

**ANNEX II**

**TIME FOR**

**ACTION!**

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

**Stan De Spiegelaere**

The main text of this report is based on country contributions from experts from twenty countries in Europe. This annex gives provides the full country contributions. Please note that these contributions are not language-checked.

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# AUSTRIA

VERA GLASSNER, JULIA HOFMANN

The Austrian collective bargaining system features an extremely high and stable bargaining coverage: According to national data around 95 per cent of all workers are covered by collective agreements (or 98 per cent, according to OECD-ICTWSS-AIAS 2023). Thus, the country's bargaining system might serve as a 'role model' for other European countries with far lower coverage rates.<sup>1</sup> Roughly said, we would identify six Austrian specifics which lead to this high coverage rate. Some – but not all of them – might lead to policy recommendations for other countries. Nevertheless, all of them are necessary elements of the Austrian bargaining system.

## 1. Compulsory membership in the national employers' association as a key asset

In nearly all comparative analyses, the (private sector) companies' compulsory membership in the national employers' associations is highlighted as the number one reason for the high coverage rate in Austria. Indeed, the compulsory membership has a huge impact: As all companies are obliged to be members of the Chamber of the Economy (WKO, Wirtschaftskammer) collective agreements are legally binding for them. Consequently, there is hardly any possibility for them to avoid their application. Mandatory membership also prevents free-rider problems as no firm could benefit from the bargaining outcomes 'without being part of the collective bargaining process (collective bargaining as 'public good'). However, compulsory membership is more than 'legal coercion' of which firms want to get rid of: The national economy in Austria is dominated by small and medium-sized enterprises. International studies have shown that smaller firms profit more from their membership in associations and have thus a higher incentive to become members. Moreover, as the fundamental structures of the Austrian bargaining system date back to several decades, many firms have made a lot of positive experiences with collective bargaining (e.g. very low incidence of strikes and a high degree of social peace as well as a good economic predictability linked to the productivity-oriented wage policy). Thus, trust in collective bargaining institutions is high. Until yet, there is no significant movement of firms which try to 'opt out'<sup>2</sup>.

→ A **policy lesson** to be learned from the Austrian case thus could be that successful bargaining systems need **strong national employers' associations**, which are **as centralised, encompassing, and representative as possible**. Furthermore, they have to be legally **entitled** to and **able to conclude collective agreements** which are binding for **their members**. Further, there should be **no possibility to 'opt out'** of the membership.

This could be easier enforced when the companies **realise in which way they benefit** from their membership in an employers' association.

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1 For lessons to be learned from Austria, we argue that one also needs to understand the country's very special bargaining system which is embedded in a complex system of industrial relations: for a detailed description see f.e. Glassner and Hofmann 2019; 2023.

2 The strategy of (some of the employers) is rather to split bargaining processes, e.g. in 2011 in the metal industry (for more information see below, point no. 5)

## 2. Comprehensive institutional resources

Wage bargaining actors in Austria dispose over far-reaching institutional resources. The already mentioned compulsory membership of employers in the Chamber of the Economy (see point no. 1) is one of these. There is also an equivalent on the employee-side, namely the compulsory membership of dependently employed workers in the Chamber of Labour (AK, Arbeiterkammer) but the AK is not an active wage bargaining actor in Austria as it has ceded its right to bargain to the trade unions. Compulsory membership not only prevents free-rider problems, which is especially important for collective bargaining processes, they are also pillars of the Austrian social partnership (Pernicka/Hefler 2015). Legally guaranteed principles such as ‘bargaining autonomy’ and ‘self-governance’ of chambers strengthen the independence from the state and ban state interference in wage-setting. In addition, they equip social partner organisations with far-reaching rights, for instance, representation in the administration of the social insurance system or in the national labour market service, or to assess and draft legal proposals.

Institutional resources are an important asset for effective collective bargaining but their availability cannot be taken for granted, especially in times of political changes. For labour the withdrawal of institutional resources would be particularly disadvantageous as this further shifts the balance of power towards capital. In Austria, at the political level, this became particularly visible in the two periods after 2000 when right-wing government coalitions involving the conservative People’s Party (ÖVP, Österreichische Volkspartei) and the extreme-right Freedom Party (FPÖ, Freiheitliche Partei Österreich) were in power (2000 – 2007 and 2017– 2019). Especially the FPÖ tries to weaken the institutional power of social partners and to abolish compulsory membership of the chambers (Aistleithner and Flecker 2017).

Although these attempts were not successful yet, it has become more and more evident in recent years that the normative commitment to social partnership could reach its limits when power relations change. Flecker and Hermann (2005) thus call the high reliance on institutional resources in Austria a ‘borrowed stability’, which might once come to a sudden end. Nevertheless, unions in Austria stick to the system of social partnership as it guarantees them an institutionalized channel to influence social policymaking and labour legislation. Moreover, public attitudes are generally in favour of social partnership.

→ A **policy lesson** to be learned from the Austrian case thus could be that **institutional resources are very helpful but also fragile** when they are not **complemented with other resources**, e.g. such as organisational resources. For bargaining processes, this means that the reliance on institutional resources alone – without focusing on the strengthening of membership-based resources, such as union organisation, members’ participation and mobilisation of workers, could be short-sighted and relies on ‘borrowed stability’. Only strong trade unions are able to ‘force’ employers (back) on the negotiation table or ensure that collectively bargained wage increases are implemented.

## 3. Closing legislative gaps regarding works council avoidance

Also in Austria, it sometimes happens that companies hinder the establishment of works councils. However, in general active **employer opposition** against setting up works councils is **rare**. Rather, structural factors, such as low wages, a large share of migrant workers not familiar with workers’ rights in Austria or high labour turnover hinder the establishment of works councils, in particular in smaller enterprises (although Austrian labour law provides for the establishment of a works council of staff representation body in establishments with 5 workers or more).

More recent examples of works council avoidance were found in sectors such as hotel/restaurants or retail trade; employees who wanted to call for a works council assembly for preparing works council elections were dismissed. Austrian labour law does not provide for sanctions in these cases.

→ Policy lesson to be learned: Labour law has to provide for effective legal sanctions in case of works council/trade union avoidance.

The Austrian Trade Union Confederation demands, first, **legal sanctions** in case of **hindering the procedure** to set up a works council or staff representation body, second, **extended dismissal protection** especially when a company assembly is called for (this means closing a legislation gap since workers are not protected during the period between calling for the company assembly and the end of the works council elections; special dismissal protection exists only for elected works council members) and, third, **no state subsidies or public funding** for establishments hindering the setting up of works councils or staff committees.

#### 4. Multi-level structure of wage-setting ensures high bargaining coordination

In Austria, the vast majority of collective agreements is settled at the industry level. Only a few collective agreements cover large companies, for instance, Austrian Airlines or the Austrian Broadcasting Corporation ORF. However, wage-setting is embedded in a multi-level system. The legal-institutional underpinnings of collective bargaining establish a hierarchy, with collective agreements founding the basis. Collective agreements are concluded between employers' federations and trade unions at the industry level, and only in a very few cases directly between management and trade unions, when company collective agreements are concluded. On top of collective agreements are company/works agreements, concluded between management and works councils at company level and on top, individual work contracts specify conditions. Labour law is superordinate to collective agreements. The latter prescribe the scope for company agreements by delegating the negotiation of certain issues to local bargaining actors. Labour law, for instance, allows for flexible working time arrangements and the extension of working time beyond the legal minimum by industrial collective agreements. Importantly, terms and conditions settled in individual labour contracts can only set more favourable conditions for workers ('favorability principle'); downward derogations from collective agreements are possible only under very limited circumstances, e.g. temporary derogations from pay during the 'big recession' 2008/09.

**Remark:** There is no statutory minimum wage in Austria. Rather, legally enforceable minimum wages are stipulated in industry collective agreements. Trade unions, against the background of the exceptionally high bargaining coverage, regard their competence to conclude collective agreements as a central part of their bargaining autonomy and thus, in contrast to unions in other countries, are not pressing for the introduction of a uniform statutory minimum wage.

The different levels of wage policy are densely interlinked and well-attuned. Bargaining actors at the sector (i.e. public administration, private sector) or industry level (e.g. metal industry, retail trade, chemical industry) cooperate with actors at the company/local level. At the national level, the Chamber of Labour supports trade unions in collective bargaining by providing expertise, data and studies (e.g. on macroeconomic and industry developments as well as on stock-listed companies). The same holds true for the employers' side, that is, the Chamber of the Economy (WKO), the statutory representation of private businesses, and the voluntary employers' association of large companies, the 'Industriellenvereinigung' (IV).

→ A **policy lesson** to be learned from the Austrian case thus could be that the **finely attuned multi-level structure of collective bargaining**, that clearly devised competences to bargaining actors from different levels is a **factor for the stability and effectiveness** of the Austrian bargaining system. In addition, **dense interpersonal relations** between actors from different levels and the **trust-based and continuous cooperation** between company-level employee representatives, trade unions and the Chamber of Labour are central features of the Austrian bargaining system.

## 5. No union competition, good cooperation instead

By European comparison, the Austrian trade union system is the most unitarian, with only one umbrella organization, the Austrian Trade Union Federation (ÖGB, Österreichischer Gewerkschaftsbund), which incorporates seven sectoral/industrial trade unions. There are virtually no other trade unions outside the ÖGB. The ÖGB also encompasses the entire party-political spectrum, including social democratic, Christian, leftist- communist, independent- green, and right- wing Freedom Party– affiliated unionists, as well as (party-politically) independent unionists. This high degree of centralization contains union competition which might be obstructive in bargaining processes. Moreover, the structure allows for dense interpersonal relations which foster mutual understanding and willingness for cooperation on the labour side. As the vast majority of works councils in the Austrian dual system are unionized, the interpersonal relations between trade union representatives and works councils/employee representatives are also dense, which is a very important asset in the country's dual system. Finally, unions and works councils in Austria can rely on the expertise of the Chamber of Labor (AK), which acts as the statutory employee interest organization of all employees in Austria. The AK provides free legal advice on issues such as labour law and social benefits and offers workers legal protection in labour court cases. Although such services are also provided by trade unions (on a much smaller scale though), the relationship between trade unions and the AK is supportive rather than competitive: The AK supports unions (which have fewer financial and personal resources) in their interest representation policies and with its expertise on a wide range of issues (see no. 2 and 3).

→ A **policy lesson** to be learned from the Austrian case thus could be that a **high degree of centralization and encompassing organisations** on the labour side **prevent union competition**. In Austria there are three levels of interest representation on the labour side (works councils, unions, Chamber of Labour) which act together on behalf of the workers. Further, **dense interpersonal relations** between (organisational/institutional) actors **foster mutual understanding and willingness for cooperation**.

## 6. Norms and cultures of cooperation are essential

The firmly established regulative structures that govern wage setting and ensure stability and predictability of bargained outcomes have contributed to the fact that employers have developed a long-term commitment to participate in collective bargaining (Pernicka and Hefler 2015). In addition, far reaching collective bargaining autonomy has strengthened actors' (self) perceptions that collective wage setting is one of the prior tasks of the national peak organisations of labour and employers. However, as the example of Slovenia indicates, the withdrawal of certain legal prerequisites of collective bargaining might result in a quick decline of bargaining coverage as social norms and practices alone are too weak to ensure the continued cooperation and commitment of employers. The abolishment of companies' statutory membership in employers' associations in Slovenia in 2006 led to a considerable and steady decline of bargaining coverage.

Also in Austria, under the surface of intact and inclusive collective bargaining institutions signs of erosion of structures, norms and practices are becoming visible. An example is the break-up of the 'bargaining cartel' in the metal sector in 2011 when the most powerful branch-level employers' association of the metalworking industry declared the unions' wage demand as being 'excessive' and withdrew from joint negotiations. In response, the manufacturing union mobilized for industrial action, including strikes – a very rare incident in Austria. Although collective bargaining was resumed later on, collective bargaining was carried out at the level of sub-sectors in the metal industry from 2012 onwards, with the metalworking (sub-)industry taking the lead. Wage bargainers from both the employers' and unions' side though state that commitment of employers is still generally strong. However, for trade unions' it is a feat of strength to ensure an industry-wide wage increase that is taken over by all sub-sector employer associations. Every year, employers call the highly integrated and chronologized collective bargaining process in the metal industry into question (e.g. 'there is nothing to distribute this year', 'Austria has to maintain its international competitiveness'). The unified wage accord in the

metal industry is of particular relevance since it is this sector that takes the lead in the annual national 'autumn bargaining round'. The wage increase settled in the metal industry serves as orientation mark for other sectors that negotiate afterwards (Bittschi 2023).

In addition, generational change among employer-side bargaining actors, politicians and journalists in parts erodes norms of social partnership, i.e. concertation and compromise, and the aim of reaching bargained wage outcomes at levels above the enterprise. These norms and values are sometimes not comprehended and appreciated by younger generations that have passed through different instances of socialisation (e.g. in their university study programmes). Rather, some of them regard bargaining norms and practices as outdated rituals that inhibit progress, innovation and even justice (e.g. by maintaining gender equality and privileges).

