, national-level bargaining on sectoral or occupational working conditions was the second most important level for bilateral dialogue (Patra 2012), while enterprise-level bargaining was introduced after 1974, allowing for company-level improvements to minimum conditions set at the sectoral or occupational level. It wasn't until 1990 that enterprise agreements gained a legal basis through Law 1876/1990 on free collective bargaining (Ioannou 1999). This Law introduced the 'favourability principle', meaning that the provisions most favourable for workers would be applied in the case of any conflict between different applicable collective agreements (ILO 2014a). However, sectoral agreements remained dominant.

With a view to responding to the strings attached to the financial assistance programme, the collective bargaining system was reformed during the crisis to give precedence to enterprise-level negotiations. This decentralization of collective bargaining, although partially introduced on a temporary basis, was expected to bring increased flexibility to wages and working hours.

Decentralization took place in stages, with Law 3845/10 introducing the possibility for lower-level agreements to derogate from certain provisions in higher-level agreements. This abolished the favourability principle previously central to the system. Further, it allowed legislation (emergency measures) to supersede CAs and arbitration decisions applying to wages and working conditions for employees in the public sector and public enterprises.

4. Here, we mainly follow ILO (2014a).

In the next stage, Law 4024/11 introduced further changes, applicable during the financial assistance programme period (2012-2015). Importantly, it changed the hierarchy of CAs by giving priority to enterprise-level agreements in the case of any conflict with an occupational or sectoral collective agreement. However, this priority was not extended to the level of the NGCA.

Law 3986/2011 on 'Urgent measures for the implementation of the midterm fiscal strategy framework' allowed 'associations of persons' to negotiate working-time arrangements at enterprise level in the absence of a trade union (building on Law No. 3846). Associations of persons is a distinctive feature of Greek collective bargaining, introduced in 1982. They can be created for a limited duration (six months) in small firms for the purpose of ensuring worker representation for a specific time-bound purpose, e.g. prior to the closure of an enterprise, when no union exists. Associations of persons gained further ground through Law 4024/2011 which allowed them to conclude enterprise CAs as long as they covered three-fifths of workers in an enterprise of any size, taking precedence over sectoral unions at enterprise level. Further, the duration of these associations was no longer limited to six months. However, associations of persons do not have the same recognition accorded to trade unions as workers' representatives and they do not benefit from the protection available to trade union members.

Law 4024/2011 also gave the Minister of Labour the right to suspend the extension of sectoral and occupational CAs to non-members of the signatory organizations while the financial assistance programme period was in force (2012-2015). This meant a moratorium on the extension principle, which in the past served to establish equal working conditions for unionized and non-unionized workers in companies irrespective of whether they were members of an employer organization.

Subsequently, in February 2012, Law 4046/2012 introduced limitations to the validity of CAs beyond an agreement's expiry date. However, in the case of negotiations being unsuccessful, the expired CA's basic terms (for instance, base salaries) would remain in force for existing workers. For new employees, the absence of a CA means that each will be subject to individual contractual arrangements with the employer, with the only limit being the NGCA minimum base and the minimum legal wage.

Looking at the impact of these measures, available information shows a decrease in the importance of sectoral and multi-employer CAs (see Table 2). From 2011 to 2012 there was a rapid increase in the number of company-level agreements and a parallel decline in sectoral and occupational CAs. Table 2 also shows a descending trend of company-level agreements after 2012, tied to the fact that several sectoral and occupational CAs were still valid in 2012, requiring enterprises to negotiate a plant-level agreement if they wished to employ different conditions. With far fewer higher-level agreements in place as of 2013, enterprises could directly apply minimum wages as set by law and conditions established through the NGCA or labour law (ILO 2014a).

Table 2 **Collective agreements by type**

Year	National sectoral and occupational agreements	Local occupational agreements	Company-level agreements
2010	65	14	227
2011	38	7	170
2012	23	6	975
2013	14	10	409
2014	14	5	286
2015	3	3	154

Note: The figures represent the number of registered agreements each year. The figures on company-level agreements include agreements concluded by associations of persons. For 2015, figures show the situation up to 1 July 2015.
Source: Ministry of Labour, Social Security and Welfare, Greece, www.ypakp.gr.

