

TIME FOR

ACTION!

**HOW POLICY CAN STRENGTHEN (MULTI-EMPLOYER)
COLLECTIVE BARGAINING IN EUROPE**

Stan De Spiegelaere

DISCLAIMER

This report is based on contributions by

Draga Bagić	Anders Kjellberg
Godfrey Baldacchino	Karolien Lenaerts
Wike Been	Vincenzo Maccarrone
Szilvia Borbély	Miguel Martínez Lucio
Manwel Debono	Monika Martišková
Valentina Franca	Torsten Müller
Vera Glassner	Thorsten Schulten
Julia Hofmann	Sertac Sonan
Rafael Ibáñez Rojo	Radu Stochita
Gregoris Ioannou	Adam Šumichrast
Carlos J. Fernández Rodríguez	Adrien Thomas
Paul Jonker-Hoffrén	Aurora Trif
Marta Kahancová	Sem Vandekerckhove
Ioannis Katsaroumpas	Noah Vangeel
Maarten Keune	Catherine Vincent

The author is very grateful for the cooperation, support and feedback from all contributors.

UNI Europa – The European Services Workers Union

Rue Joseph II, 40 | 1000 Brussels | Belgium | Tel: +32 2 234 5656 | www.uni-europa.org



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EXECUTIVE SUMMARY

The European minimum wage directive offers the European trade union movement a historic opportunity to rebuild its power by strengthening collective bargaining. All European countries will now be obliged to protect and promote collective bargaining and, where collective bargaining coverage is below 80%, EU Member States will be obliged to draw up and implement national action plans to increase coverage.

Based on reports from 20 national experts, the aim of this report is to support trade unions in Europe in their efforts to make the most of these National Action Plans by providing a detailed overview of a range of ideas on how to boost collective bargaining coverage. This report does not claim to be exhaustive or definitive, nor does it reflect the position of UNI Europa, the experts or UNI Europa affiliates. It is simply a list of ideas that might (or might not) be desirable or effective in different industrial relations contexts.

The ideas are structured around 5 main areas of intervention:

First, a lot of ideas refer to the need to **strengthen trade union bargaining capacity**. This could be done by removing existing barriers to union organisation and protecting

workers from anti-union practices. Next, union membership could be encouraged by limiting the cost of joining a union through tax exemptions or refunds, introducing Ghent-like structures, giving unions access to workers and facilities as well as resources for union representation, or providing direct capacity-building support to (sectoral) unions. Other proposals include the introduction of union-only benefits, the introduction of solidarity fees or even systems of mandatory union membership, and the general need to re-regulate the labour market to avoid precarious work.

The second section focuses on **employers**, emphasising the importance of willing and able employers for effective collective bargaining and the role of public policy in this regard. Enabling policies address the frequent lack of a mandate for employers' organisations to conduct bargaining and the challenge of fragmented bargaining in multi-employer systems due to sectoral definitions. Other, more enabling policies make some enterprise benefits (e.g. tax credits, training, access to subsidised employment) conditional on collective bargaining. More coercive policy proposals include compulsory membership of employers' organisations with bargaining mandates.

Thirdly, public policy has an important role to play in promoting **effective collective bargaining processes**. Such policies can focus on ensuring the availability of accurate and complete data, proposing information requirements for employers, and emphasising good-faith bargaining rules, with recommendations for the development of charters outlining fair bargaining practices. Strike legislation is identified as critical to successful bargaining, with calls for the reform of strike regulations. Incentive-based policies include the design of bargaining infrastructure, financial support for bargaining and support for mediation. Again, policy can make some benefits conditional on collective agreements, along with political pressure to encourage sectoral bargaining. More coercive measures include compulsory bargaining systems, compulsory mediation, arbitration and the setting of sectoral standards through government regulation in the event of bargaining failure. These policies are aimed at facilitating, incentivising and, where necessary, enforcing the collective bargaining process to ensure fair and successful outcomes.

Fourth, collective bargaining can be promoted by ensuring that **collective agreements are effective regulatory instruments**. To this end, public policy can use several strategies to enhance their importance. For example, policies could clarify the legal status and requirements for sectoral agreements, ensure a principle of favourability and establish a clear hierarchy of norms. Extension policies are identified as a very strong driver for increasing the coverage of collective agreements. Suggestions include limiting administrative and political discretion, making extensions automatic and considering qualitative criteria. Other measures include restricting the use of opt-out clauses, creating voluntary charters in regions without clear legislation on multi-employer agreements, and using public procurement to incentivise sectoral

bargaining. More binding measures include making agreements more enforceable through specialised labour courts, improving overall enforcement and using social inspection services to monitor compliance.

In the last part, the focus shifts to the importance of **culture**, as the cultural acceptance of (multi-employer) collective bargaining plays a crucial role in its prevalence. Policy-makers can influence this cultural perspective through various means, such as establishing monitoring mechanisms to track the extent and content of collective bargaining, ensuring bipartite or tripartite structures for monitoring bodies, and ensuring funding for research on social dialogue and collective bargaining. Education also contributes to shaping cultural attitudes, where social dialogue can be made more accessible through the public education system and business management courses. Public campaigns on the benefits of collective bargaining, involving non-traditional actors such as NGOs, journalists and activists, can also promote a positive culture around good working conditions and collective bargaining rights.

INTRODUCTION

“ **Member States with collective bargaining coverage below 80% are expected to establish them [national action plans] by the end of 2025**

(expert group report)

”

In 2025, civil servants in most EU member states will be busy drawing up national action plans to strengthen collective bargaining and ensure wider coverage. It will undoubtedly be the first time in history for so many European countries to be legally obliged to think about, consider and plan concrete actions and measures to strengthen trade unions and employers' organisations to negotiate agreements for workers.

For the European trade union movement, this is a unique opportunity to finally work on rebuilding the collective bargaining framework, to regain some control over working conditions and wages, and to strengthen democracy at work. The challenge now is to make the most of this window of opportunity.

Making the most of this moment requires political influence, power and ideas. Political influence and power are needed to ensure that the window of opportunity does not become mere window dressing. The plans should be designed as a genuine exercise to promote collective bargaining and not just a box-ticking exercise.

However, in addition to political influence and power, **ideas** are also needed. Ideas, alternatives and policy options are the means of translating political will into effective policy interventions and changes for workers.

The aim of this report is to contribute to the 'ideas' part of the debate. Based on expert contributions

from experts across the EU, this report lists and briefly discusses a wide range of suggestions and policy options that could, in some contexts, lead to stronger collective bargaining.

DISCLAIMER:

The aim of this report is to be a **discussion starter**, a starting point for trade unions and policymakers considering positive collective bargaining measures to find inspiration, which they can then translate into the most effective policies at national level. The report therefore does not aim to take a position on the necessity or desirability of some of the policy options. Nor does it claim to be exhaustive or definitive. The report also clearly does not want to suggest that all solutions need to come from policy interventions. Trade union organisation remains a key factor in strengthening collective bargaining.

The rest of the discussion paper is structured as follows. The first part provides an overview of the methodology and analytical framework used in this report. In the following parts, the different sections of this framework are discussed one by one, with a number of policy ideas presented and discussed in each category.

METHOD

This discussion paper is part of a larger EU-funded project called “*Level-up: Sustaining and Developing Collective Bargaining Coverage in the Service Sectors*”. This project runs from August 2022 to August 2024 with the aim of identifying strategies and opportunities to strengthen collective bargaining through trade union strategies and policy interventions.

The main focus is on the **development of multi-employer bargaining**, given the observation that the development of multi-employer bargaining (or sectoral bargaining) is a **necessary condition** for achieving collective bargaining coverage rates above 80%. Indeed, the graph below shows that not a single country without multi-

employer bargaining systems achieves this level of coverage, while all countries with 80% or more coverage have such systems in place.

In addition, collective bargaining coverage in the service sectors (see Figure 2) is, on average, lower than in other sectors such as utilities, manufacturing or transport. Given that the proportion of employees in these sectors is high and rising, this means that reaching the 80% coverage rate will require a special effort to address the collective bargaining challenges in the service sectors. National action plans will therefore need to provide targeted solutions to these challenges.