→ A **policy lesson** to be learned from the Austrian case thus could be that **norms and practices of collective bargaining** – at best firmly established since many decades – are very important assets. However, they **rely on legal-institutional underpinnings**, such as the statutory membership of companies in the national employers' organisation. Moreover, they **need to be renewed constantly** as new generations of wage bargainers might no longer take them for granted.

## 7. Towards a fair and holistic system of wage bargaining

The collective bargaining coverage rate in Austria is outstandingly high and, thus, the collective wage setting system is inclusive and encompassing. Nevertheless, social inequality has also increased in Austria. Wage inequality is particularly high within the services sector (ranging from high in financial services to very low in tourism, cleaning). Contrastingly, wage dispersion is more compressed in the manufacturing industries. The gendered segmentation of the labour market is particularly pronounced in Austria. Women and migrants are disproportionately often working in the low-wage segments of the services sector while male-dominated industries such as manufacturing, energy and technology offer the highest wages.

The comparatively high wage dispersion in Austria has tended to stabilize over time (polarization between high-productivity, capital-intensive industries with high wages and low-tec, labour-intensive low-wage industries). A growing divide is arising between wage developments of instable, insecure (seasonal) jobs on the one hand and stable, secure (social insurance-based) employment on the other hand. Trade unions' minimum wage policy (i.e. to raise lower wage grades to a higher extent than higher wage grades, e.g. by higher per cent-increases or basic amounts/allowances) aiming at countering these developments are particularly beneficial to women and migrants in low-paid segments.

Relatively high inter-industry wage differentials are to a certain extent a concession to employers within a highly encompassing and inclusive system of collective bargaining. In some sectors or industries intensifying international market competition inhibits compromise and the balancing of interests between labour and capital. In particular, in the pattern setting metal industry asymmetries of power and diversifying interests within collective organisations of employers (and to a lesser degree: workers) hamper collective wage setting in the entire sector. Thus, trade unions have to be careful that differences are not increasing too much, as it is difficult to remedy wage dispersion ex-post. For instance, employers are not obliged to follow trade unions' minimum wage policy demands above the collectively settled minimum pay of 1.500 EUR gross per month (the social partner agreement dates back to 2017). However, current scarceness of labour in various industries, including the low-pay sector, might be an incentive for employers to concede to unions' minimum pay demands. Evidently, if wage differentials grow too large, such pay differences are difficult for trade unions to justify vis-à-vis workers and union members and are constant source of tensions and discontent within trade unions and the labour force as such.

Non-compliance of employers to collective agreements is also rather rare in Austria as collective agreements are legally binding. However, in sectors such as construction or agriculture, where informal and/or migrant/posted workers are employed, effective controls to ensure that pay and conditions settled in collective agreements are enforced adequately are often lacking.

→ Policy lesson to be learned from the Austrian case thus could be that a holistic system of collective bargaining that covers almost all independently employed workers results in various advantages for employees, employers and the state. However, it tends to solidify (wage) inequalities between different groups of workers such as women and migrants. While wage policy and collective bargaining are primarily aiming at macroeconomic stability and international competitiveness wage outcomes have also to be perceived as fair, that is, distributional goals should not be disregarded in order to avoid a divide in wages and working conditions between the secure/stable and the insecure and instable labour market segment.

→ A **more concrete policy lesson** with regard to **compliance to collective agreements**: although **compliance** is generally **high** in Austria some **challenges** have to be met in sectors where informal/migrant work is widespread. Although legal regulations against wage and social dumping are existing, **controls are not effective enough**. Thus, more staff resources are needed in controlling authorities (finance police) to carry out more frequent controls, higher financial sanctions, public procurement rules that restrict (transnational) supply chains (e.g. Spain, Norway), liability of prime contractors (in construction).

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# BELGIUM

SEM VANDEKERCKHOVE, NOAH VANGEEL & KAROLIEN LENAERTS

## 1. Which industrial organization for social dialogue and collective bargaining?

After austerity, there was new-found need for collective bargaining in the EU. This goes back to the principles of the European “socially corrected market economy” in the wake of the second world war, and the safeguarding of human dignity by the ILO and the ratification of its treaties since the first world war. Collective bargaining has been at the forefront of these ambitions, but has had a rise and fall in most countries. Belgium appears to be the exception, where the development of the Ghent system and the institutionalization of collective bargaining is remains largely intact despite the challenges of a changing economic context.

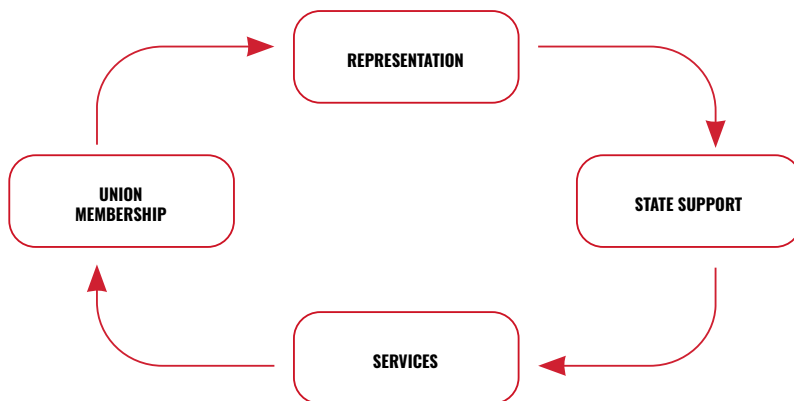
This historical continuity is usually approached from a socio-political perspective. From that point of view, the preservation of collective bargaining in Belgium has idiosyncratic explanations, and harmonization of collective bargaining is hindered by different origins and path dependent institutional structures. The ‘surviving model’ in Belgium may also be framed economically, treating workers, social partners, and the government as constituents of a market.

At its core, markets emerge from needs. These needs can be grassroots demands, emanating from individual or shared aspirations. At the same time, the needs can also originate from larger systemic requirements. Both are apparent in the case of Belgium and have created a market for social dialogue. On the one hand, workers have been self-organising in consumption and production of basic good through cooperatives, and set up strike funds and insurances via union. On the other hand, joint committees have fixed procedures around wage setting to foster efficiency and predictability, and sectoral funds may be used for training to prepare labour supply to the sector, increase the human capital of workers, and support companies. Similarly, the country has promote joint committees and social security and put the governance in hands of social partners to ensure social stability and to mitigate the adverse impacts of unregulated conflicts.

In other words, if collective bargaining holds intrinsic value, social dialogue should naturally and universally emerge. However, there may be barriers obstructing a well-functioning market. Some potential hindrances are: membership fare, intimidation of union members and militants, absence of first movers or renewal of union leadership, barriers to entry and imperfect competition due to non-recognition of new actors, legal hindrances such as liability during collective action, and structural changes in the economy leading to de-unionization as well as political competition of other cleavages such as race, religion and nationalism and not economic class (Acemoglu et al., 2001; Baert & Omey, 2015; Dundon, 2002; Fortin & Lemieux, 1997; Hyman, 2001; Stockhammer, 2017).

Consequently, there is a compelling argument for the creation and nurturing of a market, offering active incentives to encourage the proliferation and empowerment of such organizations. These organizations should ultimately cater to both individual aspirations (like better wages or working conditions) and broader collective demands (like industry standards or social cohesion) as two-sides of the market. Thus, a supply cycle emerges (Figure 1).

Figure 1: Supply cycle on the two-sided market for unions



The way economic sectors are set up in terms of number of actors and their scale and market power is called the industrial organisation, and it determines the price and quantity of goods and services that are offered. An optimal outcome is reached when there is sufficient competition to warrant innovation, efficiency, and responsiveness to market needs, and sufficient scale to do so at the least costs possible. Similar to other networks, like social media, where the number of members (or subscribers) increases the value of a platform, the market for social dialogue is two-sided (Rochet & Tirole, 2003). Applied to unions, a larger membership means stronger organization, adding value for unionized workers and recruits, but it also means more representative social partners, which is valuable to the industry or state. A single monopoly union may not serve the interests of workers best due to a lack of competition and hindering entrants, while too many fragmented unions may lack the power, experience, and representativeness to be impactful and worthy of state support. According to ETUC membership data, EU countries have between one and five major trade unions, with a median number of three, as in Belgium: the Christian-democratic ACV-CSC, the socialist ABVV-FGTB, and the liberal ACVLB-CGSLB.

## 2. Which organizational design for unions?

Within a two-sided market for social dialogue, social partners need to be structured to meet individual and collective demands. The Belgian union model does so by combining various functions:

The core function of unions is *representation*, ranging from giving voice at the company level to making collective agreements that bind entire sectors through legal extension. This meets collective needs like pay transparency and streamlined wage setting. As unions scale up, there are efficiency gains, less menu costs, and sectoral collectively agreed wages may better align with demand and supply of labour. Yet because the agreements are universally applied, workers may free-ride and benefit from the outcomes of collective bargaining without joining a union, a classic collective action problem (Olson, 1965). As a result, besides the legal endorsement of social dialogue, the state needs to facilitate negotiations with administrative, logistic, and scientific support in different institutional bodies. In Belgium, this is through the Federal Public Service Work, Employment and Social Dialogue, and through the National Labour Council and the Central Economic

Council, which in turn have evocation rights to call in other federal public services, such as the social security administration or the federal planning bureau.

Workers generally first encounter unions, however, as *service providers*, offering legal and administrative support throughout various stages of a career – from the conclusion of formal education, through career interruptions and illnesses, to retirement. They are recognized by the state in their capacity to pay out unemployment benefits, which is one of the core aspects of the Ghent system that shows the institutional importance of unions. This recognition mirrors the structure of many health insurance organisations, which also have their origins in the broader workers' movements. At this functional level, there are tangible, individual incentives for workers to join, at fairly low cost. Moreover, in many sectors these costs are partially reimbursed by sectoral funds in exchange for 'social peace', meaning no further industrial action after collective agreements.

Finally, unions may be part of ideologically driven *social movements*, in this case the Christian-democratic, socialist, and liberal workers' movements. As workers gravitate towards shared values, this can in turn shape union strategies: universalism, egalitarianism, inclusivity, fairness, and environmentalism are core tenets around which union ideologies may coalesce, and new themes can be added to the list. Union activism underscores the inseparability of work, production, and overarching societal concerns. The bidirectional nature of this function is evident – while it amplifies workers' political voices and steers policy, it simultaneously offers educational opportunities and proposes a sense of purpose among members.

### **3. Recommendations for governments and unions**

Thinking of a market for unions may appear unnatural. After all, one of the functions of collective bargaining is to correct market failures (OECD, 2019), and there may be a sentiment that any market is oppressive and abusive, and implies a zero-sum game where one party wins as much as the other party loses. However, not seeing a market for unions doesn't mean these pitfalls don't exist: the lack of inclusion of outsider groups or new forms of work, a sluggish renewal of the union leadership, and a declining membership are signs that the need for social dialogue, or for unions in particular, is not sufficiently met. Following the logic outlined above, our recommendations based on the Belgian model are also two-sided.

#### **3.1. For governments:**

- Legislative support: enact laws that protect and promote the rights of workers to organize collectively bargain, and engage in industrial action. This includes, for instance, the right to strike (cf. European Social Charter of 1961, ratified in 1990), the autonomy of social partners, and the extension of collective bargaining agreements (cf. Act of 5 December 1968 on the organisation of social dialogue). One blind spot to avoid is the absence of formal social dialogue and employer responsibilities in small and medium-sized enterprises (cf. Act of 22 April 2012 on the gender pay gap).
- Combat intimidation: implement measures against attempts to suppress unionization or whistle-blowers (cf. Act of 19 March 1991 on the protection of union representatives).
- Incentivize union membership: compensate individuals who join unions, for instance through a union premium and other benefits for union members from a collective fund (cf. Act of 7 January 1958 on sectoral funds). A Ghent system leads to higher union density rates (Ebbinghaus et al., 2011).
- Support union services: collaborate with unions in areas like the distribution of unemployment benefits and other administrative steps within the workers' career (cf. Act of 28 December 1944 on the organisation of social security).

- Regulate the market: control the number and the representativeness of the social partners organisations, keeping the number containable and allowing sufficient scale (cf. Act of 5 December 1968). In 2009, the quantitative criterium for the recognition of social partners was lifted, which limits entrance, but at the regional level, other organisations also join the social dialogue.
- Provide platforms for dialogue: organize and facilitate meetings, negotiations, and conciliation (cf. Act of 5 December 1968). In Belgium this is provided by the the National Labour Council, Central Economic Council, and the operations of the Federal Public Service Work, Employment and Social Dialogue.