Another factor partially explaining the decline in sectoral and occupational agreements is the abolishment of unilateral access to arbitration. In the 1990-2012 period, up to 50 per cent of disputes over sectoral and occupational collective agreements were settled through arbitration (ILO 2014a: box 5.3).

The decline in the number of sectoral and occupational CAs may imply a decrease in the number of workers covered by collective bargaining, as the increase in company-level agreements is relatively small in comparison to the overall number of enterprises in Greece (ILO 2014a). In addition, the temporary limitation of the Minister of Labour's prerogative to extend sectoral and occupational CAs to non-members of the signatory organizations in the period 2012–2015 has had an important effect, as no extensions have been accorded since 2012. This means that CAs are only binding for enterprises belonging to the negotiating association and cover

only workers affiliated to signatory unions. According to ILO survey data, the proportion of unionized workers to all wage and salary earners was 30.6 per cent in 2007, while the proportion relative to total employment had dropped to 19.6 per cent in 2010 (ILO 2014a), implying a coverage loss through the lack of extensions.

2.3 Portugal[5]

In Portugal, collective bargaining has traditionally taken place at sectoral or multi-employer levels, with collective agreements extended to non-parties to the agreement (Palma Ramalho 2013). As in the case of Greece (and Spain), the Portuguese economy is dominated by small firms with limited capacity to engage in collective bargaining, so sectoral collective bargaining, with legal extension mechanisms, was a way to increase collective agreement coverage.

In the past, a key characteristic of newly signed collective agreements was to improve conditions set by law and previous collective agreements. As a result, agreements often stayed in force for a long time when more favourable conditions could not be negotiated – apart from updates to wages (Palma Ramalho 2013). Portuguese industrial and labour relations were further characterized by the frequent use of administrative extensions (*portaria de extensão*) to cover non-affiliated workers due to low trade union membership in Portugal.

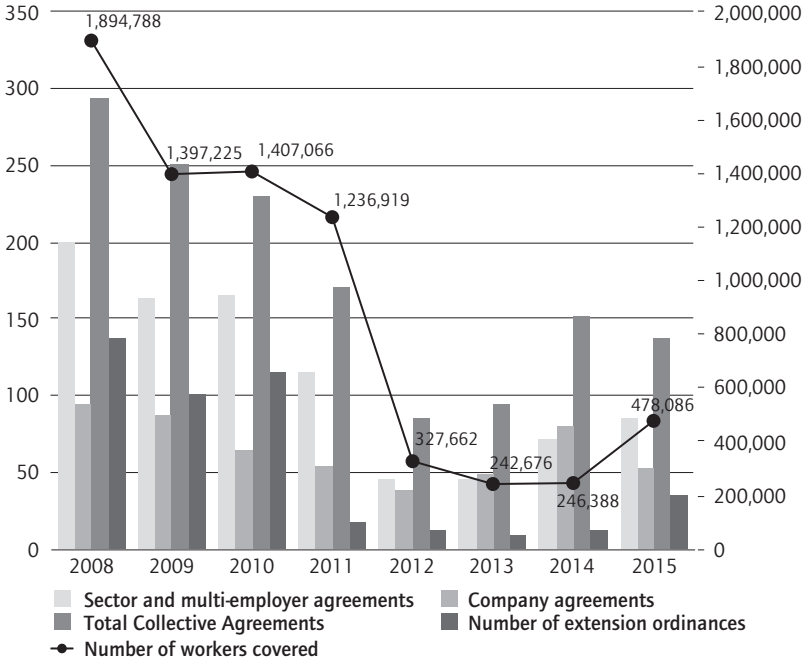
The administrative extensions were the subject of key legal changes. Much in line with the changes adopted in Greece, the mechanism for extending collective agreements to non-parties was practically suspended in Portugal in 2011. This suspension continued into 2012 and, at the end of that year, a new regulation was adopted, providing precise and tight criteria for the extension of collective agreements (Resolution 90/2012). According to the new criteria, the firms for which extension is sought should represent at least half the workers in the branch, geographical area, professional category or type of company for the extension to be granted. The Resolution further states that the requirements are not applicable when the extension request excludes small and medium-sized enterprises. As we will see later, the number of approved extensions increased after the end of the financial assistance programme and the conditionality.