Collective bargaining coverage

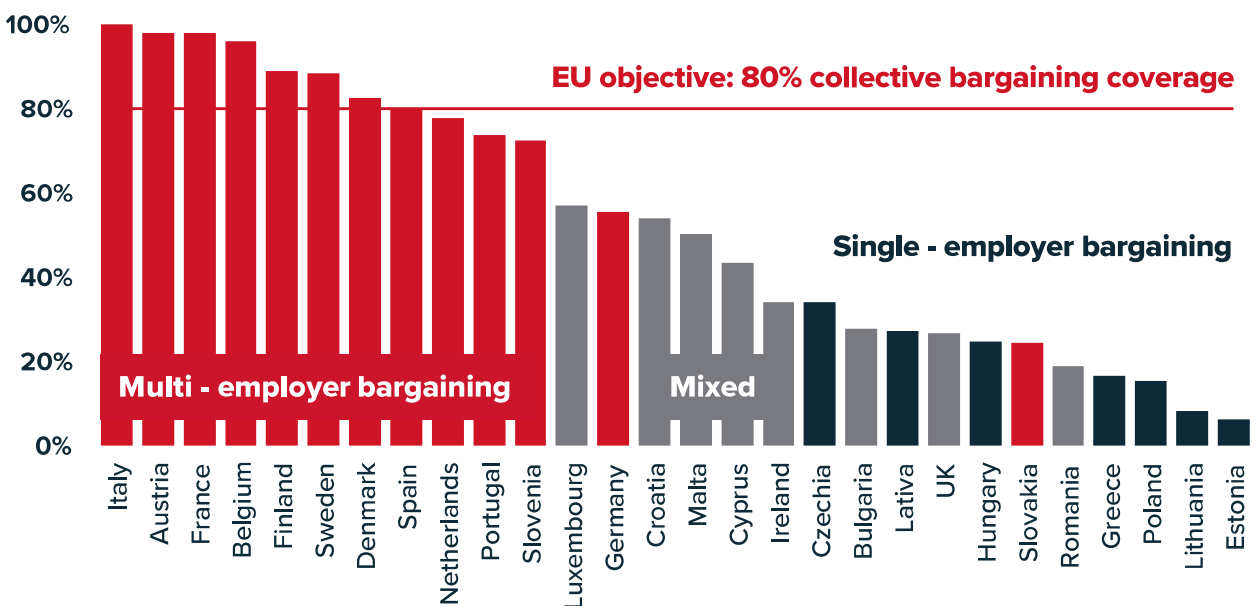


Figure 1 - Collective bargaining coverage by country

Source: ICTWSS, latest year

Collective bargaining coverage by sector

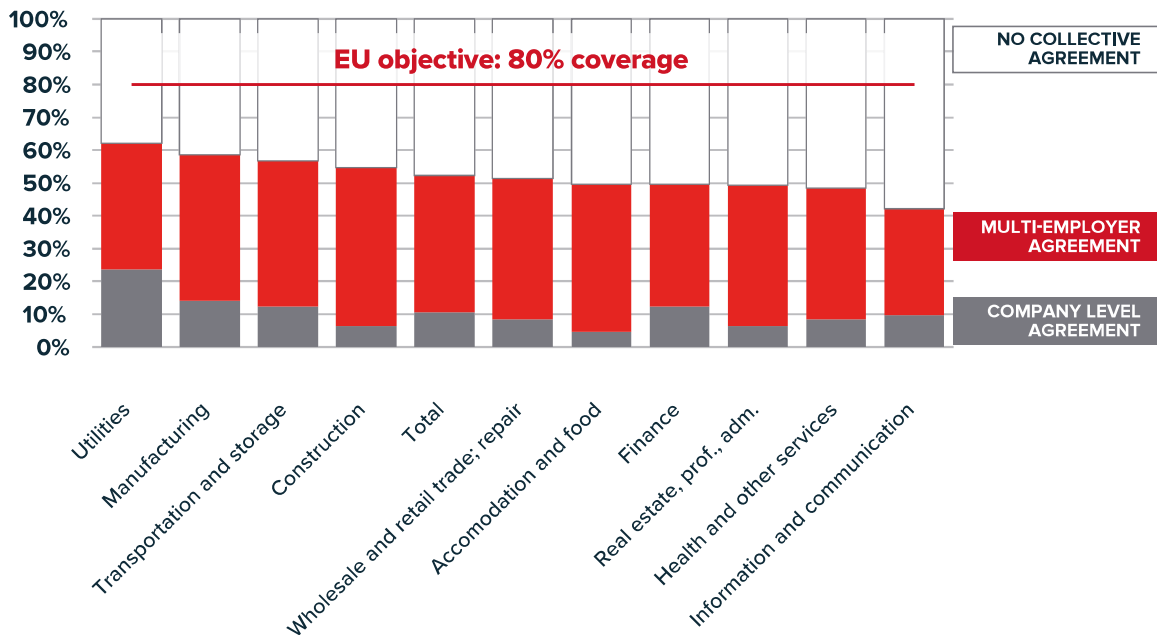


Figure 2 - Collective bargaining coverage by sector

Source: Wouter Zwysen (ETUI), estimations based on structure of earnings survey, wave 2018

Note: averaged over 18 EU countries (BE, BG, CY, CZ, DE, EE, ES, FI, FR, HU, IT, LT, LV, NL, PL, PT, SE, SK), each country with the same weighting. Only privately controlled companies.

Accordingly, UNI-Europa is examining how trade unions and policymakers can act to develop multi-employer bargaining systems aimed at strengthening and extending bargaining coverage more generally.

This discussion paper is part of the work stream focusing on **policy interventions**. Experts from all EU countries were invited to contribute short papers with concrete proposals for strengthening (multi-)employer bargaining in their country.

In total, experts from 20 countries took up this invitation and shared their thoughts in an online expert workshop. On the basis of these contributions, UNI-Europa has developed an analytical framework that attempts to form a structure for the wealth of policy ideas contained in these proposals.

The following text is based (almost) exclusively on the expert contributions received.

ANALYTICAL FRAMEWORK

To organise the myriad of ideas and proposals, this report employs an analytical framework outlined below.

The framework is based on the observation that policy interventions can focus on structural issues, as well as on **cultural** issues. While structural interventions refer to specific changes in the collective bargaining architecture, cultural interventions are aimed at addressing societal understanding and consensus on the value and necessity of collective bargaining.

Within the **structural measures**, the framework distinguishes between those that focus on strengthening the **capacity** of the **actors** in collective bargaining (trade unions, employers and employers' organisations), those that provide for the **architecture** of the collective bargaining process and, finally, those that focus on the implementation and **impact** of the collective agreements reached.

The framework therefore identifies five broad areas of intervention. Next, the framework proposes to distinguish between three different **philosophies of intervention** within these areas. First, there are policies that **enable** actors to bargain or organise. These policies essentially focus on removing barriers to collective bargaining or on providing opportunities. Secondly, there are a number of policies that focus on overtly encouraging the organising of actors and on collective bargaining. These policies are the proverbial **carrot** aimed at encouraging actors to move. Third, a number of policies focus more on forcing bargaining or organising it through mandatory requirements. In the same proverbial sense, this could be called the **stick** approach.

While this analytical framework does provide some structure to the discussion and policy options, it is not a perfect scientific tool. Many of the policy measures discussed could be categorised in several areas and include both enabling, incentivising and mandatory features.

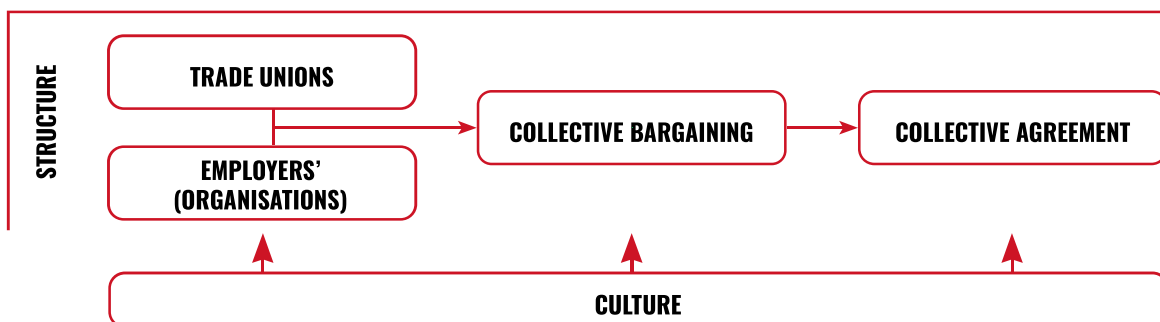


Figure 3 - Analytical framework

SCOPE OF REPORT: POLICY, NOT UNION STRATEGY

It is clear that workers, unions, employers and employer organisations themselves have a great deal of influence over the extent and coverage of collective bargaining. Through

their own strategies, they can increase membership, cover different sectors, conclude broader agreements, etc. Although these strategies are important, they are outside the scope of this discussion paper. This discussion paper focuses exclusively on policy initiatives to strengthen collective bargaining.