### 3.2. For unions:

- Expand service provision: offer a broad range of services and advertise the value and security union members get out of their membership (e.g. legal protection, unemployment or health benefits, training) to avoid free-riding on other union activities. In 2022, as much as 81.7% of unemployment payments were administered by one of the three unions (Directie Statistieken-Begroting-Studies, RVA/ONEM, 2023). Unions also provide the administrative services at a lower cost compared to the state itself. Although this keeps the unionization rate currently at 49% of salaried workers, unions should try to activate these members to be engaged in workplace democracy (Vandaele et al., 2023).
- Effective representation and resource mobilization: as representing the members is a quintessential role of unions but prone to free-riding, unions should look for advantages of scale, use big data and technology, and access services offered by the government. One trend is exploiting the national accounts data of companies gathered by the National Bank of Belgium.
- Showing colours: clearly define the ideological principles of the union to recruit workers according to their aspirations, and conversely, to educate workers about these principles. Through linkages with the broader social movement and lobbying policy makers, the social environment of work can be influenced, and this will motivate members (e.g. anti-racism, sustainable development, green transition).
- Encourage grassroots initiatives: improve internal democracy and allow self-organisation outside of traditional structures, spin-off initiatives and support for and collaboration with worker initiatives outside of the union.
- Link functions: unions appeal workers for various reasons, from community (e.g. the ideological role) to action (e.g. representation) and personal growth (e.g. training and career services). Expanding the functions to the full union model would improve the attractiveness of membership.

This list is by no means exhaustive, but it aims to illustrate that thinking about conquering market share is tantamount to increasing union coverage, and requires continuous innovation and growth directed at completing the picture of multi-faceted unions that act in the interests of its members and the society, as two sides of the market.

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## 5. Context: patterns of collective bargaining in Croatia

There have been no significant changes in the key patterns of collective bargaining and characteristics of labor market relations in Croatia over the last five years since the last systematic analysis was published (Bagić, 2019). In companies and sectors where collective bargaining has been a long-term practice, stable patterns still exist.

As of 2021, there are 579 collective agreements in force in Croatia, representing a 1.5% increase from 2014. However, only 14 of them can be classified as sectoral collective agreements because they regulate the rights of employees of a large number of employers in one sector of activity. Out of these 14, only six were signed with associations of several independent employers, while the rest represent sectoral collective agreements in the public sector in which the Government is a signatory on behalf of a large number of institutions that it finances.

About 46.5% of workers have their rights and working conditions regulated by collective agreement(s). This is a decrease of about 6 percentage points from 2014, which is about 12% less. However, even though the percentage of workers covered by collective agreements has gone down, the actual number of workers whose rights are regulated by a collective agreement has increased by about 20,000 or 3% in the observed period. The reason for the decrease in relative coverage is due to a significant increase in total employment (17%), which is concentrated in sectors that do not have practices of collective bargaining.

Although the majority of valid collective agreements are concluded exclusively at the company level, the majority of workers' coverage by collective agreements, two-thirds, comes from a small number of sectoral/multi-employer collective agreements, which shows the importance of multi-employer negotiations for overall coverage.

Given the large differences in union density, but also with regard to different practices of collective bargaining (company-level vs. sectoral), there are significant differences in the coverage of workers by collective agreements with regard to the sector of activity. Thus, in the sectors of construction, hospitality and tourism, coverage is 100%, thanks to the administrative extension of the application of the collective agreement to all employees and employers in these sectors. In several sectors, coverage is well above 50% thanks to sectoral negotiations, such as electronic energy supply, public administration, education, and health. Several sectors have a solid level of coverage by collective agreements (between 40 and 60%) although they do not have

multi-employer collective bargaining practices: agriculture, mining, water supply, transport and logistics, and financial sector. In the mentioned sectors, the high coverage is achieved mainly thanks to the small number of very large companies operating in these sectors, in which there is a practice of company-level collective bargaining. On the other hand, in other sectors, the coverage is significantly lower or extremely low. It should be noted that in the industrial production sector, the coverage is below average and reaches only about ¼ of the workers, while in the relatively large retail sector, the coverage is only about 10%.

Over the past five years, there have been no significant signs of displacement of collective agreements as a mechanism for regulating workers' rights. However, there has also been no significant trend of expanding collective bargaining in companies and sectors where this practice did not previously exist. Negotiations have been conducted at the same level as before, and no significant changes have been made in this regard.

It should be noted, however, that trade unions from various sectors, such as the food industry and agriculture, metal industry, wood processing, electric industry, and public transport, have initiated collective negotiations at the sectoral level over the past two years. Other trade unions have also expressed their interest and intention to initiate collective negotiations at the sectoral level with employers' associations, despite not formally initiating the negotiation procedure. In the past five years, the trade union's interest in leveling up collective bargaining from the level of an individual employer to the level of an association of employers, i.e. the entire sector of activity, has significantly increased. Despite this progress, no significant changes have been made in terms of changing the patterns of collective bargaining.

## **6. Plot: Structural obstacles for multi-employer collective bargaining**

As can be seen from the context description above, in Croatia, multi-employer collective bargaining is present in only a few sectors. When it comes to other sectors, we must distinguish those sectors in which there is a practice of collective bargaining at the company level to a greater or lesser extent, from those sectors in which there is no practice of collective bargaining at all. Between these two extremes, there are sectors in which there are certain practices of collective bargaining at the company level, but only in a smaller part of the sector. For all three types of sectors, their structural characteristics should be analyzed when it comes to actors of industrial relations, power relations between workers and employers in the sector, the structure of employers in the sector, and the norms and practices that shape labor market relations.

The process of leveling-up of collective negotiations to the sector level is structurally easiest to achieve where there are already developed practices of company-level collective bargaining. As previously stated, in several sectors, such as the food processing, metal, or electronic industry, there are structural preconditions for leveling up collective negotiations to the sectoral level. This means that in these sectors there are industrial unions that have a membership with a large number of employers in that industry, there are associations of employers, and most actors have (positive) experience of collective bargaining at the company level, which can be the basis of mutual trust. This also means that the unions can exert pressure on the employers and the employers' association to raise the level at which negotiations are conducted because they have a certain membership that they can mobilize into a strike. The only thing missing is the definition of the particular interests of each of the parties to raise the negotiations to a higher level. Therefore, measures to encourage raising the level of negotiations must be aimed at creating incentives for each of the parties, and especially for employers, to raise negotiations to a higher level. At the same time, the measures should be aimed at reducing the risk for trade unions of losing certain rights that are contracted at the company level. In some of these sectors, the structure of obstacles to the establishment of a sectoral collective agreement lies in the fact that in some of them, there is no industrial union, but numerous company-level unions, and in some, there are no corresponding employers' associations.

The retail sector in Croatia is an example of a sector with a very diverse structure regarding collective bargaining practices. There are around ten large employers in this sector who employ the majority of workers, but only a few of them follow collective bargaining practices. Some of these employers had been established during the socialist period and were later privatized during the transitional period. Unions managed to maintain their presence during the transition, which resulted in the practice of collective bargaining. However, the majority of the sector consists of smaller domestic companies or foreign investments that were established after the transition. Trade unions failed to establish themselves in these companies, or they couldn't impose the practice of company-level collective bargaining. In such sectors, the different experiences of collective bargaining act as an obstacle to establishing sectoral collective agreements. Even if there is a joint employers' association, as is the case in the retail sector, the diverse interests and experiences of different employers make it challenging to establish sectoral collective agreements. Unions can only exert pressure realistically on those employers with whom they already have a positive company-level collective bargaining practice. They have very little possibility of exerting pressure on those employers who are not covered by a collective agreement at all, and for whose workers a sectoral contract meant a step forward. In these sectors, the establishment of multi-employer collective agreements requires changes at the level of union organization and strong incentives for employers to introduce the practice of collective bargaining.

There are certain sectors where collective bargaining practices are almost non-existent or very irregular, which form the third group of sectors. In these sectors, trade union density is typically very low, and there are not many trade unions present at the workplace level. These sectors are often dominated by small employers, making it difficult for workers to organize themselves. Even when there are some trade unions present, they are mainly small company-level unions that lack the interest and capacity to negotiate at a higher level. In addition, employers' associations are either non-existent or do not bring together a significant number of employers from these sectors. There is also a structural problem in Croatia with numerous employers' associations (over 30 of them operate in Croatia, while 30 of them are united in the umbrella association Croatian Employers' Association) that are not organized at the level of clearly defined sectors of activity. Furthermore, most employers' associations act primarily as lobbying organizations towards the authorities, rather than social partners focused on social dialogue with unions and collective bargaining.

## **7. Conclusion: Recommendations for leveling-up**

Taking into consideration the structural barriers that hinder the improvement of collective bargaining, we can suggest a set of recommendations for measures and activities that could help eliminate these obstacles and, in the medium term, facilitate the process of raising the level of collective bargaining and establishing collective bargaining practices where they are not currently in place. These measures can be divided into legislative changes and other types of public policies.

### **7.1 Direct public policies: legislative changes**

#### **1. Encouraging employers to engage in sectoral collective bargaining by allowing for more flexible regulation of labor relations through sectoral collective agreements.**

As previously mentioned, an important mechanism for raising the level of collective bargaining, where such a practice exists at the company level, is to incentivize actors to change their current practice and increase the level of negotiations to the sectoral level. It is particularly important to provide incentives to employers. In Croatia, employers have been advocating for further flexibilization of certain aspects of labor legislation for decades, and most governments have favored employers through changes in legal provisions. This practice should be altered so that any further possible flexibilization can only be applied through sectoral collective agreements. Specifically, this measure can be implemented through amendments to the Labor Act, which would allow for more flexible regulation of some rules than the standard set by law through sectoral collective



agreements for certain issues.

## **2. Incorporation of collective negotiations as a mechanism for regulating specific industry issues.**

In addition to the general Labor Act, which regulates labor relations at a general level, a number of sectoral regulations and laws also regulate some aspects of working conditions and work organization in individual sectors. In such regulations, wherever possible and logical, sectoral collective agreements should be introduced as a mechanism by which sector-specific rules can be regulated in a different way than the one prescribed by law. In this way, employers would be given an additional incentive for sectoral collective bargaining and trade unions would be given additional importance, both in relation to employers and in relation to workers.

## **3. Giving preference in public procurement procedures to companies where a company-level or sectoral collective agreement is applied**

Companies that can prove they apply a company-level or sectoral collective agreement should be given preference, other conditions being the same, in public procurement procedures. This mechanism of incentives would encourage employers to engage in company-level or sector-level collective bargaining, particularly medium and larger-sized companies. Given the share of state spending in Croatia's total GDP, this would strengthen the position and authority of trade unions.

## **4. Facilitating the procedures for recruiting foreign workers for employers who apply a company-level or sector-level collective agreement**

Due to the lack of labor in the Croatian labor market, many employers are forced to recruit foreign labor. Although the procedure for legal employment of foreign workers has been simplified in recent years, it still slows down and complicates the process for many employers. The law could regulate that procedures are simpler and faster for employers where a collective agreement is applied, since the working conditions in these companies are more regulated, and there is a mechanism for controlling and supervising the rights of workers (usually by union).

## **5. Granting authority (representativeness) for company-level collective bargaining to trade unions that are signatories to the sectoral collective agreement**

According to the existing regulations that regulate the powers of trade unions for collective bargaining (representativeness status), a separate procedure for determining representativeness is conducted for each level of collective bargaining. Thus, a trade union may have the status of representativeness, and thus the authority, to sign a sectoral collective agreement, but at the same time the same trade union does not have the authority to negotiate a company-level collective agreement in one of the companies from that sector (because there are some bigger unions at the company-level). To encourage larger unions to engage in sectoral collective bargaining, it would be necessary to introduce a system of top-down representativeness. According to this model, the union that is representative of the contracted sectoral collective agreement should automatically receive the status of representativeness for company-level collective bargaining in all companies operating in that sector. This could lead to the merger of labor unions that function in the same industry.

## **6. Tightening of the regulations governing the status of social partner**

In Croatia, there is a relatively well-developed system of tripartite social dialogue that enables employers' associations and trade unions to directly influence a wide range of regulations and public policies, often in the early design stage, which gives them a unique privilege in society. As stated earlier, employers' associations in particular use this mechanism to lobby for the interests of their members. This possibility of lobbying for

the interests of its members through social dialogue mechanisms is one of the main values that employers' associations deliver to their members (companies). However, numerous sectoral associations of employers do not consume other elements of social dialogue at all and show no interest in participating in social dialogue and collective bargaining with trade unions (where they exist). To reduce such an emphasis on lobbying, employers' associations should be imposed a certain obligation to participate in social dialogue with workers' representatives.

According to a similar logic, certain rules could be imposed on trade unions related to their legal status if they do not participate in social dialogue and collective bargaining. Namely, there are trade unions in Croatia that do not emphasize collective negotiations at any level, but provide their members with some other type of services (legal representation, employer representation, organization of sports and recreational activities, etc.).

The aforementioned would imply changes to the provisions of the Labor Act, which defines the criteria for the establishment and operation of unions and employers' associations, which would oblige employers' associations and unions to maintain a certain form of bipartite social dialogue if they want to maintain their status and privileges as social partners. Part of these mechanisms can be incorporated into the law that regulates the criteria for determining representative trade unions and employers' associations for tripartite social dialogue.