5. Here, we mainly follow ILO (2014b) and Palma Ramalho (2013).

The degree of centralization was the other focus of legal changes affecting collective bargaining. Following the MoU, in 2012 a legal modification was introduced promoting the so-called 'organized decentralization' of collective bargaining (Law 23/2012). Under the new legislation, workers' councils can negotiate at plant level in firms with at least 150 employees (compared with 250 before the reform), subject to delegation by trade unions. The need to promote collective bargaining was acknowledged through the establishment of a Labour Relations Centre (Decree-Law No. 189/2012). These changes were agreed by employers and certain unions in a tripartite commission (the so-called Comissão Permanente da Concertação Social).

The impact of the above legal changes has resulted in a clear decline in the number and coverage of collective agreements (Figure 1). While nearly 300 collective agreements were registered in 2008 and around 230 in

Figure 1 **Number of collective agreements in Portugal and covered workers in the private sector.**



Source: UGT, Relatório Anual da Negociaçao Colectiva, various issues.

2010, the number of agreements fell to 170 in 2011 and a mere 85 in 2012. A similar trend was recorded concerning the number of workers covered by collective agreements, although it is important to note that, at the same time, there was an unprecedented increase in unemployment and a significant decrease in private-sector employment. In this vein, the number of agreements increased when the Portuguese economy relatively improved in 2014, although the number of covered workers did not increase until one year later, in 2015. Nevertheless, Figure 1 also shows that while the number of sectoral or multi-employer agreements has declined, the number of company-level agreements has not increased accordingly. While there was a surge in company-level agreements in 2014, this died down in 2015.

2.4 Spain[6]

Traditionally, Spain has been considered as a country with high levels of bargaining centralization and coordination, with provincial sectoral agreements covering the majority of workers (Malo 2015a).

Two major labour market reforms in 2010 and 2012 affected collective bargaining regulation in Spain. The reform of 2010 introduced, among others, the possibility to derogate from multi-employer agreements through enterprise agreements on salary levels, working hours and schedules. The 2012 Labour Market Reform introduced new measures in an effort to place greater emphasis on decentralized bargaining levels. The major changes included: (i) priority of enterprise-level agreements on a wide range of issues; (ii) limitation of the post-expiry effects of CAs, i.e. automatic extension of working conditions (in Spanish, *ultra-actividad*) in the case of a failure to conclude a new agreement; and (iii) broadening the possibilities for employers not to apply clauses in collective agreements (CAs) and to change working conditions.

The aim of the changes to collective bargaining in both reforms was to enable companies to adjust to rapidly changing demand by adapting working conditions rather than resorting to dismissals. A further objective was to increase the dynamism in negotiations: since the automatic extension of working conditions (including wage increases) would no longer apply, parties would be forced to negotiate a new agreement within

6. Here, I mainly follow ILO (2014b) and Malo (2015a, 2015b).

one year of the expiry of the current one. Further, an enterprise-level collective agreement can be negotiated at any time during the validity of higher-level agreements.

The 2012 Labour Market Reform also introduced more opportunities for enterprises to opt out of specific CA clauses under certain circumstances. Non-application in this respect covers a broad list of issues, such as wage increases, remuneration systems, work schedules, shift work, the organization of work and work functions, and voluntary social security enhancements.

Where a justifiable cause emerges, an agreement on non-application should be concluded between the enterprise and the workers' representatives through a legislated period of consultation. In cases of disagreement, either party can first turn to the dispute resolution mechanism established by the agreement. If this does not result in agreement, the issues should be subjected to designated mediation and arbitration procedures, as foreseen in the CA in question, or in the final instance to the National Consultative Commission on Collective Agreements (Comisión Consultiva Nacional de Convenios Colectivos).