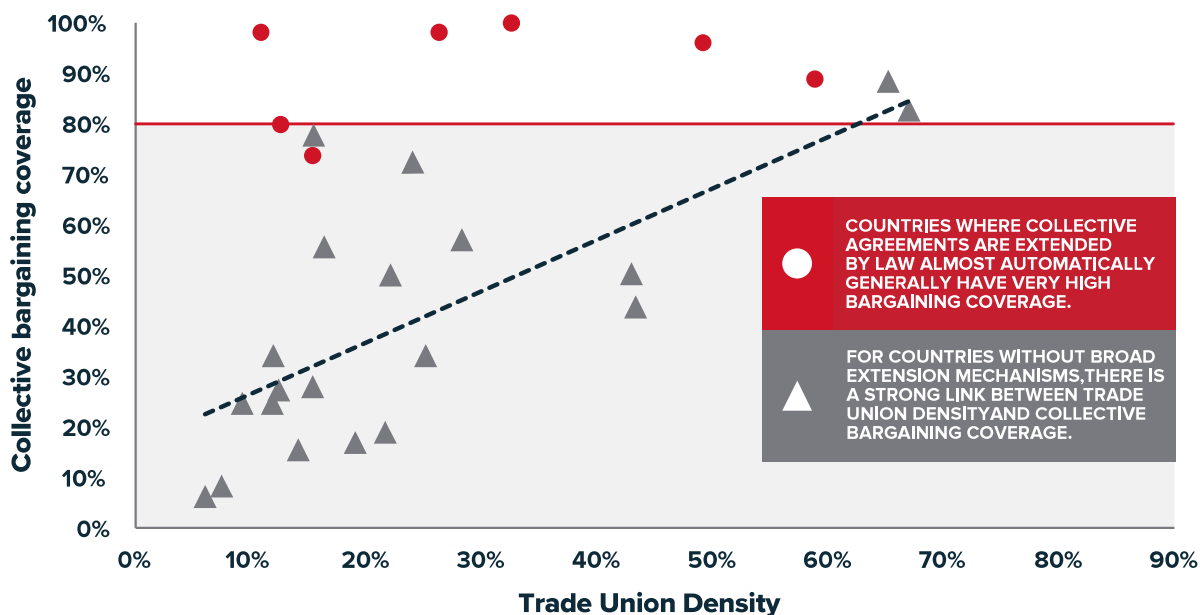
TRADE UNIONS

The European Directive on Adequate Minimum Wages defines collective bargaining as “*all negotiations which take place in accordance with national law and practice in each Member State between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more trade unions, on the other hand, with a view to determining terms and conditions of employment*”.

It is clear from this definition that trade unions are a key actor in collective bargaining. It follows that enabling trade union organisation and promoting trade union membership through facilitating or compulsory requirements is likely to promote collective bargaining.

The same relation can be seen in the graph in Fig. 2 showing the link between trade union density (on the x-axis) and collective bargaining coverage (on the y-axis) for countries with (dots) and without (triangles) broad systems through which sectoral agreements are made generally applicable (extension mechanisms). As can be seen, there is a strong relationship between trade union membership and collective bargaining coverage for the second group of countries.

This means that promoting trade union membership is one of the main avenues for attaining the 80% collective bargaining coverage threshold.



Source: ICTWSS, latest year latest year of available data

Figure 4 - Relation between trade union density and collective bargaining coverage

ENABLE

A first set of policy interventions aimed at building trade union strength focuses on **enabling** trade unionism. In many countries, trade union organisation faces a range of institutional and other obstacles. Policies should, in the first instance, remove barriers to workers joining together in trade unions.

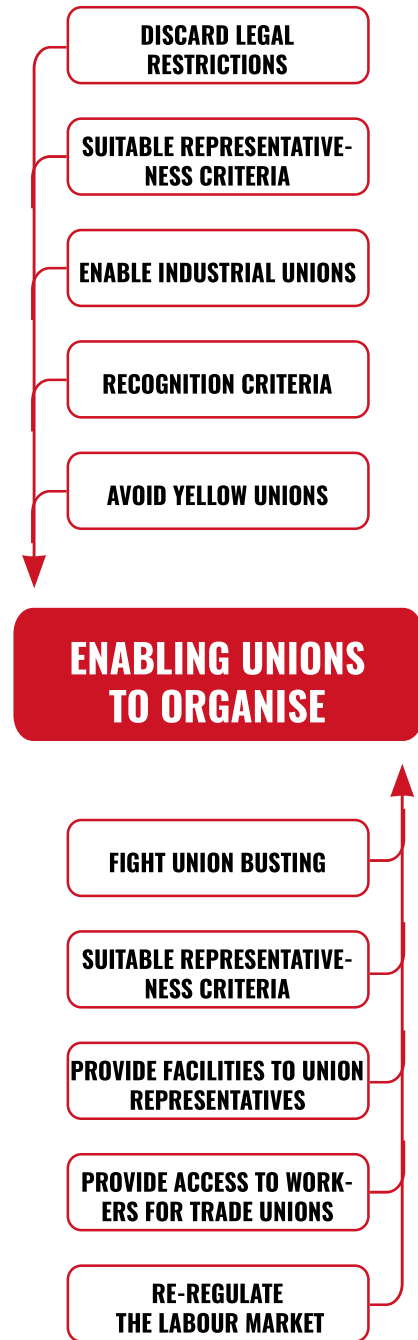
To this end, **legal restrictions** on which workers can join a union, how they should join a union, or over-regulation of the structure and operation of unions should be reviewed and designed to facilitate rather than inhibit union organisation.

Some of these legal constraints relate to thresholds of **representativeness** that are often set. Policymakers face a dilemma here. On the one hand, thresholds should ensure that unions have a sufficiently broad mandate to bargain on behalf of the entire workforce, and therefore avoid yellow unions. Yet thresholds should not be set so high that they effectively make any union organisation impossible, or make it virtually impossible to form new unions (see the Belgian contribution, for example). The policy ideas concerning representativeness criteria contained in the contributions mostly relate to lowering unduly high thresholds (e.g. Cyprus) or reducing complexity (e.g. Hungary). A suggestion from the Croatia contribution to boost the interest of trade unions in sectoral bargaining could be aimed at automatically giving company level representativeness status to trade unions that have a sector-level agreement (and are representative at that level).

However, some contributions (e.g. Slovenia) also suggest a modest raising of the thresholds so as to avoid a fragmented union landscape and urge unions to merge into larger formations.

The Austrian contribution also stressed the value of having encompassing unions and not too much competition between unions.

Specifically for multi-employer or sectoral bargaining, the **presence of an industrial union** appears to be a precondition for effective bargaining. If unions only exist at company level



without any sectoral coordination, they cannot be expected to negotiate at a supra-company level.

One way of making representativeness criteria more flexible is to work with a parallel system of **voluntary recognition**, as is the case in some sectors in Malta. There, a number of employers continue to have collective agreements with trade unions even if they no longer meet the official threshold for recognition (i.e. 50%+1 employee). Recent legislative changes in Romania provide for a similar system.

Where thresholds are not set or are set too low, countries may face the challenge of collective bargaining by so-called **yellow unions**. Accordingly, a number of contributors put forward ideas to combat such yellow unions by imposing conditions on some of the internal regulations of trade unions to avoid them focusing exclusively on service provision (e.g. Croatia), tightening the legal criteria for engaging in collective bargaining (e.g. Greece) and other measures (e.g. the Netherlands).

When workers try to join trade unions, they often face more or less subtle forms of **union avoidance or union busting**. Employers use a variety of methods to discourage workers from joining unions. However, in many European countries, the social pacts and the general understanding are that employers should remain neutral with regard to workers joining trade unions and should not directly or indirectly prevent workers from unionising. The reality in companies is often different, though. Accordingly, many national contributions suggest measures to “combat intimidation” (e.g. Belgium) or to take measures against union busting (e.g. Germany).

A number of contributions suggest strengthening legal protection against dismissal for trade union representatives and those who start organising trade unionism. The Czech contribution refers to legal protection for whistleblowers, which should be used to expose anti-union intimidation and protect active trade union members. The Slovak contribution also suggests considering legislation that would allow trade unions to organise and apply for registration in complete secrecy to avoid early retaliation by employers. Criminal sanctions are also proposed for employers who violate the right to organise trade unionism and engage in union busting.

The French contribution also points to a hurdle that can prevent employees from becoming union members, let alone active union activists, in terms of the effects this might have on career opportunities. Policies to fight union discrimination and provide career paths for union activists could help here. As a first step, relevant research should be conducted to establish the extent of the problem.

Additionally, policy can enable union organisation by providing **facilities and resources** for union representatives. Depending on the size of the company or the number of members, union representatives should have sufficient time and resources to run and organise their union. The policy may provide for time off work for union duties, the possibility of using company equipment (computers, offices) for union activities, and access to expert advice. As such, the Czech contribution proposes to implement the Slovak system where trade union representatives' wages are partially dependent on the number of workers they represent. One of the facilities provided for workplace union representatives could be involvement in the onboarding of new employees, in the course of which the trade union could inform the employees of their rights and possible recourse to the trade union (and invite them to become members at the same time).

Another of these facilities for trade union representatives is **access to workers**, especially in contexts where there is a substantial amount of remote, dispersed or mobile work. The Cypriot contribution therefore suggests legislative changes that would facilitate trade union access to the workforce. Similarly, the Irish contribution, referring to the Adequate Minimum Wages Directive, suggests the introduction of a right for trade union officials to meet workers (members and non-members) in order to consult with them, provide information and recruit members. The German contribution also envisages legislation that would enable trade unions to have access to workers.