## **7. Strengthening the role of European works councils in encouraging collective agreements in multinational companies**

After the adoption of Directive 2022/2041 on adequate minimum wages in the European Union, space is opened for strengthening the regulation at the level of the European Union. Namely, the experiences of Eastern Europe show that international corporations that have established collective bargaining practices in their home countries do not transfer such practices to other countries in which they operate, especially those countries where there are no centralized collective bargaining systems. In Croatia, there is evidence even that such companies actively work to demotivate unionization of their workers. In many sectors, as we described above, it is not possible to establish a sectoral level of collective bargaining without establishing the practice of company-level collective bargaining. Therefore, it would be necessary to develop policies that enable European works councils in such international corporations to exert pressure on the management of these corporations that wages in all branches must be determined in the same way, that is, through a system of collective bargaining.

### **7.2. Indirect public policies: strengthening the capacity of social partners**

#### **1. Encouraging and facilitating the process of establishment of sectoral associations of employers**

The basic prerequisite for the establishment of sectoral collective bargaining is the existence of representative social partners at the level of the sector of activity. As shown in earlier chapters, in some sectors of activity there are no employers' associations that could represent the employer side in multi-employer collective bargaining. For example, several sectoral unions that bring together workers whose employers are local self-government units are interested in concluding multi-employer collective agreements, but they do not have a suitable partner on the other side in the form of an employers' association. Therefore, it would be appropriate to provide funding for projects at the national and EU levels, which should be aimed at facilitating the networking between employers at the sectoral level and the establishment of their sector associations. Such projects should also provide funds for the education of employers regarding the benefits of collective bargaining for them, both at the company and sectoral level.

#### **2. Encouraging and facilitating the process of establishment and strengthening of sectoral trade unions**

Just as on the employers' side, a structural obstacle to the establishment of sectoral social dialogue in some sectors is the absence of sectoral unions, which bring together workers from a larger number of employers from the same sector of activity. Therefore, in the same way, as in the case of employers, funds should be provided for financing medium-term projects of strengthening/establishing sectoral unions, which can then be a credible partner for employers' associations in sectoral collective bargaining.

### **3. Measures for trade union organizing in sectors and occupations where trade union organizing is minimal or non-existent**

A prerequisite for any collective bargaining is the existence of a union and a certain level of union density. Research in Croatia, as well as in other countries, has shown that there are more and more sectors of activity and occupations in which trade union organization is virtually non-existent or minimal. In such sectors, it is first necessary to invest significant efforts in the union organization of workers, which is also a prerequisite for the implementation of Directive 2022/2041 on appropriate minimum wages in the European Union. Therefore, national and EU funds should be provided for medium-term projects of union organizing of workers in sectors with a low level of union density. The aforementioned could be ensured through the investment of funds in the establishment of general trade unions covering several related sectors and occupations. Furthermore, it is necessary to finance projects that would generally strengthen the organizational capacities of unions, including knowledge about organizing workers and financing professionals who deal with this work.

### **4. Strengthening the strike capacity of trade unions**

Finally, the ultimate means of securing collective agreements is industrial action, including strike action. In Croatia, but also many Eastern European countries, the existing unions have a very low mobilization potential, even when they have a significant share of workers who are union members. Therefore, through projects financed from national and EU funds, it is necessary to encourage the strengthening of the mobilization potential of trade unions. It is necessary to strengthen the awareness of union leaders about the importance of a credible strike threat to strengthen the union's negotiating position and also to strengthen knowledge about techniques and strategies for mobilizing membership for various types of industrial actions.

# CYPRUS

GREGORIS IOANNOU AND SERTAC SONAN

## 1. Introduction

The state can basically support collective bargaining arrangements, through economic incentives or administrative compulsion. Incentives may take the form of tax relief and subsidies rewarding employees and employers who are unionised and engaging in collective bargaining while compulsion may involve making collective bargaining mandatory, through incorporating it in public procurement selection criteria or even sectoral regulations. In this report we briefly elaborate some suggestions along these lines, taking into account the specificities of industrial relations in both parts of divided Cyprus, as mapped out in Ioannou and Sonan (2019) and account for an example that has already taken place in the northern part.

## 2. Building upon existing collective bargaining traditions

The most significant multi-employer bargaining arrangements are found in hospitality and construction industries, more specifically in medium and large sized hotels and in medium and large construction firms. This is a result of tradition dating back many decades and trade unions have managed to maintain multi-employer bargaining despite the major challenges this faced as a result of the financial crisis' consequences in the 2010s (Ioannou, 2021). In recent years, collective bargaining in these two industries has been indirectly strengthened through policy initiatives which introduced legally binding working time regulations and occupation-specific minimum wages on the basis of existing sectoral collective agreements (Trimikliniotis, 2023). Despite the gradual erosion of trade union density, trade unions were able to retain sufficient density in these industries, maintain bi-partite dialogue structures and successfully negotiate framework agreements which were subsequently adopted by the state and instituted in legislative forms.

In other service industries, where collective bargaining traditions are absent and where trade union density is low and collective bargaining exists only at enterprise level in a few enterprises, policy changes are more difficult to undertake, yet at the same time top-down initiatives seem to be the most realistic way forward. Any policy initiative in such context of trade union weakness and employer reluctance would presuppose strong political will on behalf of the state to intervene and effectiveness in the design of such intervention. Given that in the Cyprus' industrial relations system, 'erga omnes' clauses and extension mechanisms are absent, collective bargaining coverage ranges around unionisation rates (Ioannou and Sonan, 2023). Thus, policy initiatives to promote collective bargaining need to also include specifically steps to increase unionisation rates.

### **Incentives-based initiatives:**

In industries without significant trade union presence and without significant collective bargaining arrangements, policy initiatives to promote multi-employer collective bargaining need to begin essentially from scratch. For the major trade unions, PEO and SEK, the biggest incentive to devote resources and efforts to unionisation drives and organising attempts with which to secure recognition agreements is the increased possibility of success in this endeavour. For workers and employers in such industries though, there seems to be definite costs and risks and uncertain benefits. Workers are often afraid of employer hostility to unionisation, they may not believe in the efficacy of unions or they may not realise the long term benefits of collective bargaining or they may be lured by the possibility of individual bonuses or prioritise direct and immediate monetary benefit (slightly increased wage, avoidance of union subscription) as opposed to indirect and future benefits (provident/pension fund, welfare fund). Employers are often opposed to collective bargaining because it limits their freedom and power and often raises total labour cost, even if the stability afforded through it may increase productivity and reduce turnover cost. By offering some financial incentives to both workers and employers, both trade union and employer density can increase, and this can pave the ground for instituting and maintaining collective bargaining.

Most workers in retail trade and other private services where currently collective bargaining does not exist (secretarial work, courier services, warehouse work) are low paid, earning a bit above the national minimum wage and mostly below the income tax threshold. Thus, unlike better paid workers in say white collar contexts, skilled trades and professions, they currently enjoy no or little tax incentive if they join a trade union or an occupational pension/provident fund (if available to them)<sup>3</sup>. A policy initiative aiming to increase unionisation rates and promote collective bargaining in such sectors could involve providing a different sort of economic incentive to workers to join trade unions, such as for example an annual subsidy covering the union subscription cost. For employers, an analogous economic incentive to induce them to engage in collective bargaining with trade unions could involve a subsidy (calculated on the basis of workforce size) in the form of a reward for initiating and maintaining collective bargaining arrangements. This could have two elements in it: a) covering the enterprise subscription cost for membership in the relevant employer associations and b) partially covering additional cost in instituting and maintaining collective bargaining arrangements. Both these subsidies could be administered through the social insurance system via discounts in employee and employer contributions; alternatively, they could be administered separately, but again within the remit of the Ministry of Labour and Social Insurance as they are distinct from taxes.

### **Compulsion-based initiatives:**

The most common compulsion-based initiative in support of collective bargaining that can be undertaken is legislative change. The 2012 law which provided a procedure for obligatory trade union recognition in contexts where trade unions are highly representative has produced modest results. This is because for unionisation and consequently trade union representativeness to grow, workers need to see that the benefits from this outweigh the risks and costs. In settings where a substantial section of the workforce is irregularly employed, on part-time and temporary basis, achieving the 25% initial quota of membership to initiate the process is challenging. This is more so, when the employer does not share information about the numbers and contract types of staff with the trade union and obstructs access to the workforce. An amendment of the law to limit the initial quota required and to further ease trade union access to the workforce would be a step in the right direction. Finally, in sectors where multi-employer collective bargaining exists, but coverage is low, a collective agreement extension mechanism could be instituted, making it

<sup>3</sup> Trade union subscriptions in Cyprus are tax free, while in numerous private sector contexts, occupational pension funds, whether at enterprise or sectoral level are administered by joint employer-trade union committees. Worker eligibility to join this "Provident Funds" is usually not automatic and is often an issue upon which trade unions bargain with employers.

mandatory for the whole industry <sup>4</sup>

Beyond legislation regulating the 'supply side' of labour, other compulsion-based initiatives can be undertaken by the state at the political and administrative levels to regulate the 'demand side'. All businesses deal with the state and are subject to numerous regulations. If sufficient political will is present, some of these dealings of the state with private firms can be used to promote collective bargaining. Existing regulations could also be amended to include clauses that make collective bargaining obligatory, or that substantially raise the cost for employers who avoid it.

The state, both at the level of the public sector proper, and at municipal and semi-governmental organisations (public services) levels is a major buyer of goods and services from a vast array of firms. It could utilise this enormous power it has as a buyer in the service of promoting collective bargaining for example by making obligatory for all firms bidding for public contracts, or providing services with public money, to have collective bargaining arrangements in place. This could take place in a phased manner: beginning for example with an administrative change in the weighting of selection criteria benefiting firms with collective bargaining arrangements, subsequently benefiting those who are part of multi-employer bargaining arrangements and finally disqualifying all together those without collective bargaining arrangement from bidding in the first place.

In addition to its economic power, the state can also utilise its regulatory power proper to promote collective bargaining. For example, it may link the existence of collective bargaining to the securing or maintaining of operation licences, including it as an item in application procedures and inspection and review processes. Like with public procuring, this 'administrative' promotion of collective bargaining could vary across industries and be phased starting with initially signalling that this is the preferred mode, to rendering it as the highly preferential one before finally making it outright obligatory.

### **3. The northern part: Building collective bargaining from scratch: an experiment in the private media sector**

The northern part of Cyprus, which is a de jure European Union territory (since 2004) but a de facto state where the *acquis communautaire* does not apply, in many respects, offers a sui generis case. The island was divided in 1974, and in 1983, the Turkish Cypriot authorities controlling the northern third of the island unilaterally declared independence (as Turkish Republic of Northern Cyprus [TRNC]) but failed to receive international recognition except from the patron state Turkey. Although an opportunity for the reunification of the island and EU membership, and hence becoming part of the international community arose in early 2000s, this was not seized by the Turkish Cypriot authorities. Having been embroiled in a frozen conflict since 1974, most legislations also give the impression that the country is frozen in time. The law regulating collective agreements (and strikes, and referenda) came into force only in 1996, while the trade unions law can be traced back to 1971. Neither of them has been seriously updated since then. The current international debates over decent work or collective bargaining sound like discussions from a distant universe.

Currently, although a majority (around 70%) of those who work in the public and semi-public sectors are unionized, unionization and collective bargaining are almost non-existent in the private sector. This overall negative outlook notwithstanding, in the recent past there was a successful attempt to promote collective bargaining and unionization in the private sector, which is worth elaborating on in the context of this study. This was a scheme, which was introduced in July 2018 when a short-lived social democrat-led four-party coalition government was in power, and involved government incentives for private media institutions, which signed collective agreements with their employees. An important pre-condition was that the employees are TRNC citizens as the funding of the arrangement

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<sup>4</sup> Such an initiative was attempted in a 2012 bill which gave the Minister of Labour and Social Insurance the right to decree the extension of sectoral collective agreements, but because of employer opposition the right-wing government that took over in early 2013 shelved it and has never been put forward since.

came from a special fund to promote the employment of domestic labour force.

Under the provisions of this regulation, businesses in the media sector which had a minimum of three employees holding press cards would have the opportunity to benefit from government incentives. This incentive was in the form of refunding the social security and provident fund premiums for the specified employees, contingent upon the condition that the employer enters into a collective agreement with the union organized in the workplace. This was meant to last for 36 months only but later it was extended.

At the time, the Minister of Labour, Zeki Çeler presented the arrangement, which was prepared in collaboration with a trade union organized in the media sector (Basın-Sen), and the Journalist's Association, as an attempt to promote unionization in the private sector (TRNC Ministry of Labour and Social Security, 2018). The President of the Journalists Association Sami Özuslu praised the effort by saying *"the unionization in the private sector cannot be by force, but it can take place with incentives. Starting from today, I hope that unionization and collective bargaining will increase in the private sector"* (*ibid.*).