Table 3 shows the impact of the above changes on the relative importance of company-level agreements in Spain. At the onset of the crisis, there was a slight drop of 2 percentage points from approximately 76% at the start of the crisis, rising again in 2014 and reaching 81% in 2015, although information for 2015 is provisional. This increase is small and hard to link to the 2012 reform, as the number of workers covered by company agreements dropped from almost 11% in 2006 to just around 9% from 2009 onwards. Therefore, the change is small, and the trends in the numbers of agreements and workers covered go in opposite directions.

Table 4 shows the evolution of agreements by level, disaggregating the supra-company level to show the development of provincial sectoral agreements. The most important finding is the drop in the relative weight of provincial agreements following the 2012 labour market reform. From more than 50% of all covered workers, these agreements dropped to around 35-37% following the 2012 reform. Even considering that information for 2015 is provisional[7], this negotiating level is losing its

7. The percentage of workers covered by company agreements in 2015 is not exactly the same in Tables 3 and 4. In fact, the total number of agreements considered in Table 4 is smaller in

Table 3 **Agreements and workers covered by scope of negotiation.**

	Total		Company agreements		Company / total, %		Agreements at levels higher than company-level	
Year	Agreements	Workers (thousands)	Agreements	Workers (thousands)	Agreements	Workers	Agreements	Workers (thousands)
2005	5776	10755.7	4353	1159.7	75.4	10.8	1423	9596.0
2006	5887	11119.3	4459	1224.4	75.7	11.0	1428	9894.9
2007	6016	11606.5	4598	1261.1	76.4	10.9	1418	10345.4
2008	5987	11968.1	4539	1215.3	75.8	10.2	1448	10752.9
2009	5689	11557.8	4323	1114.6	76.0	9.6	1366	10443.2
2010	5067	10794.3	3802	923.2	75.0	8.6	1265	9871.1
2011	4585	10662.8	3422	929.0	74.6	8.7	1163	9733.8
2012	4376	10099.0	3234	925.7	73.9	9.2	1142	9173.3
2013	4589	10265.4	3395	932.7	74.0	9.1	1194	9332.7
2014	5185	10304.7	4004	867.2	77.2	8.4	1181	9437.5
2015	4913	8614.1	4012	763.9	81.7	8.9	901	7850.2

Source: Register of Collective Agreements; Spanish Ministry of Employment and Social Security. Information for 2015 is provisional.

Table 4 **Percentage of workers covered, by negotiating level**

	2010	2011	2012	2013	2014	2015
Company level	**8.6**	**8.7**	**9.2**	**9.1**	**8.4**	**9.2**
Higher level	**91.4**	**91.3**	**90.8**	**90.9**	**91.6**	**90.8**
Group of firms	1.5	1.7	1.9	1.6	2.7	3.4
Sector:	89.9	89.6	89.0	89.3	88.9	87.4
Province	53.8	51.2	37.4	35.3	36.5	36.8
Regional	7.8	7.7	20.5	20.2	19.4	21.9
Inter-regional	0.2	0.1	0.1	0.0	0.0	0.2
National	28.2	30.7	30.9	33.7	33.0	28.5

Source: Register of Collective Agreements; Spanish Ministry of Employment and Social Security. Information for 2015 is provisional.

Table 3 for 2015, because the data is provisional and the number of categories included in Table 4 has not yet been recorded for all agreements. In addition, agreements with effects in 2015 are not recorded at all in the Register of Collective Agreements. This is the main reason for considering information for 2015 as provisional.

formerly central position. However, company-level agreements are not increasing accordingly, but rather sectoral agreements at regional and national level. In fact, as sectoral provincial and regional agreements continually account for 58% of all agreements on average, there seems to be a shift from the provincial to the regional level.

Why has there not been a shift towards company-level agreements? For small businesses (predominant in Spain, as in Greece and Portugal) finding that the sectoral agreement imposes unacceptable conditions, negotiating a company-level agreement, which would take priority over the sectoral one, may not be an attractive option even when considering the mechanisms introduced by the 2012 labour market reform. Employers probably find it simpler to opt out of an agreement. According to Malo (2015b), there was a significant use of opt-outs from 2013 to 2015. Indeed, workers affected by opt-outs represented the additional 18% of workers covered by a company-level agreement in 2013 and 12% in 2014. These figures highlight the importance of this exit route from sectoral agreements in enabling companies to adjust to specific needs without going through the process of negotiating a company level-agreement (and without putting an end to sectoral negotiation).