The Swedish contribution focuses on the union role for representing vulnerable employees such as posted workers. Given that they are rarely union members, unions have no access to the workplaces. Although union safety representatives at regional level provide a partial solution, they should also be given access to workplaces and workers.

Finally, a large number of proposals relate to **re-regulation of the labour market**. The growth of flexible and precarious work has a significant impact on trade union organisation, as temporary workers are often more reluctant to join unions or

engage in local union organisation because they may soon leave the company. Reducing the size of the flexible labour market could therefore indirectly promote union membership. Re-regulation of the labour market refers to reducing flexible forms of work (e.g. Netherlands, Slovakia, Sweden), stopping privatisation of the public sector (e.g. Netherlands, Sweden), fighting unemployment (e.g. Sweden), fighting bogus self-employment (e.g. Sweden) and introducing policies to reduce the precarious nature of some categories of workers such as migrants, asylum seekers and undocumented workers (e.g. Sweden).

PULL – CARROT

While enabling the organisation of trade unions is necessary and useful to promote collective bargaining, this alone is often not sufficient. In most collective bargaining structures, and particularly in multi-employer or sectoral systems, there is a **free-rider problem**. When workers join unions and negotiate strong collective agreements, these benefits apply to both unionised and non-unionised workers. A non-union member can therefore ‘free-ride’ on the effort and resources invested by union members in collective bargaining.

Limit the cost of joining a union. To limit or compensate for this free-rider problem, measures can be taken to promote union membership and/or reduce the cost of joining a union. In some countries, such as Belgium, trade union membership fees are partially offset by annual tax-free trade union allowances. These allowances can cover a significant proportion of annual membership fees. Currently, they are usually negotiated in sectoral or company collective agreements and are therefore financed by the employer(s). A proposal by the Belgian experts would make this system more generally applicable and finance it through a kind of collective fund. A similar system was suggested by the Cypriot expert. The Dutch expert suggested free trade union membership, while the German, Swedish and Irish experts suggested a tax reduction for trade union membership fees.



Ghent-like structures. Trade union membership can also be encouraged by means other than financial. The most obvious example is the Ghent system, where unions are responsible for the payment of unemployment contributions. Workers who want to receive unemployment benefits must therefore be members of a trade union or an organisation close to a trade union. This provides unions with new members, as well as direct contact with large numbers of workers for future membership or union organisation purposes. A lighter version of the Ghent system is any structure that involves trade unions as service providers to workers. For example, countries may involve unions in (government-supported) careers guidance, adult and vocational education, occupational illness or retirement services. Such structures are proposed by contributions (e.g. Belgium) in order to create a sort of beneficial environment in which unions can organise their activities.

Trade union capacity building. In addition to strengthening unions through increased membership, unions can be supported through direct capacity-building initiatives. In Austria, workers are automatically members of the Chamber of Labour. Although the Chamber of Labour is not a trade union, it supports trade unions in their advocacy work and by providing direct expert support for collective bargaining. It also provides a range of benefits to workers, such as free legal advice and legal protection in labour courts. Many experts suggest direct funding of trade union activities (in difficult sectors) through project funding (e.g. Croatia), while other experts suggest more indirect ways of capacity building, such as state-funded training for trade unionists involved in collective bargaining (e.g. France, Ireland).

Solidarity fees. A more direct way of addressing the free-rider problem in collective bargaining is through some form of solidarity fee. In such a system, workers who are covered by (and therefore benefit from) a collective agreement contribute in one way or another to its establishment by financially supporting trade unions. Such a solidarity or bargaining fee was put forward by the Romanian expert, who suggested that the contribution should be put into a 'bargaining fund', which could then be used by unions to obtain expert support for their bargaining endeavours.

Union-only agreements. Another way of tackling the free-rider problem is through union-only agreements. This means that collective agreements negotiated by unions would only apply to union members. Non-union members would not benefit from the rights and obligations included in the agreement. Such agreements are illegal in most countries because they can lead to undue discrimination and unequal pay for equal work. In a number of countries, however, union-only benefits can be included in collective agreements to a limited extent (e.g. Germany, with proposals to extend this). In some other countries, this type of measure has recently been introduced to promote union membership, such as in Croatia, where it has also been ruled as unconstitutional by the constitutional court. Some experts'

contributions (e.g. Czechia) mention this but also assess its potential as being rather limited.

Importantly, all these proposals focus on policy initiatives that could promote union membership. It goes without saying that unions themselves can use many other effective strategies to increase membership, ranging from organisation strategies, organisation at community level, improving services, focusing on particular sectors, etc. Although these strategies are outside the scope of this discussion paper, they have been suggested by many of the expert contributors.

PUSH – STICK

Union membership and organisational strength can also be improved by more coercive policy initiatives. Here the policy does not only encourage trade unionism, it actually makes it (more or less) compulsory.

A prime example of this is the Austrian Chamber of Labour system. Every worker is by definition a member of the Chamber of Labour, which does not function as a trade union, but does support workers with training, expert information as well as legal advice and support.

Ideas along the same lines emerge from the Maltese and Dutch contributions, which envisage a system of **default trade union membership**. According to this proposal, workers should by definition be affiliated to a trade union, but there should be an opt-out. This opt-out would mean that their contributions (assumed to be paid through their tax returns) would go to worker training or similar organisations.

EMPLOYERS

Collective bargaining takes the form of negotiation between workers and unions on the one hand and employers and their organisations on the other. It follows that, without willing and able employers, bargaining at company level is difficult or impossible. Similarly, collective bargaining at the sectoral level requires organised employers in organisations that are willing, mandated and able to negotiate collective agreements that are binding on their members.

Public policy can play an important role in enabling, incentivising or requiring employers to organise and bargain collectively.

ENABLE

The most important policy initiative for the organisation of employers, and more specifically the organisation of employers' organisations, refers to the frequent lack of employers' organisations with a **mandate to bargain**. Moreover, in quite a number of countries, it is observed that employer organisations with a mandate to bargain increasingly change their statutes and become business organisations that focus exclusively on lobbying activities (e.g. Finland, Czechia, Slovakia and many others).

Second, the **definition of sectors** is important for multi-employer bargaining. Countries such as France and Belgium have a dense system of sectoral bargaining, though the definition of these sectors sometimes leads to rather fragmented bargaining with weak employer organisations due to their very specific focus. For this reason, the French government launched a review of the

scope of collective agreements in 2017, based on five criteria related to (1) the size of the sector, (2) the concentration of employer organisations, (3) the bargaining activity, (4) the scope of the sector, and (5) whether or not the sector manages to fulfil its training tasks. The Spanish contribution also stressed the challenge of upcoming multi-sectorial firms that are difficult to place in the existing sector organisation.

PULL (THE CARROT)

The national contributions put forward a number of ideas and proposals to strengthen collective bargaining by providing **incentives** to employers and employers' organisations. First, employers need to become organised in employer organisations. Second, they need to be willing to engage in bargaining and, thirdly, they need to be able to do so.



Organised: First of all, employers need to be organised in associations. To provide incentives for this, experts have suggested using national and EU **funds for networking** between companies to create sectoral organisations (e.g. Croatia).

Willing: Second, employers and their organisations need to be **willing** to engage in (multi-employer) bargaining. While sectoral bargaining also has a number of important advantages for employers, there may be a lot of scepticism concerning sectoral bargaining with individual employers and organisations collectively. Initiatives may therefore focus on convincing employers and employers' organisations to become involved in bargaining.

One way of increasing employers' willingness to engage in (multi-employer) bargaining could be to make certain **advantages or benefits conditional** on the existence of a company or sectoral agreement. An example of this is the Belgian system of collective bonuses, which can benefit from a tax advantage depending on whether there a relevant collective agreement exists. In Finland, company level agreements are only legally possible for companies that are members of an employers' organisation, which effectively supports membership of the sectoral employers' organisation.

Some experts (e.g. Croatia, Slovenia, Hungary, Malta) suggested giving employers additional incentives for sectoral bargaining by, for example, offering tax credits, co-financing employee training, or allowing them to **derogate** from some legislation through collective agreements, for example with regard to working hours.

In a context of labour market shortages, the Croatian contribution also suggests, for example, facilitating the recruitment of foreign workers for employers who apply company and/or sector-level collective agreements. The Swedish contribution gives an illustrative example where a type of subsidised employment (so-called establishment jobs) is only available for employers that have concluded a collective agreement.

Able: Thirdly, employers' organisations also need to be **able** to engage in collective bargaining. Another set of ideas therefore relates to capacity building. As with trade unions, many experts note that employers' organisations lack the capacity, expertise, competence and resources to engage in meaningful multi-employer or sectoral bargaining. Suggestions were therefore made regarding the provision of training, resources, expert advice and other types of support (e.g. Hungary, Slovenia, Ireland and others). Suggestions included reimbursing employers' organisations for the direct and indirect costs of collective bargaining (e.g. Slovenia). It should be noted that the independence of social partners' organisations should be guaranteed when resources are channelled to them.