The incentive scheme was welcome by the wider public<sup>5</sup>. This has led to a rise in the number of workplaces where Basın-Sen signed collective agreements from one to six, then recently reached 13; and was expected to reach 15 soon at the time of the writing. According to the president of Basın-Sen, Ali Kışmir, thanks to the project, the number of their members went up from 78 to 470; almost all of their members were working in the public sector before the scheme was introduced, and now around 400 of them are in the private sector (Kışmir 2023). Kışmir sees the scheme as a big success as it secured the social benefits of employees in the sector<sup>6</sup> and increased the dialogue between his union and the employers (*ibid.*).

Not everything went smoothly, however. Although Kıbrıs Media Group (KMG), the biggest private media company in the northern part of the island initially joined the scheme, in the first instance of economic hardship, and disagreement with the union, the KMG stopped abiding by the collective agreement, and later, it made its employees resign from Basın-Sen and join a yellow trade union organized only in KMG. This lent support to the claim of a small political party/movement on the left (Bağımsızlık Yolu [Path to Independence]), which saw this initiative as nothing but subsidy for the employers; they advocate for compulsory unionization in the private sector (Ankaradegillefko-sa.org 2019).

Although the probable extension of this incentive scheme to other sectors was announced at the launch (TRNC Ministry of Labour and Social Security, 2018), and some preliminary studies later showed that this was financially feasible (Çeler 2023), this did not eventually happen because the Minister of Labour's efforts to extend the arrangement to some other sectors received strong resistance and criticism particularly from the Chamber of Commerce (Çeler 2023; see also Kıbrıs Türk Ticaret Odası 2019). An ideological hostility to trade unions can be observed in this reaction. Eventually, the coalition government, which introduced this arrangement was replaced by a series of conservative-led coalition governments, who did not show any interest in broadening the scheme. On a more positive note, although the initial project was limited to 36 months, the subsequent governments agreed to extend it further on a yearly basis.

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5 There was also negative reaction from one media organization whose editor argued that they were excluded from the consultation process. He had two basic arguments: (a) this is an attempt to force unionization using public money; (b) it is discriminative as it supports only the domestic workforce (see Akar 2018). Eventually, this media organization also became part of the scheme and started signing collective agreements.

6 According to Kışmir, before the scheme most employers did not even pay the premiums at all, depriving their employees from benefiting from public healthcare services.

## 4. Conclusion

The main suggestion that comes from this Cyprus contribution is the exploration of an economic incentives-based approach that could, or arguably should, be combined with some of compulsion arrangements that will both complement and reinforce it. This could be used both to extend or level-up existing collective bargaining arrangements as well as establish them from scratch in settings where they are absent. The scheme of social security and provident fund premiums refund as a reward for collective bargaining agreements in the northern part can serve as a practical example.

However, as the aborted 2012 legislation and the private sector media experiment in the show us, there are limits to what can be achieved in circumstances where there is strong suspicion on the employers' side. To address and overcome obstacles and opposition, a strong political will and ideological commitment on the government side to take further steps in this direction will be needed.

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# CZECHIA

MONIKA MARTIŠKOVÁ

## 1. Introduction

In the proposed commentary on possible ways to increase the low collective bargaining coverage in Czechia, I brainstorm about possible solutions to increase the collective bargaining coverage via legal changes, levelling up the collective bargaining, broadening the extent, changing the scope of the bargaining and introducing other supportive measures. The proposed solutions are interconnected and should not be understood as isolated measures, but rather as a complex set of measures to support collective bargaining in the country with low bargaining coverage and very low trade union density. This input is based on my own research work including recent interviews with employers and trade union representatives, and observation of the debates within the trade union movement.

## 2. Collective bargaining and social dialogue in Czechia

The current level of collective bargaining coverage is 34 per cent (in 2019, the latest figure) and remained constant in the last 10 years. Trade union density is at the level of 11.4 per cent (in 2018, the latest figure) and is constantly falling (it was 27 percent in 2000). Employers association density is around 67 per cent and remains constant. There have been no changes to the institutional setting of collective bargaining in the recent years.

### 2.1. Legal framework

The legal framework in Czechia strictly applies the non-derogation principle, i.e. lower levels of collective bargaining can only improve the provisions set at the upper level including national labour legislation. There is an Act on Tripartite Consultations guiding the involvement of social partners in the tripartite body which is the consultative council of the government and its decisions do not have a binding character. Then, the social dialogue is guided by the Collective Bargaining Act and by the Labour Code. Besides, trade unions have a historically strong role in guiding health and safety at the workplace.

Collective bargaining occurs between officially recognized union organizations, which require a minimum of three members for legal registration. While either party can initiate the bargaining process, it is typically the unions that take the first step. Employers are required to respond to the initiation but are not obligated to reach an agreement. These collective agreements, typically lasting for one year, hold legal authority. Agreements made at the sectoral level, involving employers' associations, cannot establish conditions for

employees that are less favourable than those stipulated by law. Furthermore, the agreement is valid to all employees within the organization, not only to trade union members.

Extension of the multi-employer collective agreement is possible and applied in some sectors. If both parties agree on the extension for the defined sector (based on the NACE code), Ministry of Labour proceeds and extends the agreement which is then legally binding to the whole sector.

## 2.2. Level of collective bargaining

Czech legislation recognizes the sectoral (referred to as higher-level) collective bargaining and the company level collective bargaining. These two can overlap, thus one employer can be covered by both, higher-level and company level agreements, in such a case company agreement only improves the higher-level agreement. In practice, there is a limited number of higher-level agreements, currently 20 agreements are registered, covering sectors such as energetics, construction, chemistry or airship construction. Four out of 20 agreements are extended (construction, paper processing industry, glass processing industry and garment and textile industry). The extension mechanism is activated when both sides of collective bargaining agree on it and submit the request for the extension to the Ministry of Labour.

**There is little motivation for employers to participate in the higher-level bargaining, especially in the sectors dominated by the foreign companies** (Myant 2019). The main obstacle in increasing the collective bargaining coverage is the understanding of the possibility to set working conditions at individual or at the company level as a part of the competitive market which should not be distorted by any higher-level coordination. As put by the representative of the employers association which is not participating in the sector collective bargaining: *“It would be an impulse for us to think about sectoral social dialogue, if only there was some impetus from our members. We are just some say professional association here, we are paid for by the contributions of our members. And if our members only want social dialogue at the level that we are conducting it [company level], then that is what is important for us.”* (interview 07/2023).

**Currently discussed topics related to green or digital transition** and related labour dismissals but also labour shortages do not seem to be an impulse for better coordination for employers. On the other hand, trade unions aim to establish higher level collective bargaining in previously uncoordinated sectors building on the common problems for employers and employees (such as retraining), thus not insisting on the wage setting in the higher-level collective bargaining (interview 08/2023).

**At the national level, social partners meet at Tripartite meetings** (Council for economic and social agreement, Rada hospodářské a sociální dohody ČR, RHSD). Despite, there is no collective bargaining at the national level, the body is valued among social partners for providing access to government representatives and thus possibility to articulate topics related to the labour market (Myant 2019). At the same, it is important to mention that the ability of social partners to influence government policies is limited and dependent on the ruling government (Martišková and Šumichrast 2023). The social democrats were naturally leaning to trade union requests more often than the centre-right wing governments. Tripartite dialogue thus suffers from the dominance of the government’s political preferences, leaving trade unions and employers without the possibility to implement autonomous decisions at the national level.

The company level is the dominant level of collective bargaining resulting in the legally binding collective agreement. The results of the company level bargaining are heterogeneous and there is little coordination at the sector level (Martišková et al. 2021).

### **2.3. Extent of collective bargaining**

Higher-level collective agreements cover either employers signing the agreement (most usually associated in the employers association) or the whole sector (if extended). At the company level, collective agreement is valid for all employees regardless of membership in the trade union organization. This decreases the motivation of employees to enter trade unions. In many cases, the collective agreement is bargained only to some group of employees, e.g. only to production workers, while administrative workers within the company (think about automotive), are excluded from bargained wage increases and their wage is a subject of individual employee–employer bargaining. This further undermines the role of collective bargaining at the company level because this concerns only production workers (low and middle-qualified).

### **2.4. Scope of collective bargaining**

The most important topics for collective bargaining in Czechia are related to wages and working conditions improvement. Among the top five most frequent provisions in collective agreements, we find employer’s contributions to food, working time arrangements, holidays beyond the Labour Code, payment provisions and wage tariffs. The least frequent are the provisions on reduction of agency work, employer’s contribution to commuting and short working schemes at the workplace.

Employees’ professional development is mentioned in one-third of collective agreements, but only 1,8% explicitly regulate the retraining policies (see Table 1). The fact that some provisions are rare in collective agreements does not necessarily mean that they are not the subject of social dialogue between employer and trade unions at the company level. These topics are, however, consulted but not codified in mutual agreement, thus the final decision remains at the discretion of the employer.

The higher-level collective agreements rarely regulate wages and mostly concentrate on incremental improvements of working conditions, e.g. in the increased number of holiday days, or additional payments for weekends and night shifts. Wage levels are rarely regulated, and if regulated, they are set very little above the level of minimum wage.

In Czechia, there is no higher-level collective bargaining in the public sector except for the state service employees. Even this agreement does not regulate wages, and it only stipulates that both sides agree to start consultations to wage increases to a defined date. The wage levels in the public sector are defined as tariff wages regulated by the government, thus via the unilateral decision of the government. It is important to mention, that part of the wage tariffs (in the lower grades) are set under the minimum wage and employees falling in the lower grades are compensated by special “personal remuneration” payments to gain the statutory minimum wage.

Table 1: Content summary of collective agreements, Czechia, 2019

PROVISIONS IN COMPANY-LEVEL COLLECTIVE AGREEMENTS	ABSOLUTE NUMBER OF COLLECTIVE AGREEMENTS	COLLECTIVE AGREEMENTS %
Employers contribution to food	1204	95,6
Working time arrangements	1155	91,7
Holidays beyond Labour Code	1113	88,4
Payment provisions	1077	85,5
Wage fixes	982	78,0
Employers contribution to pension insurance	827	65,7
Severance payment (employed more than one year)	637	50,6
Employees professional development	425	33,8
Of which provisions on qualifications	23	1,8
Severance payment (employed less than two years)	422	33,5
Severance payment (employed less than one year)	411	32,6
Employers contribution to life insurance	319	25,3
Work account provisions	93	7,4
Employers contribution to commuting	88	7,0
Reduction of agency work	37	2,9

Source: Authors' compilation based on data from Information On Working Conditions (IPP)<sup>7</sup> (kolektivnislouvy.cz)

### 3. Recommendations

#### 3.1. Increasing collective bargaining coverage via legal solutions

- **Motivation to apply extension mechanism**

**The current mechanism as such works theoretically ok but it is rarely applied.** Motivation for the extension is currently very low – it needs new impulses such as an effort to protect the sector by setting common standards to protect against wage dumping, or by coordinating responses to current challenges (related to the changes in the scope of the CB). This can be provided through soft tools such as awareness rising and networking among employers and trade unions, especially when seeking the ways how

<sup>7</sup> In 2021 selected data about wage and working conditions were analysed from 1,775 collective agreements from 28 different trade unions (TU), which represented approximately 835 thousand employees. In 2021, 21 higher level collective agreements or their amendments were also analysed and evaluated.

to address new challenges on the labour market, such as retraining, collective bargaining should be discussed as viable option. It can also be achieved via legal tools, enhancing the representativity criteria and enforcing the extension upon the request of only one of the signing parties recognized as representative.

- **Strengthening collective bargaining in the public sector**

There is higher level agreement for state service employees, but other public sector employees are not covered by the sector level agreement, especially education and healthcare would benefit from wages bargained in collective bargaining. This would also allow to correct the unilaterally defined tariff wages which are defined below the statutory minimum wage.

- **Public procurement in favour of social dialogue and collective bargaining (labour clauses)**

It would represent an important incentive to bargain collectively especially in the sectors often entering the public procurements such as construction, automotive, services, IT or hospitality. The advantage would be that sectors with a low presence of trade unions, e.g. in the IT, would gain an incentive to start social dialogue.

- **Establishment of labour courts to decrease the time of labour dispute resolutions.** This could make labour disputes more frequent, and thus it would contribute to higher enforcement of workers rights. Specialized labour courts would also further strengthen trade unions servicing role in providing legal advice and assistance to their members, thus eventually increasing the trade union membership.

### **3.2 Increasing the collective bargaining coverage via increasing trade union density**

- **Collective agreement valid only to trade union members at the company (sector?) level<sup>8</sup> (differentiation clauses).** If trade unions have a chance to improve working conditions only for their members, this would represent a strong incentive for employees to enter trade unions thus improving the associational power of trade unions. On the other hand, even now, trade unions in some cases bargain only for specific groups of workers (e.g. production workers) but this does not motivate other employees to enter trade unions. If not supported by other measures, this measure can lead to a decrease in collective bargaining coverage (at least temporarily).