Following the end of the so-called *ultraactividad* (automatic and permanent continuation of an agreement's provisions after its expiry), the anticipated conflicts did not generally materialise (ILO 2014c). Disputes were concentrated in firms and sectors where there was no higher-level agreement that could be applied when the relevant collective agreement expired. Recently, the Supreme Court covered this legal grey area, ruling that in these cases the provisions continued to apply to existing workers but not to newly hired ones. In addition, empirical evidence shows that the end of *ultraactividad*, instead of stimulating negotiating activity, only triggered a one-off increase, probably corresponding to agreements affected by its end (Malo 2015b).

3. Tripartite social dialogue and legal changes to collective bargaining

The previous section has shown that reforms deeply affect key issues in the organization of collective bargaining. But what was the role of social dialogue in implementing these changes? In Greece, as in Portugal, all changes were implemented as part of the MoUs of the successive financial

assistance programmes, while in Spain the legal changes were implemented via unilateral legal reforms adopted by successive governments following unsuccessful negotiations with the main trade unions and employer organizations.

There are differences in the degree of social dialogue applied in the national contexts, whereby Portugal is an outstanding example of a country in serious economic difficulties where social dialogue was kept alive during the crisis.

Even so, social dialogue did not continue unharmed during the crisis in Portugal. One of the social partners – Confederação Geral dos Trabalhadores Portugueses (CGTP) – opted out of the 2012 tripartite agreement. Furthermore, social partners expressed the view that they had not been consulted on various other reforms. Nevertheless, social dialogue on minimum wages was reinstated later when a tripartite agreement on a new minimum wage (*Retribuição Mínima Mensal Garantida*) was concluded in September 2014. However, CGTP was not party to the agreement, arguing that the increase in minimum wages should have been higher.

In Spain (ILO 2014c) and particularly in Greece (ILO 2014a), social dialogue lost ground as a mechanism for joint decision-making in the same period. Two successive unilateral reforms by different governments in Spain (in 2010 and 2012), together with an increasing weakness of the main trade unions during the recession, harmed tripartite social dialogue. In addition, Spanish governments used direct dialogue with large companies, weakening the CEOE (Confederación Española de Organizaciones Empresariales) as the main employers' negotiating institution (Malo 2015a). The early years of the crisis followed the tradition of a relatively strong tripartite social dialogue, though with few actual results. This period included the introduction of stimulus packages in 2008 and 2009. The situation changed considerably when the economic situation worsened with the onset of the sovereign debt crisis in 2010. During this second part of the Great Recession the importance of the main trade unions and employers' association weakened, leaving room for unilateral government decisions on labour market regulation[8].

8. In fact, Spanish unions complained to the ILO about Spain's non-observance of the conventions related to the termination of employment contracts (ILO 2014e) and restrictive legislation on collective bargaining and trade union leave (ILO 2014d).

In Greece, despite its legal recognition since 1975, social dialogue has in practice been rather weak, allowing the government to make unilateral changes in the 1990s and 2000s. At the same time, social dialogue has sometimes been successful, as with the National Reform Programme in the early 2000s (ILO 2014a). However, in the face of the economic difficulties experienced from 2008 onwards, social dialogue was practically suspended in Greece, and almost all attempts (such as setting a new minimum wage, for instance) were unsuccessful. In May 2015, social dialogue was reinitiated in Greece, with discussions focusing on collective bargaining and minimum wages. However, it is subject to major limitations due to international dependencies related to the need for continued financial assistance and the requirements of the international financial assistance programme.

4. Collective bargaining changes and international labour standards

A set of ILO conventions and recommendations governs collective bargaining at international level. Conventions are binding for Member States once they have ratified them, thereby integrating their provisions into national legislation. The latter can happen either directly when entering into the agreement (in states with a monist system with regard to international law) or by adopting national laws to apply the provisions (in states with a dualist system with regard to international law). Recommendations are *soft law* documents that act as guidelines for states and can voluntarily be included in national legislation and lower-level regulations through state action. At the core of international collective bargaining norms are the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), two of the ILO's fundamental conventions. In addition, the Collective Bargaining Convention, 1981 (No. 154) sets down guidelines for the promotion of collective bargaining and extension of its scope; while the accompanying Collective Bargaining Recommendation, 1981 (No. 163) discusses the levels and coordination of collective bargaining, as well as the training of negotiators, among others.