PUSH (THE STICK)

More coercive policy interventions vis-à-vis employers in relation to collective bargaining are also conceivable. As with employees, Austria has a system of compulsory membership for employers in the Chamber of Commerce (WKO), which has a collective bargaining mandate and thus ensures a very high level of collective bargaining coverage. Slovenia had a similar system until 2006. After its abolition, the country experienced a significant decline in collective bargaining coverage. Such **compulsory membership** systems could also be considered in other countries (see, for example, the contribution from the Netherlands).

In many companies, it has been observed that sectoral level employer organisations often lack the **mandate** to bargain collectively on behalf of their members. These organisations mostly focus on lobbying. One suggestion for urging these organisations to also engage in collective bargaining is to make lobbying possibilities dependent on engagement in (sector level) the collective bargaining process (e.g. Croatia). In the German case, where many employer organisations have special membership options that exclude collective bargaining, it is proposed that these so-called membership types be banned. As a first step towards such a prohibition, an obligation to disclose these type of membership would be necessary.

COLLECTIVE BARGAINING PROCESS

Once you have both unions and employers willing and able (or obliged) to negotiate a collective agreement, there is still a lot that public policy can do to enable, encourage or mandate an effective and successful collective bargaining process and conclusion. The policy ideas below are therefore focused on ensuring that the bargaining itself goes smoothly and fairly, and leads to a compromise agreement.

ENABLE

Any genuine collective bargaining process must be based on accurate, complete and reliable **data**, whether at company, sectoral or national level. At company level, policy could include strong obligations for employers to provide information before negotiations start (e.g. Hungary). This may require some changes to the rules and regulations on the confidentiality of information surrounding the negotiation process. At the sectoral level, the same may be required of employers' organisations. In addition, government-supported statistical offices can provide regular sectoral analysis. At the national

level, statistical offices should provide reliable and up-to-date information on productivity developments, wage trends, profit rates, etc.

A number of countries apply general rules for employers to **negotiate in good faith**. This means that employers must start negotiations with the aim of reaching an agreement. If, on the other hand, they negotiate for the sake of form without any real intention to compromise, employers can be taken to court for breaching such rules on good-faith bargaining. A number of contributions suggest introducing more or less well-developed versions of such good-faith bargaining rules (e.g. Ireland, UK). The French contribution, for example, suggests the development of a charter of obligations for fair bargaining (venue, conduct, process, transparency, etc.).

The **definition of sectors** is particularly important for sectoral bargaining. With the changing economy, growing and declining sectors and the growth of multi-sector companies (e.g. Spain), policy faces a huge challenge in defining and redefining sectors in such a way that collective bargaining effectively creates a level playing field for competition.

STRIKE LEGISLATION

Collective bargaining without the right to strike is collective begging.

It follows that strike regulation is crucial to the collective bargaining process. Good strike regulation and legislation is therefore a key enabler of an effective collective bargaining process. In many countries, however, strike regulations restrict rather than enable trade unions to take strike action. A number of experts therefore suggest changes to strike legislation (e.g. Hungary, Romania, UK), legal intervention in strike action (e.g. Greece), warn of imminent restrictive legislation (e.g. Finland) or simply stress the importance of guaranteeing the right to strike (e.g. Belgium).

However, in addition to the legal barriers to strike action, a number of experts feel that there is a lack of awareness among trade unions, trade union leaders and workers regarding strikes as a collective bargaining tool (e.g. Croatia).

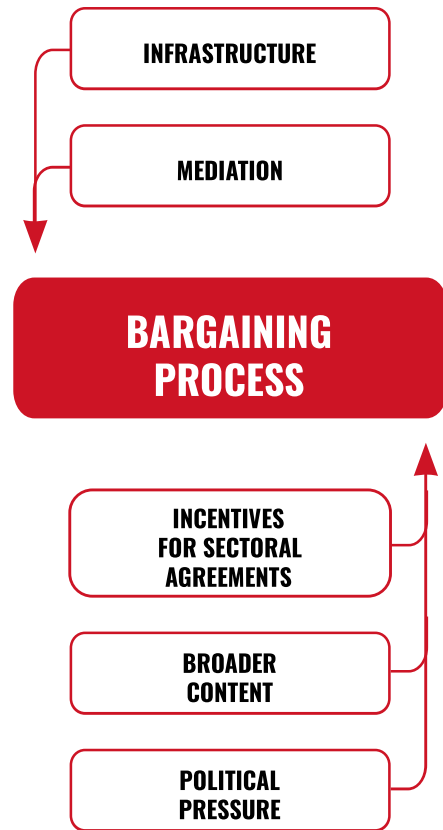
In the strike debate, allowing **secondary and solidarity strikes** is also essential. The Nordic model of very high collective bargaining coverage has regularly been defended through the use of secondary strikes against companies that want to avoid collective bargaining. In Sweden, we have recently seen similar action against Tesla for refusing to join the industry agreement. As a result, a number of Swedish unions are carrying out secondary strikes in which they refuse to work indirectly for Tesla, e.g. by refusing to unload Tesla cars, refusing to clean the offices, and so on. Secondary strikes have therefore been identified as an important issue by experts (e.g. Finland).

PULL (THE CARROT)

One way in which policy can provide incentives for (multi-employer) bargaining is through the design of a **bargaining infrastructure**. Such an infrastructure can be, for example, a state-supported (or mandated) forum in which employers and unions can (or should) meet to discuss issues. These forums can be supported financially and organisationally by the state providing resources and a secretariat. Suggestions to this effect were made in the Belgian, Greek, Hungarian, Irish and UK contributions. In the Hungarian case, it was noted that, although there was political support for the establishment of social dialogue committees initially, the number of committees has declined in recent years along with political support. Regarding the UK, the abolition of the wage councils in the 80s led to a significant decline in collective bargaining coverage. The UK contribution proposes the re-establishment of wage councils in vulnerable sectors.

Starting negotiations is no guarantee that an agreement will be reached. **Mediation** can help the parties to reach an agreement during the negotiation process. Government experts could help the social partners to find common ground and compromise (e.g. Luxembourg and Sweden).

Effective and successful bargaining processes can also be stimulated by a number of policy interventions that make **benefits conditional on the conclusion of a collective agreement**, and thus overlap with the ideas discussed earlier on how to encourage employers to engage in bargaining. Some examples cited in the reports are a Cypriot policy of providing social security contribution refunds for certain employees, conditional on the existence of a local collective agreement. According to the report, this led to a significant increase in union membership and collective agreements in the sector. The Maltese contribution identified some possible policy incentives for concluding a multi-employer collective agreement. For example, tax incentives could be given to companies that join, sign or adhere to a multi-employer agreement. Alternatively, training funds could be set up in those sectors with multi-employer agreements.



In addition to general incentives, a number of experts see the **content** of sectoral agreements as a possible incentive for social partners to engage in (multi-employer) collective bargaining. If social partners negotiate on a broader range of issues than just pay and conditions, they may find it easier to conclude sectoral agreements (e.g. Slovenia, Spain). Policy can play a role here in inviting, inciting or mandating social partners to bargain collectively on a number of topics like training, health and safety or remote work arrangements (e.g. Spain). In the French case, social partners are obliged to 'open discussions' every so often on topics such as pay, work-life balance, occupational risks and the job classification scheme. While they are not obliged to come to an agreement, they often do conclude some collective agreements in this regard at the sectoral level.

Last but not least, **political pressure** can help to persuade social partners to negotiate and conclude sectoral agreements. For example, the French contribution reported on an initiative by the Ministry of Labour to invite employers' representatives from sectors where (collectively agreed) wages lag behind to explain why. If no significant progress is made, the government is considering making some social security exemptions conditional on compliance with the minimum wage.

PUSH (THE STICK)

The bargaining process can also be safeguarded by more binding measures to ensure that the right actors are at the table, provide for compulsory mediation, or ensure back-up sectoral legislation if negotiations fail.

The first idea in this context is a policy that introduces some form of **compulsory bargaining**. This exists at company and sectoral level in France, where the social partners have to check every five years whether, for example, job classifications are still up to date; and where social partners are required to negotiate (not conclude) when collectively agreed rates of pay fall below the national minimum wage. At company level, negotiations must be initiated every two years. Importantly, there is no obligation to reach an agreement, only to start negotiating. Proposals for similar systems of compulsory bargaining are included in several contributions (e.g. Cyprus, Luxembourg, the Netherlands).

Where agreement is difficult to reach, mediation can help but, even with mediation, the positions of the social partners may diverge to such an extent that agreement is impossible. In such cases, **arbitration** can help. In arbitration, a third party examines the issues and makes a binding decision. Although controversial, experts have proposed policy changes that would facilitate access to arbitration by giving trade unions the unilateral right to request arbitration (e.g. Greece).