- **Organizing**

Despite the sharp decrease in trade union density in the last 20 years, trade unions did not embark on organizing strategies. There are, however, some successful cases from recent years, e.g. in the care sector, automotive or platform work. Comprehensive and more targeted organizing campaigns are still missing. This can be strengthened by project-based work or internal capacitation within the trade union movement.

It is important to highlight that this measure targets only trade unions and not employers, thus this only indirectly supports the goal of attaining increased collective bargaining coverage.

- **Improving conditions for trade unions' operation**

Ensuring trade union members have adequate time and place for their work. Here we can consider an application of the Slovak regulation where the employer contributes to the wage of the trade unionists

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<sup>8</sup> It is not clear how this would be evaluated in terms of equal opportunities at the workplace. It is one of the real proposals for the action plan from the Ministry of labour, which, paradoxically, trade unions are opposing.

based on the number of employees they represent. However, even this relatively generous support applied since 2010s is not helping to increase trade union membership in Slovakia.

- **Protection against union busting**

The quick and strict application of the legislation protecting whistleblowers can be beneficial for the trade unionists uncovering maltreatment of employees at the workplace, because it can help trade union members gain protection from union busting.

### **3.3 Increasing the collective bargaining coverage via a change of the focus of collective agreements**

- **Increasing the collective bargaining coverage tackling the scope of agreements**

There are three possible ways:

- 1. The scope of the collective agreement is limited but would become more acceptable to employers** (e.g. not covering wages but only retraining policies), but there is the risk of further decreasing the impact of the agreements on advancing working conditions
- 2. The scope of the collective agreements is redefined** by abandoning the strict non-derogation principle in the company and sector-level agreements so the trade unions have “something to put on the table” when bargaining with employers. There should be an in-depth discussion where to allow downward derogation and how to ensure this won’t be misused.

**Extending the scope of agreements to previously not covered groups of workers.** This would be relevant for the agency workers, who are rarely covered by the CA at the workplace they are assigned to. The legislative change would be required, such that the CA at the user employer would be valid to agency workers.

### **3.4 Other supportive measures**

- **Raising awareness about the importance of good working conditions:**

Establishing data hub on the working environment (working conditions, wages, presented to media, journalists training, index of working environment, parallel to index of entrepreneurship environment etc), cooperation of trade unions and NGOs in this topic, establishing the ecosystem of actors to change the public discourse on quality of work and wage increase

- **Award for innovative social dialogue**

This can be regarded as a supplementary measure to boost innovations in collective bargaining and to raise awareness about social dialogue in the public sphere.

## **4. Conclusion**

Social dialogue in the CEE region needs reframing. It can’t be anymore viewed by employers as an obligation and it can’t be regarded as a goal for the trade unions. Collective bargaining is a way how employers can improve working conditions and thus increase the attractiveness of their workplace. At the same time, it must become a part of their social responsibility agenda, equally (and even more) important to planting trees and

supporting the disadvantaged in their neighbourhood. For trade unions, collective bargaining must be a tool to achieve predictable and secure working conditions.

For this to be achieved, trade unions can't be alone. We need to establish an ecosystem of actors who promote the topic of good working conditions and decent wages via different channels. The complexity of actors should include researchers and NGOs providing rigorous arguments and informing the public debate about the importance of decent working conditions. The ecosystem should further consist of trade unions and employers who trust each other and thus conclude agreements with impact. This also includes journalists or other professionals who inform about maltreatment at workplaces. It needs also a bold whistleblowers who report cases of maltreatment to Labour Inspectorates. It includes also reliable labour inspectorates and labour courts which are quick in their decisions. Last but not least, it includes aware and oriented employees who know their rights and are not afraid to reclaim them.

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# FINLAND

PAUL JONKER-HOFFRÉN

Since the publication of Jonker-Hoffrén (2019) the new Finnish model of labour market relations in its essence has been a sector-based model, with ample opportunities for local bargaining. Local bargaining has been common in many aspects of the employment relation, such as working time organization, use of outsourcing of work and job-based wages. However, already in the Finnish-language publication Jonker-Hoffrén et al (2021) we flagged a few developments that warrant attention by unions. The current Finnish right-wing government seems to have made it a top priority to radically change the nature of Finnish labour market relations, and recent public discussions mention the loss of trust between labour market partners and the loss of the “we-spirit” in the face of uncertain economic development. For this reason, this article first shortly sketches the broad development in the labour market relations. After that, several critical points are identified to which unions should attend.

## 1. Labour market relations since 2018

The critical junction in Finnish labour market relations happened in 2018, when Elinkeinoelämän keskusliitto (*Confederation of Finnish Industries*) announced that through an internal rule change, it ceased to be a representative for its members regarding labour market agreements. As a result, the possibility of any centralized labour market agreements in the future was gone. Although initially there was quite some apprehension about the new status quo, it has proven to be functional and perhaps surprisingly devoid of conflict. Finnish labour market relations have experienced purely sectoral agreements before, but these in some cases resulted in high strike levels (especially in the 1970s and 1980s). Previously, a centralized (tri-partite) agreement often also guaranteed labour market peace or at least a shorter period with strikes. In the new model, on the other hand, formally every sector negotiates collective agreements based on their own assessment of their sector. In practice though, it appears that especially the export industries are informally coordinating wage increases. For example, the most recent round of collective agreements in the export industries by and large stuck to a so-called “4+2” model, which is short-hand for a two-year collective agreement with respectively 4 and 2 percent wage increases (as an attempt to accommodate inflation, but guard price competitiveness). Currently, the government is pushing hard to revive the “export-led model” and enshrining it into law. Unions have been on strike against this very actively, also because it conflicts radically with the voluntarist nature of the Finnish labour market relations model.

The unionization rate in Finland has been steadily declining, although this varies by sector and by gender. On average, the unionization rate by the end of 2022 was 54,7%, based on the scope of collective agreements rather than on union membership statistics (Ahtiainen 2023). In the public sector the rate was 76,7%, in industry 63,4 and in services 41,6%. Ahtiainen (2023) provides various metrics on calculating unionization



rates, including one based on the scope of collective agreements. One worrying statistic tells that 30,3% of employees is outside the scope of a collective agreement. This is one issue that has an effect on the extension mechanism in Finland, which I discuss below.

The only major protracted and complicated industrial action happened in 2022 in the nursing sector. This conflict essentially was about typical labour market issues: wages and working conditions. But it was as much about the pay gap between industry and public sector and between men and women. It was complicated because it happened in the context of a major organizational reform of the social- and health sector. Most importantly though, the conflict showed the extent to which the state is willing to intervene in issues that previously were the exclusive domain of the labour market partners.

The government led by Juha Sipilä from 2015 to 2019 for the first time tried to intervene in the labour market relations, in order to make sure unit labour costs would decline by 5%. The intervention included provisions on local bargaining, but ultimately the government proposal was rejected by the Suomen Yrittäjät (*Federation of Finnish Enterprises*). Even though it was a comparatively heavy-handed intervention, the government (unsuccessfully) tried to find support for it in the broader labour market relations field.

In 2022 however, at issue was a labour market conflict around the collective agreement of the health care sector, especially concerning nurses. Even though in Finland nurses are often in the public sector, their right to strike has not been restricted – as long as essential patient care provisions are taken care. During rising tensions in negotiations, it was argued that the nurses' union did not ensure sufficient essential care. As a result, the conflict entered the political arena and ultimately a Patient Safety Law was activated, which restricted nurses' right to strike and could mandate nurses back to work. Even though the conflict was eventually resolved, the law has stayed in place, setting a precedent for the state to interfere in labour market relations.

This episode dovetails with the institutional changes in the labour market relations system: since the Confederation of Finnish Employers is no signatories to labour market agreements anymore, it could focus more on its political lobbying. Formally, in Finland there are no institutional ties between political parties and labour market organizations, but the current chairperson of the Confederation is an esteemed member of the National Coalition Party, who has served as a Minister of Defense and Minister of Economic Affairs. Although the Social Democratic Party of Finland has had ministers (of Labour) who used to be chairpersons of labour unions, there hasn't been a similar intervention before. The newest Finnish government has a coalition program, which is very much aimed against the current system of labour market relations. Below, I discuss risks to labour unions, which are on the one hand due to policy, and on the other hand due to general developments in Finnish society.

## **2. Policy risks for labour unions**

### Renewal of strike regulation

The current government intends to restrict the right to strike. Although policy-making is still in process, the intention is that update strike regulation comes into force from the beginning of 2024. The three proposed changes concern political strikes, secondary strikes and a personal fine for participating in illegal strikes. The government intends to restrict the right to political strikes to 24 hours. Although the details are unclear, the government points to similar restrictions in other Nordic countries. The measure appears to be aimed at union-organized political strikes, which under current Finnish law are legal. The government wants to change legislation on secondary strikes in such a way, that an evaluation of proportionality is performed. Secondary strikes will only be allowed to affect the parties to the primary conflict.

As legislation is being prepared, it is difficult to assess at this moment whether these proposed changes affect multi-employer bargaining in Finland. Regarding secondary strikes, it is likely that the proportionality criteria

will be more important than the “afflicted parties” criterion, but the risk for unions is that the state will have two quite diffuse criteria to prohibit secondary strikes. These criteria will be shaped in court cases rather than through policy development. The restriction on political strikes seem aimed at the potential of unions to attract many people legally to protests. Large scale protests are rare in Finland, so it is unclear what the effect of this measure will be. Furthermore, this measure does not directly affect multi-employer bargaining, except through the loss of trust that has already happened since the new government started.

### **3. Local bargaining**

By far the most controversial policy proposal regarding the labour market relations is the revived proposal from 2016 to allow local bargaining also in firms which are unorganized, i.e. not a member of an employers’ association which is a signatory to the collective agreement. In Finland, it has long been accepted that local bargaining on themes mentioned in collective agreements is only allowed in organized firms. The reasoning behind this is that in these firms there will be also a shop steward or so-called contact point for these local bargaining processes. To extend the scope of local bargaining without a mandatory shop steward can be seen as a direct attack on the primacy of labour unions in negotiations. Earlier, in 2016, a compromise by tri-partite parties on this issue did include a mandatory shop steward, but for this reason it was not acceptable to Suomen Yrittäjät. Therefore, a deal didn’t go through. The current government appears to believe that it will have enough support to make a legal intervention; the earlier 2016 proposal was an agreement by the major labour market partners.

The risk for multi-employer bargaining is obvious: firms do not have to be a member of their sector’s employers’ association to be able to locally bargain about issues, which likely has been an incentive for the employers’ organization rate. Furthermore, this model wrests control from labour unions about local negotiations to other local bargaining partners, for which the unions do not have election procedures. Unions also do not have necessarily contacts with these non-unionized employee representatives. The proposed model would expose what I have earlier identified as the “competence trap” (Jonker-Hoffrén 2020).

As long as there were comprehensive or sectoral collective agreements, unions developed skills in negotiating that kind of agreements to the detriment of organizing the local workforce. Finnish labour market relations have included many issues that are to be locally negotiated, but the union movement may have to face a situation in which they must start with unionizing workplaces, as it might not be necessary to be unionized to bargain locally. This relates to another development, which should be a core focus of Finnish unions’ attention.

A positive approach to this challenge is that in some sectors, for example the Restaurant and Hospitality sector, there is no interest in (firm-level) local bargaining. The reason is that the size of establishments is so small, typically 20 or less employees, that from an organizational point of view there is no sense in firm-level collective agreements. This is likely a sentiment shared in other parts of the services sector. Although there is no desire to go back to the times of centralized collective agreements, there is thus a threshold on the employers’ side as to what is sensible.

At a practical level, my advice in this respect is to try to strengthen local unionisms. This is not necessarily easy, because of diversity in professions and type of employment contracts in the services sector. This diversity in potential members and workplaces is also a background for the decline in collective bargaining coverage. On the other hand, the willingness to embrace firm-level bargaining appears to relate to average firm size. This is important for especially the service sector unions, as they might be able to find common ground for multi-employer bargaining against the tendencies in industry. Furthermore, given existing worker shortages and relatively bad working conditions, service sector unions may well be able to broaden the scope of bargaining in this respect.

#### 4. Institutional change through economic change

In Jonker-Hoffrén (2019) I wrote about the criteria for collective agreement extension. The current government has not signaled its intention to change these criteria, but due to changes in professional (or sector) boundaries and developments in union membership it may not have to. It is no secret that certain political parties and employers' associations are not particularly fond of the extension of collective agreements (especially in the light of the still-valid limits to local bargaining). The committee responsible for extension decisions (*työehtosopimuksenyleissitovuudenvahvistamislautakunta*) receives new collective agreements. Often it doesn't have to reconsider its decisions, but in case of new sectors (or new actors), or when the sector has significantly changed, it must reconsider. In recent years it has occurred that collective agreements for new sectors have been declared extended, but also that the collective agreements of old sectors have declared not to be extended anymore.