Recent changes to collective bargaining regulation in Southern European countries raise some questions vis-à-vis the international legal framework on collective bargaining. Changes promote decentralized collective bar-

gaining systems, and in some cases legal priority has been given to enterprise-level agreements in the case of conflict. Particularly in Greece and Spain, various changes were effected with little or no negotiations with social partners. Extensions of collective agreements were restricted in Portugal and Greece, in the latter case on a temporary basis. In Greece, associations of persons were given the legal right to negotiate enterprise-agreements instead of trade unions. In Portugal, a similar right can be delegated by higher-level trade unions to associations of workers. All of these countries have an enterprise structure where micro, small and medium enterprises clearly dominate the economy, and this has relevance when assessing the appropriateness of changes in collective bargaining systems.

In the case of Greece, the ILO Committee of Experts has repeatedly questioned the far-reaching modifications to collective bargaining regulations carried out without full consultations with the social partners, and has requested that the latter be effectively involved in the process, including in negotiations with international creditors (CEACR 2012, 2013a, 2014b). Similarly, in the case of Spain, the Committee of Experts has stressed the need for social dialogue when introducing employment policy measures, measures affecting freedom of association and collective bargaining, as well as economic crisis policies in general (CEACR 2013b). Portugal, in turn, received a direct request from the Committee in 2013, asking the government to ensure that decisions on minimum wages were taken after full consultation with the social partners (CEACR 2014a).

ILO conventions and recommendations give protection to *free and voluntary bargaining*. For instance, government action annulling or modifying the content of freely concluded collective agreements is in breach of the principle of voluntary collective bargaining. However, exceptions to this general rule have been increasingly introduced in the three countries considered, as we have seen in previous sections. The vast majority of these exceptions respond to specific economic circumstances at company level.

Free and voluntary bargaining also means that the bargaining parties play an important role in determining how and at what level they negotiate. This also forms part of the *autonomy of the bargaining partners*. In line with the Collective Bargaining Recommendation (No 163), collective bargaining can take place at any level whatsoever, including establishment, undertaking, branch of activity, industry, regional and national

levels. Indeed, decentralization *per se* is not problematic from the perspective of international labour standards.

Concerning the collective bargaining *process*, the ILO Committee of Experts holds the view that employer and worker organizations should be able to choose the level(s) of bargaining themselves through mutual agreement, as they are the experts of their own situation. This has been seen as the best way to ensure independence of the parties. There are neither any criteria nor preferences on the hierarchy of agreements at different levels. As such, determining the level of priority among agreements can happen through collective bargaining – with the social partners at the forefront – or through legislation. Legislating that enterprise-level agreements should have priority thus does not breach the process-related requirements of collective bargaining norms at international level, though such legislative action requires effective consultations with the social partners. In a system where bargaining takes place at several levels, the parties should aim at ensuring coordination between the different levels in line with the Collective Bargaining Recommendation.

When analysing the *content-side* of collective bargaining decentralization, it is important to see whether the changes promote collective bargaining in line with international labour standards. In the Southern European context, it is therefore necessary to assess whether enterprise-level bargaining promotes collective bargaining and, at a minimum, appears feasible on a large scale in an environment where most enterprises are small or very small, and where almost no bargaining traditions exist at that level. Indeed, this latter aspect has been a source of concern, and in view of the preliminary effects of the reforms, those concerns have largely materialised. For instance, the ILO Committee of Experts alerted the Greek social partners to the questionable future of collective bargaining in a context where 90 per cent of the workforce works in small enterprises where traditions or the perceived need for collective bargaining are not present (CEACR 2013a).