As an alternative to arbitration, policy can also encourage collective bargaining by providing a system whereby **sectoral standards can be**

set by regulation when negotiations between employers and unions fail. Such systems have recently been introduced in New Zealand and Australia, for example. They provide a government-backed framework for bargaining and, if agreement cannot be reached, sectoral standards can be imposed through government regulation, arbitration or other means. Ireland has a similar system with Sectoral Employment Orders and Employment Regulations Orders. In Malta, the same is achieved through Wage Regulation Orders.

Expanding, improving and facilitating access to such systems can help. In the Irish case, this would mean weakening or removing the employers' veto on the establishment of new orders, effectively increasing the number of sectors that can be covered by such orders. In the Maltese case, a general renewal and updating of these wage regulation orders is long overdue.

EFFECTS OF COLLECTIVE AGREEMENTS

Collective bargaining can also be stimulated by looking at the impact of collective agreements. Essentially, the idea is that if (multi-employer) agreements are guaranteed to be implemented and have power and influence, actors will be more willing to invest in developing them. Again, policy can play an enabling, facilitating and/or mandating role in this regard.

ENABLE

The main proposals regarding how policy can enable multi-employer agreements to have a substantial impact relate to the legal status of a sectoral agreement. In many countries where company-level bargaining is dominant, collective bargaining legislation does not even provide for the **legal status of multi-employer agreements**. In others, the requirements for concluding an enforceable multi-employer or sectoral agreement are such that they effectively discourage the social partners from doing so.

In such countries (e.g. Malta), the first step is to enable multi-employer bargaining by providing a **legal status** or by making the requirements more flexible, as has also recently happened in Romania. Some experts suggested strengthening the legal status of sectoral and multi-employer agreements in their countries (e.g. Ireland). Others

propose changes to the legal requirements to be met for concluding a sectoral agreement (e.g. Hungary).

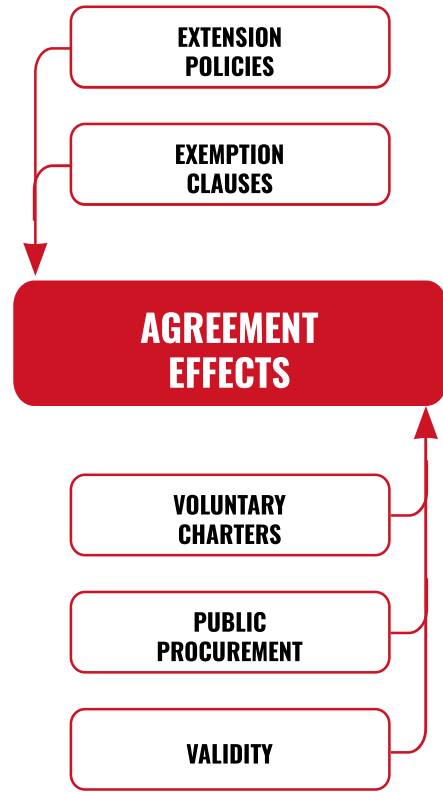
A second aspect of enabling multi-employer bargaining through the effectiveness of multi-employer bargaining agreements relates to their relationship with other legal norms, such as company-level agreements or individual employment contracts. In essence, the **hierarchy of norms** should be clarified and a clear **favourability principle** enshrined in law. This means that lower-level agreements can only be more favourable to workers than higher-level agreements.

This favourability principle has been identified as a crucial part of the strength of some countries with high coverage (e.g. Austria), as well as in countries with lower coverage (e.g. Czechia, UK). Conversely, the weakening of these two principles is generally seen as particularly detrimental by experts from countries where such policies have been introduced (e.g. Hungary).

It follows that the policy should clearly clarify the hierarchy of norms and the principle of preference for collective agreements at different levels (e.g. Luxembourg). Any derogations (as suggested by some experts as an incentive for employers to negotiate) should be limited and well defined.

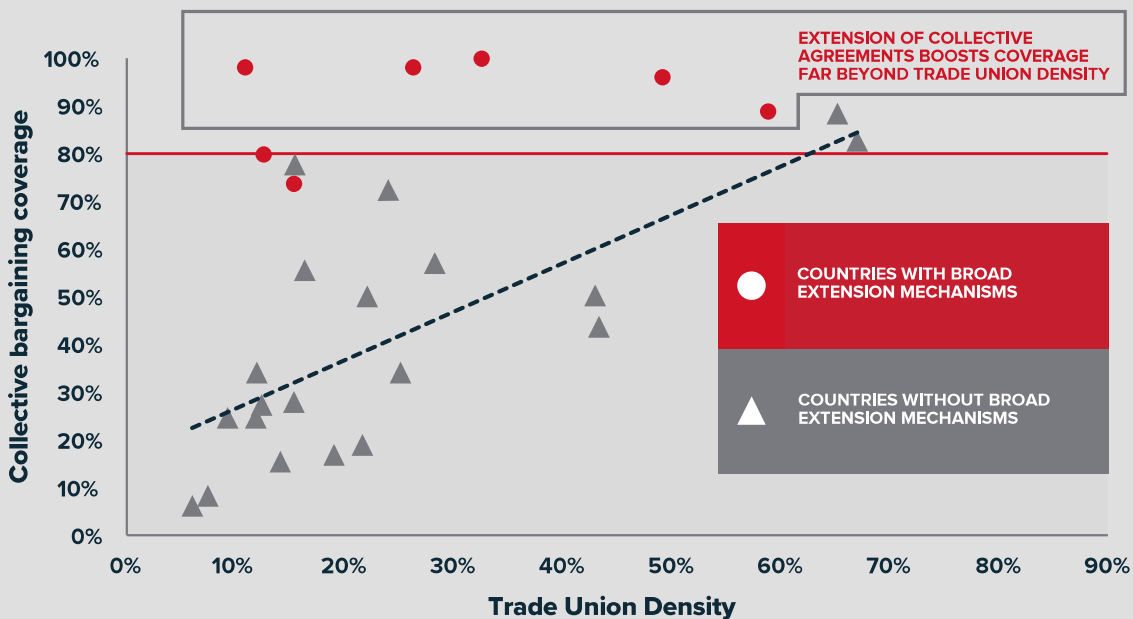
PULL (CARROT)

There are also policy options that could encourage (multi-employer) bargaining by adjusting the impact of collective agreements. A number of these policies envisage voluntary ways of strengthening the impact of collective agreements through extension policies to the entire sector or other parts of the economy. The rationale is that ensuring the general applicability of collective agreements will encourage more actors to participate in the conclusion of such agreements, for the reasons discussed below. At the same time, a number of proposals seek to limit the impact of (multi-employer) agreements in some contexts and cases, which in turn could lower the bar for some actors to engage in collective bargaining.



Extension policies: Collective agreements made between an employer organisation and a trade union normally only apply to the signatory parties. However, a lot of countries have procedures that make (some or all) collective agreements apply to workers in all companies of a sector, regardless of

membership of employer organisations. This works like a turbo on collective bargaining coverage. As can be seen from the figure below, those countries with broad systems of extensions (the dots) have collective bargaining coverage rates that are far above the trade union density rates.



Source: ICTWSS, latest year of available data

Figure 5 - Collective bargaining coverage, trade union density and extension policies

Accordingly, one of the main policy proposals for (voluntarily) strengthening the impact of (multi-employer) collective agreements relates to extension policies. Most European countries have (more or less extensive and flexible) systems under which collective agreements can be made applicable to a larger number of companies than those originally involved in signing and negotiating the collective agreement. This extension is often sectoral, but can also be regional.

An extension policy is an effective way of boosting the impact of multi-employer agreements on both the employer and the employee side. One of the main reasons for negotiating sectoral agreements is to set minimum standards for work in a particular sector, thereby removing the issue of pay from inter-firm competition. In a sense, sectoral bargaining regulates competition. If an agreement is extended by law, it is guaranteed that all players will have to respect it, effectively taking wages and working conditions out of the competitive arena. The possibility of such an extension could encourage employers to participate who might, in a different scenario, fear unfair competition from non-participating employers.

As a result, more than half of the expert reports discuss ways in which policymakers could **introduce or modify extension policies** to

encourage collective bargaining. One observation is that the decision to extend a collective agreement often depends on the political orientation of the government or administration concerned (e.g. Slovakia, Finland, Greece). Proposals are therefore being made to limit administrative or political discretion in extension policy and make it more automatic once certain thresholds are reached. In the German case, where only 0.8% of all new sectoral agreements are extended, the proposal is to lessen the veto-power of sectoral and national employer's associations.

For some sectors with particular challenges in terms of low pay, exploitation, strong wage competition and low union density, experts also suggest making the extension of collective agreements less dependent on reaching thresholds and providing for some kind of **extension based on the general interest** (e.g. Greece).

One suggestion was to consider not only quantitative but also **qualitative criteria** for extending collective agreements. This could, in the medium to long term, increase the quality and scope of collective agreements and thus benefit collective bargaining in general (e.g. the Netherlands).