The decisions to declare a sectoral (or even company-wide) collective agreement extended are public and can be found on [www.finlex.fi](http://www.finlex.fi), while the full list of extended and non-extended collective agreements with the date of the decision can be found here. The importance of these decisions lies in the above-mentioned regulation of local bargaining. However, as the organization rate of industry slowly declines and that of the service sector (on average) is clearly below the 50% threshold, it is likely that, in the near future, extension of collective agreements becomes less common. This is not only due to membership developments however, but also depends on the organization rates of the employers associations. One "trick" union officials have mentioned, is that non-organized firms nonetheless declare they apply the collective agreement. This has a quantitative effect on whether the collective agreement is seen to be representative, because when the collective agreement has to be submitted to this committee, the labour market partners also have to inform about the number of members and member firms covered by the collective agreement. When the sector many unorganized firms, then it is possible, regardless of union membership, that the committee rules the collective agreement to be non-representative.

It can be assumed that collective agreement extension is an important issue for unions. Overlap between blue- and white collar work and overlaps between work in public and private sectors due to privatization and/or differences in employment contracts can cause border conflicts between unions. Although it is difficult to make a quantifiable estimate, it is safe to assume that it is not necessarily preferable to have an ever-fractioning union landscape. The challenge is nonetheless to attract new members, especially in the services sector. This sector is known for high levels of non-typical employment contracts (Sippola, Jonker-Hoffrén and Ojala 2023). The fact that according to Ahtiainen (2023) there is roughly 30% of employees outside the scope of collective agreements should be a call to action for unions. In terms of potential union members, Ahtiainen (2023) reports that there would be slightly over half a million employees that would be within the scope of unions. In the services sector nonetheless both labour market parties seem to be aware of the importance of this issue.

#### 5. Conclusions

For unions, the most acute point of action is the attempt to tighten the right to strike. The current Finnish government intends to weaken a number of labour market provisions, such as dismissal rules, which do not fall within the scope of (traditional) labour market relations. Other issues formally relate even less directly with issues labour unions normally deal with, such as social security issues, but the cumulative effect like is that they affect the unions' constituency, especially in the services sector and public sector. A weakening of the political strike instrument can be circumvented, but nonetheless weakens the institutional position of unions as a representative voice of civil society.

Taken together it may be that the bigger threat to unions' capacity to act on behalf of employees is that their membership base is slowly eroding. There are many aspects to this: economic change (including the on-going transformation into a services economy), demography, political attitudes. On the positive side, unions in the

services sector do recognize the importance of representing workers in non-typical employment. This is an important step to inclusiveness in the Finnish labour market.

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# FRANCE

CATHRINE VINCENT

With a bargaining coverage rate of 98%, France has long fulfilled the objective of the European directive on adequate minimum wages, mainly through multi-employer bargaining. The issue facing the trade unions is not therefore to increase this coverage rate, but to improve the quality of the content of collective agreements in order to ensure the best protection for employees. In this respect, the policy of successive governments since the 1990s has been ambiguous: on the one hand, successive reforms have aimed to decentralise bargaining within companies by giving this level priority in more and more issues; on the other hand, there has always been a commitment to improving sector-level bargaining, which is considered to be lacking, leading to the adoption of a number of support measures. As for the employers' organisations, although for three decades now they have made no secret of their preference for company-level bargaining, they admit (particularly those defending SMEs) that sector-level bargaining has a certain usefulness.

It is important to bear in mind that the role of the state remains one of the most peculiar features of the French collective bargaining system, whose strength and spread have never relied on the existence of strong and encompassing bargaining parties, but on support from the state, particularly in the form of extension procedures and the statutory minimum wage. Political intervention both reflects and, to a certain extent, maintains the relative weakness of the social partners. This specificity explains the importance given to the actions of the public authorities in this report, as well as the importance of the requests addressed by the trade unions to the government.

## 1. Sectoral collective bargaining: a brief overview.

Despite one of the lowest rates of union density, the French bargaining coverage rate is one of the highest among the OECD countries: 96 percent in the private sector and 98 percent including public enterprises<sup>9</sup>. This is due to the general use of administrative extension of collective agreements<sup>10</sup>: as a result, sectoral level bargaining emerged as the main pillar of French industrial relations. Although collective bargaining in France can legally take place at three levels<sup>11</sup> – the multi-sectoral level, sectoral level and company level, in descending order of normative priority – from the 1950s to the 1980s, industry-wide bargaining was the most common level at which collective agreements were negotiated; firm-level bargaining took place only in large companies.

9 (OECD/AIAS ICTWSS database, 2021 (<https://www.oecd.org/employment/ictwss-database.htm>))

10 This procedure was implemented in 1936. The contents of sectoral agreements extended by the Ministry of Labour are binding on all the employers in a similar activity, with or without registered membership in a professional association. This extension procedure helps to offset the weakness of employee representation, as well as the employers' lack of incentives to bargain.

11 The Collective Labour Agreement Act of 1971 legalised the triple-level collective bargaining system.

Until the early 1980s, the bargaining coverage rate never exceeded 80 %, because, in many economic sectors, there were simply no employers' associations able to enter into negotiations. Taking advantage of the 1981 reformist political change, in line with a series of laws aimed at developing employees' rights, a strong impetus was given towards extending bargaining coverage. This generalization process of collective bargaining coverage was based on the labour administration's deliberate policy through the administration's discretionary power in determining the quality of a representative employers' organization for sector-level bargaining. Since then, the coverage rate has risen rapidly to its current level. This increase has also had problematic consequences because of the weakness of some of the new employers' organizations, particularly in retail or new technology sectors. In most of these sectors, unions and employers' organizations keep negotiating in committees chaired by the labour administration, and the legal minimum wage repeatedly catches up with their minimum wage grid. These shortcomings are still present today (Combrexelle 2015)

Since the 2000s, strengthening sector-level bargaining has become a concern for public authorities. State interventionism in collective bargaining goes so far as to define a part of its agenda. Successive legislations have introduced the obligation to negotiate at sector-level on various topics. At the present time, in each bargaining sector, every four years the employer and union negotiators are obliged to open discussions on a certain number of topics: pay, work-life balance, working conditions and strategic workforce planning, exposure to occupational risks. Every five years, the sectoral social partners must examine whether the job classification scheme of the collective agreement is still up to date. They may also conclude an agreement that changes the rhythm and redefines the topics of sectoral bargaining. Importantly, there is no obligation to reach an agreement between the social partners, only to open discussion. In practice, however, almost all bargaining sectors regularly conclude agreements on these topics. As a result, since the 2000's, employment and training have been the second major theme of sector-level bargaining – after wages - and training one of the pillars of employers' sector organizations' operations in business, an important source of their legitimacy, especially in their corporate services functions. Analysing these sector-level agreements tends to show that these are little innovative bargaining, dependent on legislative provisions and imposing weak constraints on enterprises. The sector-level is taken into account in its subsidiary role of firm-level bargaining, to cover SMEs that had not engaged in bargaining. In the last decade, with the development of the theme of lifelong training, bargaining on training tends to become one chapter of broader negotiations on employment, in particular through strategic workforce planning or older worker' employment bargaining. On these issues however, sector-level collective bargaining is struggling to find its place. Since 2010, less than 10 sector agreements have been signed per year over the GPEC.

In the meantime, decentralisation of the collective bargaining system has been reinforced since 2004 by successive legislative reforms, voted both by right-wing and left-wing majorities. The process ended up with the 2017 Macron Ordinances, which replaced the 'favourability principle' with a compulsory division of topics among levels. In the new collective bargaining architecture, regarding competencies in standard setting, the division is as follows:

1. Formally, the role of sectoral level agreements is reinforced since there are now 13 topics on which derogation is forbidden. This reinforcement has taken place at the expense of the law, however, and not at the expense of company agreements. The 13 topics excluded from the derogation include agreed minimum wages, classifications, vocational training, and supplementary social protection.
2. The sectoral level 'lock up' faculty, i.e. the possibility for sectoral level negotiators to exclude them from company-level waivers, unlimited under the 2004 Law, has now been reduced to four areas, which mainly concern issues of occupational safety and disabled workers. The weakening of sectoral level bargaining is evident here.
3. The primacy of company agreements concerns everything that does not fall into the two previous blocks,

a considerable quantity. Regarding remuneration rules, company agreement can now waive *in pejus* higher-level bargaining agreements, with the exception of agreed minimum wages, classifications, and overtime premia.

Finally, the driving force of sectoral collective bargaining has eroded over the course of successive reforms in recent decades (Vincent 2019). However, studies on the relationship between company and sectoral-level bargaining do not point to a straightforward decline of the latter, but to the diversity of patterns (Delahaie and Fretel 2021). Alongside sectors where bargaining is well established and effective, there are many small collective agreements whose content barely exceeds the labour code and where the negotiators are weak and supported by the labour administration.

## **2. Government initiatives underway to boost sector-level bargaining.**

The observation shared by the various actors - State, trade unions, employers' organisations (EOs) - is that the collective bargaining landscape is not satisfactory insofar as there is a multitude of bargaining sectors, heterogeneous and with vitality of negotiation and means very varied. Although the coverage rate is high, two related problems remain: the capability of the negotiators and the quality of the content of collective agreements, particularly regarding wages.

Over the last three decades, governments have been aware of these shortcomings and have implemented measures to overcome them. Just recently, these two problems were at the heart of the social conference held on 16 October 2023, which brought together the government, EOs and trade unions.

### **2.1. Minimum wage and agreed minimum wages.**

Wage-setting mechanisms are an illustrative example of how the French collective bargaining system works. The legal minimum wage or SMIC represents the gravitational pull for wage bargaining at sectoral level and sets the pace for annual wage increases. In some ways, it has the same effect as centralised national wage agreements in other countries. At sectoral level, trade unions and employers' organisations bargain the increase of agreed minimum wages for each professional grading— which correspond to the wage floor for a given set of qualifications. The sector-level collective agreement remains the place for determining wage hierarchies, as it serves as a referent for extending increases throughout the wage scale. Agreed wages granted to the lowest qualification levels often achieve compliance with the legal minimum wage only with difficulty. As the SMIC rise often serves as a reference for extending increases throughout the wage scale, in some sectors, agreed wage scales are not always in line with the SMIC (Delahaie and Vincent 2021).

Since the 1990s, the recurring observation that agreed minimum wages were lagging behind the minimum wage has led to attempts by the public authorities to encourage the revaluation of these minimum wages (for example, the “low and medium wage” policy conducted by the Ministry of Labour from 1990 to 1992, which continued quietly throughout the 1990s and 2000s, and which consisted of a firm incentive for employers' representative to negotiate sector by sector).

The problem raised by sectoral minimum wages below the minimum wage has been on the political agenda ever since: how can we revitalise wage bargaining so that agreed wages move out of the gravitational field of the minimum wage? In response, the law has constantly introduced new constraints on non-compliant sectors: the obligation, introduced by the 2017 Labour Law, to open (but not conclude) negotiations as soon as a minimum agreed wage falls below the SMIC; the threat of automatic mergers for non-compliant sectors included in the 2022 Purchasing Power Act. What is most striking, however, is the declaratory nature of these provisions: the legislative apparatus is getting tougher, but enforcement and sanctions are still lacking.

Despite improvements in recent years, the situation remains unsatisfactory, with ten sectors in 2023 where minimum wages are persistently below the minimum wage. To remedy this situation, the government announced at the last social conference that the Ministry of Labour would shortly be receiving all the employers' representatives from the sectors concerned so that they could explain why they are lagging behind. If "significant progress is not made by 1 June 2024", the government plans to make part of the exemption from social security contributions conditional on compliance with the minimum wage. This was one of the demands made by the trade unions.

However, the government's proposal does not resolve the issue of low wages, i.e. minimum agreed wages close to the minimum wage.

## **2.2. The merging of bargaining sectors**

The way bargaining processes are run and the content of the agreement reached mainly depend on the strength of the bargaining parties' presence. All the stakeholders agree that there are too many sector-level agreements in France. This fragmentation is detrimental to the effectiveness of social dialogue, which is poor or non-existent in some sectors.

This is why a law passed in 2014 allowed the Minister of Labour to merge the scope of a collective agreement with that of a sector with similar economic and social conditions. In 2016 and especially in 2017, the process accelerated and 5 alternative criteria were defined for these mergers: workforce covered of less than 5,000 employees; less than 5% of companies belonging to the EOs; low level of contractual activity; local scope of application; failure to take account of all vocational training missions. A target of 200 branches was set, to be implemented by a joint committee. This will take the number of bargaining sectors (outside the agricultural sector) from 687 in 2016 to around 230 by 2022.

The trade unions are not opposed to the restructuring of sectors, provided that this is not done to the detriment of the benefits acquired by employees.

## **3. Unions and experts claims regarding sectoral bargaining.**

Bargaining has been encouraged at all levels by legislation even if the priority given to the company-level in many topics of negotiation undermines the sectoral level. Recent studies on the relationship between company and sectoral level bargaining point to the diversity of patterns and the relative autonomy of bargaining levels (Béthoux, Mias, 2019). In practice, company-level bargaining has developed dynamically over the past decades and, despite the 2017 Labour law, without hampering the development of collective bargaining at the sectoral and multi-sectoral levels.