On top of this, concerns have been raised about *effective worker representation* at enterprise level. Naturally, effective collective bargaining representation of both employers and workers is necessary for meaningful outcomes. As employers are considered institutions in themselves, employer parties to collective bargaining can be employers or their organizations. However, only workers' organizations with legislated

protection of their representatives are seen as being able to effectively represent workers under international labour standards. Thus workers themselves or their non-union representatives can only participate in collective bargaining in the absence of workers' organizations. The new regulation in Greece on 'associations of persons' is problematic in this regard. These associations were given priority as bargaining partners in enterprises with less than 20 employees, removing this majority of enterprises from the sphere of sectoral negotiations. These associations operate on vulnerable ground: they do not enjoy trade union protection and are dissolved if their membership falls below the required representation threshold (3/5 of workers in the enterprise). As a result, the Committee of Experts has repeatedly requested the Greek government to ensure that trade union sections can be established in small enterprises to ascertain the possibility of collective bargaining through trade unions (CEACR 2013a and CEACR 2014b).

Finally, extensions of collective agreements are discussed in the Collective Agreements Recommendation, 1951 (No. 91). The extension of collective agreements to cover all employers and workers within the industrial and/or territorial scope of a CA is promoted in line with national laws, regulations and collective bargaining practices. The recommendation also discusses certain conditions that can be introduced for extending agreements, such as a representative number of employers and workers already covered, a request for extension made by worker or employer organizations, and the possibility for the workers and employers concerned to submit their observations prior to the extension. As such, the key issue in the case of extensions as well is the consultation of the social partners on any modifications to be made to an existing regulation on CA extension.

To sum up, the international law framework sets certain conditions to guarantee free and voluntary collective bargaining while maintaining a broad sphere for the partners themselves to decide on the details. Decentralizing collective bargaining is not *per se* against international labour standards, but a role needs to be given to social dialogue in determining what kind of a collective bargaining system to establish in a country or how to modify an existing system. Finally, international labour standards protect the status of worker representation through trade unions, which is not the case in Greece for associations of persons.

5. Final comments

The intention of all regulatory changes in Greece, Portugal and Spain was to promote the decentralization of collective bargaining, limiting or expanding different institutions. From the perspective of international standards, decentralization is not problematic *per se*. However, as small and medium enterprises dominate the company landscape in the three countries, company-level agreements are not easy to implement, and some measures promoting decentralization in this context may harm sectoral and multi-employer agreements without providing coverage by company-level agreements. The limitation of extensions illustrates this problem in Portugal, as company-level agreements have not replaced the coverage of old extensions. At the same time, legitimating non-union workers' representatives – 'associations of persons' in Greece – to bargain at company level is not in line with international standards, because they do not have the recognition and legal protection of trade union members as workers' representatives, clearly re-balancing bargaining power to the detriment of trade unions. The result comes close to individual bargaining between workers and employers, moving the labour market towards a monopsonistic performance totally unrelated to an increase in economic efficiency or better employment outcomes (Manning 2004).

Indeed, a more feasible option for small firms is to delegate negotiations to their corresponding employer organisation (with all the legal guarantees a collective agreement requires) and thus free up their time and effort for the more pressing day-to-day tasks involved in running a small business. The Spanish case presents an interesting result: in fact, the relative importance of sectoral collective bargaining has increased at the same time as opting out of CA clauses has become more significant. The interaction between supra-company agreements and the use of agreed opt-out mechanisms could provide the necessary coordination in wage-setting without harming companies temporarily unable to pay the wages set in a sectoral collective agreement.

Finally, the role of tripartite social dialogue in the major changes implemented was rather small. Even considering that in Portugal social dialogue remained important throughout the crisis, legal changes to collective bargaining were introduced because of the MoUs of the financial assistance programmes. Therefore, social partners' leeway was very restricted, as seen in Greece. The case of Spain shows increasingly weak social dialogue during the crisis, with the two labour market reforms

introduced unilaterally by successive governments after unsuccessful negotiations with the social partners. Therefore, all changes promoting decentralization did not follow an important aspect of international standards, as the changes in the organization of collective bargaining were not decided by the social partners, but unilaterally imposed by governments. Nevertheless, as we have shown, the actual impact of the use of the different types of collective agreements is not necessarily that expected by the reformers.

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