Exemption clauses: The second set of proposals relate to (voluntary) ways of reducing the impact of (multi-employer) collective agreements in order to promote collective bargaining and reduce the threshold for some actors to engage in bargaining. One way of doing this is to include (and make legally possible) opt-out clauses in collective agreements, allowing companies to deviate from the agreement under certain conditions (e.g. Germany). At the same time, some contributors argue for restricting the use of exemption clauses to avoid abuse and the erosion of sectoral agreements (e.g. Austria, Greece).

Voluntary charters: In contexts where there is no multi-employer tradition and no clear enforceable legislation on the status of sectoral agreements, such as in the UK and Hungary, some regional voluntary charters are being developed. The aim of these charters is to set sectoral standards that go beyond minimum pay and require employers to pay a living wage, while also extending to expectations of decent work, training and working conditions. Although they are obviously unenforceable and not really negotiated agreements, they function as a form of quasi-regulation.

Public procurement: Finally, a number of experts referred to the use of public money to encourage employers to engage in collective bargaining. For example, public tenders could stipulate that multi-employer agreements must be respected by companies that are awarded public contracts, effectively forcing them to engage in sectoral bargaining (e.g. Croatia, Cyprus, Czechia, Ireland, The Netherlands). The German contribution envisages a law that would force the federal government to only award public contracts to companies that comply with the respective collective agreement. In addition, or in contexts where there are no multi-employer or sectoral agreements, public tenders could give preference to companies with collective agreements (e.g. Croatia, Slovenia). In the Swedish contribution, attention is paid to the limited possibilities of public authorities to monitor compliance with collective agreements under public contracts, leading to de-facto undercutting. The German contribution further clarified that such conditionality should not only be limited to public procurement, but could also be applied broadly in the area of public spending.

As a large number of employers use strategic restructuring, outsourcing or spin-offs as a way of circumventing or escaping collective agreements and bargaining, the German contribution contains a proposal to ensure the **continued validity of collective agreements** not only for staff that are transferred, but also for new employees in those companies. This would avoid two-tier systems and lessen the employers' incentive to engage in such strategies.

PUSH (STICK)

More binding approaches to ensure sufficient impact and the effectiveness of collective agreements are also conceivable. For example, policy may focus on making collective agreements more binding through

better **enforcement**. As one of the main objectives is to create a level playing field, it is important to ensure that all (signatory) employers respect the same minimum standards. If not, the whole system will come under pressure. Accordingly, a number of national contributions suggest ensuring enforcement through the establishment of specialised **labour courts** (e.g. Czechia, Romania) and, general improvement of enforcement (e.g. Romania and Slovakia). In addition, the role of social **inspection** services in monitoring compliance with collectively agreed pay and working conditions is crucial (e.g. the Netherlands, Romania), as is the provision of legal support by (for example) the Chamber of Labour in Austria.

CULTURE

In addition to structure, culture also plays an important part. The extent to which (multi-employer) collective bargaining is taken for granted is obviously related to the spread of collective bargaining in general. The same goes for the cultural consensus on union presence, representation and what is not acceptable in terms of suppressing and avoiding union presence in a company.

To influence the general culture (and knowledge) surrounding collective bargaining, a number of experts have suggested that policymakers could set up a variety of **monitoring mechanisms** to track the extent and content of collective bargaining (e.g. Czechia, Hungary, Slovakia). Such monitoring bodies should necessarily have a bipartite or tripartite structure and keep a close eye on new and long-term developments (e.g. Greece and Luxembourg).

In addition to monitoring, policymakers can ensure sufficient funding for research in the area social dialogue and collective bargaining. This can be done through dedicated budget lines for academic and non-academic research and studies.

Culture is clearly also influenced by **education**. For example, the Swedish expert suggests that information on social dialogue should be made more widely available through the public education system, the public employment service and the migration office for newly arrived immigrants. Similarly, compulsory inclusion of social dialogue issues

in business management courses could be considered. Similar proposals were raised in the Austrian contribution.

Next, proposals were put forward to coordinate and launch **public campaigns** on the benefits of collective bargaining for workers and employers, and on collective bargaining rights (e.g. the Netherlands and Slovakia). Similarly, the Czech contribution stresses the need to have an ecosystem of actors to promote the topic of good working conditions and thus promote collective bargaining. This ecosystem could consist of non-traditional actors like NGOs, journalists and activists.

Similarly, the Biden administration in the US has sought to influence collective bargaining in a similar non-legislative way by providing much more **information** and clarity on trade union and collective bargaining rights through government agencies and departments.

One way of putting the value of collective bargaining more to the forefront could be by presenting a sort of **award** for innovative social dialogue (e.g. Czechia).

It is not only the culture of wider society that is important, but also the culture between the social partners. As such, the Austrian contribution stressed the importance of dense interpersonal relations between social partners, as well as ongoing trust-based cooperation. Such a culture can be promoted through policy aimed at bringing the social partners together in multiple forums.

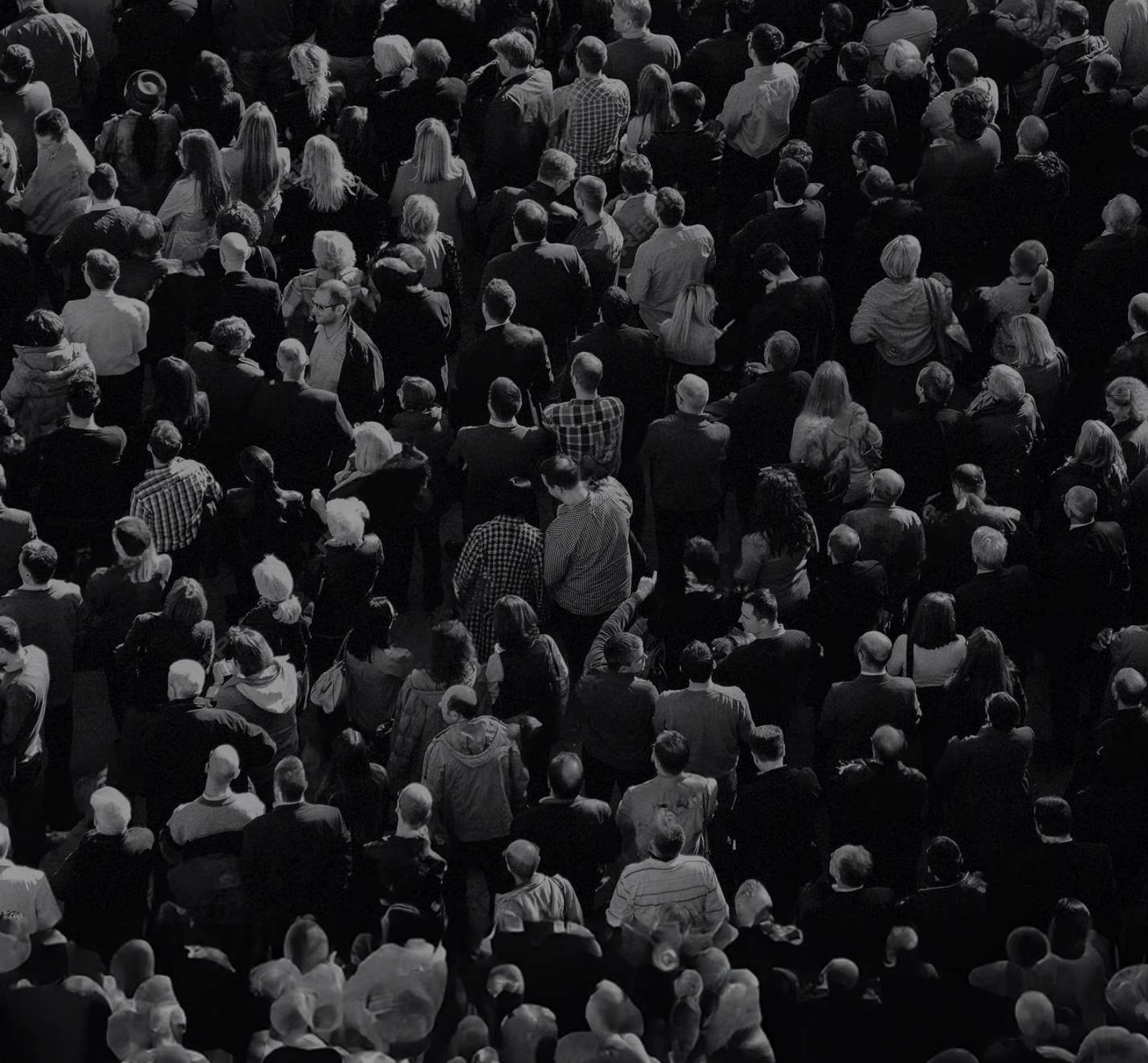
CONTRIBUTING AUTHORS

AUTHOR	COUNTRY	AUTHOR BIO
Draga Bagić	Croatia	Dragan Bagić is a Full Professor at the Department of Sociology, Faculty of Humanities and Social Sciences, University of Zagreb. He is one of the rare scholars in Croatia dealing with industrial relations issues. In addition to industrial relations, his research interests include political sociology, sociology of migration, and social research methodology.
Godfrey Baldacchino	Malta	Godfrey Baldacchino, PhD, is Professor of Sociology at the University of Malta, Malta, where he also chairs the Board of the Centre for Labour Studies.
Wike Been	The Netherlands	Wike Been is assistant professor in labour sociology at the sociology department of the University of Groningen. Her expertise lies in the precarization of working conditions and the (collective) regulation thereof at the national, sectoral and organizational level.
Szilvia Borbély	Hungary	Szilvia Borbély, PhD, is an economist, senior research fellow and member of the board of the Trade Union Economic and Social Research Institute (SZGTI), and a former member of the Collective Bargaining Coordination Committee of the European Trade Union Confederation. Present research areas include: industrial relations (social dialogue, analysis of collective agreements, social partners' capacity building), labour market gender issues (gender wage gap, gender and collective bargaining) and lately migration.
Manwel Debono	Malta	Manwel Debono, PhD, is a Chartered Occupational Psychologist and a Senior Lecturer at the Centre for Labour Studies, University of Malta, Malta.
Valentina Franca	Slovenia	Valentina Franca, PhD, is as an associate professor and researcher at the Faculty of Management, University of Primorska, Slovenia. Her main research work is concentrated in collective labour relations, especially she is focused on social dialogue and employee participation. She has published several articles and has been involved in different national and international research projects in this field. She is a national expert in the Workers' Participation Network (coordinated by the ETUI), member of the editorial board of Adapt, Association of International and Comparative Studies in Labour and Industrial Relations and of the E-journal of International and Comparative Labour Studies.
Vera Glassner	Austria	Vera Glassner is a sociologist at the Vienna Chamber of Labour and a lecturer at the University of Vienna. Her research focus is on gender inequalities in working life and labour relations.
Julia Hofmann	Austria	Julia Hofmann works as a researcher at the Vienna Chamber of Labour and is a lecturer in sociology at the University of Vienna. Her research focus is social inequality, the sociology of work and labour relations.

Rafael Ibáñez Rojo	Spain	Rafael Ibáñez Rojo is Senior Lecturer in Sociology at the Universidad Autónoma de Madrid, Spain. His research interests are the sociology of work and consumption, and industrial relations.
Gregoris Ioannou	Cyprus	Gregoris Ioannou is a sociologist and a Reader at Manchester Metropolitan University. He has published widely and has served as an external expert for numerous international organisations including the European Commission, the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the European Trade Union Institute (ETUI) and Friedrich Ebert Stiftung (FES). His research focuses on labour relations and trade unionism, class conflicts and contentious politics.
Carlos J. Fernández Rodríguez	Spain	Carlos J. Fernández Rodríguez is Associate Professor in Sociology at the Universidad Autónoma de Madrid, Spain. His research interests are sociology of consumption and organisations, and industrial relations.
Paul Jonker-Hoffrén	Finland	Paul Jonker-Hoffrén is a Senior Researcher in the Work Research Centre of Tampere University. He currently works in the Horizon2020-funded ReCreate –project, in which the reuse of prefabricated concrete is studied. His focus is on labour processes and the circular construction policy environment. Otherwise, his research interests are labour market relations and the sociology and philosophy of work.
Marta Kahancová	Slovakia	Marta Kahancová, PhD, is Founder and Managing Director of the Central European Labour Studies Institute (CELSI) in Bratislava, Slovakia. Her research interests include the sociology of organizations and work; in particular, she studies industrial relations, trade unions, working conditions, and atypical and undeclared forms of work. She also serves as a labour market expert for the European Commission (European Centre 28 List of contributors of Expertise in the field of labour law, employment and labour market policies) and the European Labour Authority (European Platform for Tackling Undeclared Work).
Ioannis Katsaroumpas	UK & Greece	Ioannis Katsaroumpas is a Lecturer in Employment Law at the University of Sussex. His research focuses on international, comparative and European labour law.
Maarten Keune	The Netherlands	Maarten Keune is Co-Director of the Amsterdam Institute for Advanced Labour Studies (AIAS) and Professor of Social Security and Labour Relations at the University of Amsterdam (UvA). He obtained a PhD in political and social sciences at the European University Institute in Florence. He worked for seven years for the International Labour Organization in Latin America and Eastern Europe. Prior to his appointment in Amsterdam, Maarten worked as a senior researcher at the European Trade Union Institute in Brussels. Maarten Keune conducts research in the field of labour relations, labour market and social security.
Anders Kjellberg	Sweden	Anders Kjellberg is Professor of Sociology at Lund University, Sweden. His research deals with the Swedish model of industrial relations in a historical and internationally comparative perspective. Among the studied dimensions are self-regulation versus state regulation, union density and coverage of collective agreements.

Karolien Lenaerts	Belgium	Karolien Lenaerts is the head of the research group Work, Organisation and Social Dialogue at HIVA- KU Leuven
Vincenzo Maccarrone	Ireland	Vincenzo Maccarrone is a researcher in industrial relations, political economy and sociology of work. He is currently a Marie Skłodowska-Curie Postdoctoral Fellow at the Scuola Normale Superiore, with a project on global governance of labour.
Miguel Martínez Lucio	UK and Spain	Miguel Martínez Lucio is Professor at the University of Manchester and is involved in its Work and Equalities Institute. He researches and publishes on the changing nature of worker representation, union renewal, the state, and social issues within labour relations.
Monika Martišková	Czechia	Monika Martišková is a researcher at the Central European Labour Studies Institute (CELSI) in Bratislava, Slovakia, and is a PhD candidate at the Department of Social Geography and Regional Development at Charles University in Prague, Czechia. She is interested in labour market institutions and collective bargaining in Central and Eastern European (CEE) countries.
Torsten Müller	Germany	Torsten Müller is a senior researcher at the European Trade Union Institute in Brussels, where he is responsible for the area of wages and collective bargaining in Europe.
Thorsten Schulten	Germany	Thorsten Schulten is Head of the Collective Agreements Archive of the Institute of Economic and Social Research (WSI) within the Hans Böckler Stiftung in Düsseldorf. He also teaches political science as an Honorary Professor at the University of Tübingen.
Sertac Sonan	Cyprus	Sertac Sonan is an Associate Professor at the Political Science and International Relations Department of Cyprus International University. He is the Director of Centre for Cyprus and Mediterranean Studies at the same university. His research interests include political clientelism, corruption, Cyprus conflict, and Turkish Cypriot politics and economy.
Radu Stochita	Romania	Radu Stochita is a journalist and trade union activist at Romanian national trade union centre Cartel ALFA and Maine Service Employees Association (MSEA-SEIU) in the United States, and a current Watson Fellow. He covers labour issues for publications such as <i>Jacobin</i> , <i>The Nation</i> , <i>Al Jazeera</i> and <i>Dissent</i> .
Adam Šumichrast	Slovakia	Adam Šumichrast is a doctoral candidate at the Institute of History, Faculty of Arts, Masaryk University, Brno specializing in comparative labour and social history. He is also a junior researcher at the Central European Labour Studies Institute. He is also interested in research into industrial unrest and collective action in present-day Slovakia and Czechia.
Adrien Thomas	Luxembourg	Adrien Thomas, PhD, is a Research Scientist in the Labour Market Department at the Luxembourg Institute of Socio-Economic Research (LISER). His research focuses on trade unions in a comparative perspective, employment relations and the social dimensions of sustainable development.

Aurora Trif	Romania	Aurora Trif is an Associate Professor in International Employment Relations and Human Resource Management at Dublin City University Business School, Dublin City University, Ireland. Her research interests include comparative employment relations in Eastern Europe, precarious work, trade union innovation, work conflict, workplace partnership, and compassion at work. She has published widely in international scholarly journals.
Sem Vandekerckhove	Belgium	Sem Vandekerckhove is a senior researcher at HIVA-KU Leuven. His research deals with working conditions and employment conditions, focusing specifically on the institutional aspects of social dialogue on issues such as poverty, wage inequality and the gender pay gap.
Noah Vangeel	Belgium	Noah Vangeel is a researcher at the research group Work, Organisation and Social Dialogue at HIVA-KU Leuven
Catherine Vincent	France	Catherine Vincent is a sociologist and senior researcher at IRES (Noisylégrand, France). Her current research interests focus on collective bargaining, employee workplace representation and HRM in the private and the public sector. She recently authored the French chapter of the ETUI book on collective bargaining in Europe.



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ANNEX II

TIME FOR

ACTION!

**HOW POLICY CAN STRENGTHEN (MULTI-EMPLOYER)
COLLECTIVE BARGAINING IN EUROPE**

Stan De Spiegelaere