Facing these evolutions, for all the French trade unions, it is necessary to reaffirm the right to collective bargaining as a worker right implemented by the unions. Only sector-level bargaining can guarantee the effectiveness of this right. To this end, they request the consolidation of relevant actors to give them the capacity to negotiate and conclude collective agreement. Their demands relate in particular to training of bargaining parties and negotiation methods. The training of union negotiators must be strengthened so that all players are on an equal footing.

Regarding bargaining methods, a charter of commitments between trade unions and employers' organisations should be put in place to guarantee fairness in negotiations: this would cover the venue for negotiations, which should be neutral; the conduct of negotiations, with drafts sent in advance of meetings; discussions on all drafts and not just the employers' text; and the right to benefit from trade union expertise.



Strengthening union negotiators starts with strengthening their presence. The high level of bargaining coverage results from the state support: the rules of procedure it raises and of its administrative action. However, this dense legislative framework has not guaranteed the high quality of the content of the agreements signed, particularly in terms of wages. This weakness obviously goes hand in hand with the weak union presence. Trade union membership statistics have always exhibited lower rates in France than in other European countries, barely reaching 20 per cent even in the late 1960s. Union density is now considered to be around 11%. Nevertheless, the sectoral breakdown highlights that union membership remains robust in traditional industries.

The low rate of unionisation is the result of complex causes, including historical and cultural factors. Numerous media and educational campaigns could be run to encourage people to take part in workplace elections and to promote trade union membership and commitment. In my opinion, there are two other types of action that could be taken: the fight against union discrimination and the promotion of the career paths of those who take on trade union responsibilities.

The need to have strong and responsible trade unions and to promote social dialogue is regularly invoked, including by employers, even though in companies, employers still too often see the establishment of union delegates as incompatible with their economic objectives and attacks on trade union freedoms or trade union discrimination are frequent. The trade union confederations are aware of this problem and have long been calling on the State to provide a precise inventory of the situation and to monitor statistical and survey data on the subject. These figures are still lacking. An annual report should be published to document the state of trade union discrimination in France on the basis of information provided by the Ministries of Labour and Justice, as well as good practices observed in companies.

As well as protecting trade union representatives, it is important to promote the exercise of their mandates. For example, in April 2016, the Economic, Social and Environmental Council (CESE), in an advisory on “developing a culture of social dialogue”, recommended that when a new employee is taken on, time should be set aside to provide information on social dialogue in the company and the legitimacy of union involvement. This recommendation envisaged that this procedure should include time for meetings with employee representatives. This measure could also help to resolve the generational renewal problems currently facing trade unions.

The issue of career development for union representatives during and after their term of office is just as crucial. According to a Ministry of Labour survey published in 2008, employees who took the plunge and assumed trade union responsibilities felt that their career development was held back. This was the case for 30% of elected union members and 40% of union delegates. The same survey showed, very concretely, that the latter were paid around 10% less than their non-union counterparts. The Act of 17 August 2015 could provide some answers to this type of situation by making it compulsory for staff representatives to have a professional interview at the beginning and end of their term of office, and by guaranteeing salary progression for representatives who are given time off at least equal to 30% of their working hours (Act of 17 August 2015). An assessment of the results of these measures should be carried out.

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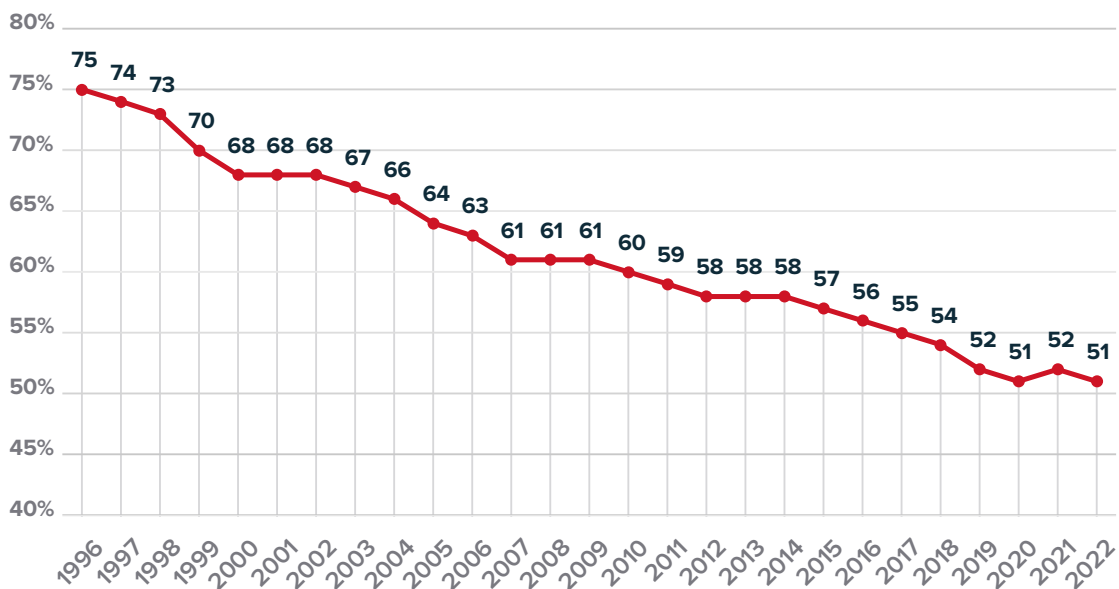
# GERMANY

THORSTEN SCHULTEN & TORSTEN MÜLLER

## 1. Collective bargaining coverage in Germany

Since the 1990s, Germany has seen an almost continuous decline in collective bargaining coverage (Figure 1). While in 1996, 75 per cent of all employees were still employed in companies with a collective agreement, by 2022 this figure had fallen to just a bit more than half of all employees (51 per cent).

Figure 1: Collective Bargaining Coverage in Germany 1996-2022  
Employees working in establishments with collective agreements in % of all employees

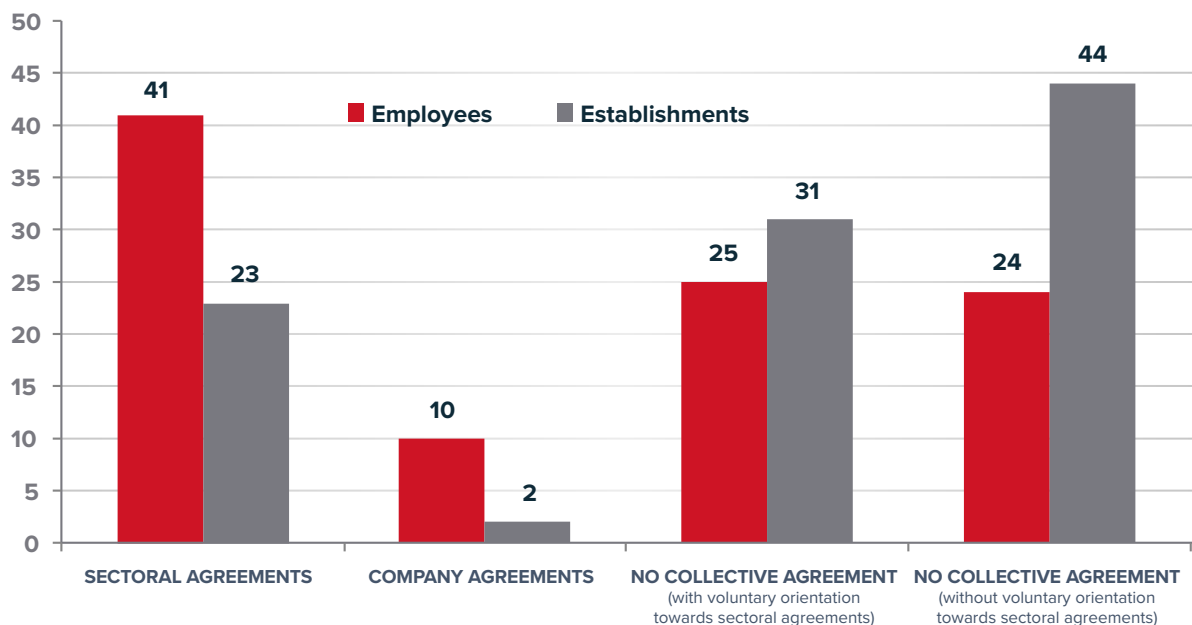


Source: IAB Establishment Panel 1996-2022



Of these 51 per cent of employees covered by a collective agreement, 41 per cent are accounted for by sectoral agreements and 10 per cent by company agreements. Around 25 per cent of workforce works in companies that are not formally covered by a collective agreement, but in which the management claims that it voluntarily uses existing sectoral agreements as a frame of reference. Hence, the effectiveness of collective agreements extends beyond their formal scope of application. However, in companies that voluntarily use collective agreements as a frame of reference, wages and working conditions are usually significantly worse than in companies that are formally bound by collective agreements. Using collective agreements as a frame of reference, often means that the companies are merely cherry-picking. It is therefore not a substitute for formal collective bargaining coverage. Finally, the remaining 24 per cent of employees work in companies which are neither covered by any kind of collective agreement nor informally use existing collective agreement as a frame of reference.

**Figure 2: Collective Bargaining Coverage in Germany 2022 in % of all employees and establishments**



Source: IAB Establishment Panel (Hohendanner and Kohaut 2023), own calculations



There are a number of structural features that characterise the German collective bargaining system and explain the decline in bargaining coverage:

- Only one quarter of the establishments in Germany are still covered by collective agreements (Figure 2). There is a strong correlation between the size of an establishment and bargaining coverage: Only a minority of small and medium-sized establishments is covered by collective agreements while most of the larger companies are covered. However, there is also a growing number of prominent multinational companies such as Amazon, Tesla or Biontech, which refuse to participate in collective bargaining with the unions. 7 out of 40 companies listed in German stock market index (DAX) have no collective agreements at all while the rest has more or less large gaps regarding the bargaining coverage of their subsidiaries.
- The bargaining coverage in Germany has a strong sectoral bias. While it is still relatively high in the public sector as well as in most of the manufacturing industries, it is rather low in many of the private service sectors as well as in some tech industries such as information and communication (Müller and Schulten 2019).

- The age of the company is also an important feature. Older companies, which have been established before 1990 have a much higher bargaining coverage than new company founded during the last three decades.
- The decline of bargaining coverage is also the result of a decline in trade unions' organisational power resources, which in many industries and establishments is not sufficient to force the employer to the bargaining table.
- There is also a significant weakening of employers' associations due to the introduction of a special "OT-membership status" (OT = ohne Tarif/without collective agreement). This means that employers can be a member of the employers' association without being bound by a sectoral collective agreement signed by the respective association.
- Finally , there is only weak support for a higher bargaining coverage by the state, i.e. through instruments such as the extension of collective agreements etc.

## **2. Attempts and Strategies to Strengthen Collective Bargaining in Germany**

For some years now, there has been an intense debate in Germany about how the erosion of collective bargaining can be halted and how collective bargaining coverage can be increased again. Already in 2014, The German Federal Government passed a so-called "Tarifautonomiestärkungsgesetz" (Act to Strengthen Collective Bargaining Autonomy), which, in addition to the introduction of a statutory minimum wage, also provides for numerous measures to strengthen collective bargaining coverage; for instance a reform of the extension mechanism. While the minimum wage had a positive effect on collectively agreed wages in the low-wage sectors, the measures adopted were not sufficient to bring about a turnaround in collective bargaining coverage.

In the coalition agreement, the current federal government reaffirms its commitment to strengthening collective bargaining coverage and proposes a series of measures (SPD et al. 2021). With the adoption of the European Minimum Wage Directive, the debate has intensified once again about the fact that Germany is definitely one of the countries that must present a concrete action plan to strengthen collective bargaining (Schulten 2023; Schulten/Dingeldey 2024). The German trade unions have presented a comprehensive catalogue of demands to strengthen collective bargaining and launched a campaign for a "Tarifwende" (collective bargaining turnaround) to place the issue even more strongly in the public debate (Fahimi 2023). In contrast, the German employers' organisations reject most political measures to strengthen collective bargaining, actively defend the companies' possibility to decide against collective agreements and assume that collective bargaining can only be strengthened through "better" agreements, i.e. agreement which are cheaper and more flexible (BDA 2023).

In order to systematise the measures and instruments currently under discussion in Germany in order to increase collective bargaining coverage, two broad groups can be distinguished (Behrens/Schulten 2023; Table 1). The first group consists of instruments which aim at strengthening the power resources of trade unions and employers' associations which can have an indirect positive effect on collective bargaining coverage. The second group includes political and legal measures by which the state supports the collective bargaining system.

**Table 1: Measures and instruments to strengthen collective bargaining coverage currently under discussion in Germany**

<b>STRENGTHENING THE POWER OF THE COLLECTIVE BARGAINING PARTIES</b>		<b>POLITICAL SUPPORT FOR COLLECTIVE BARGAINING</b>
<b>STRENGTHENING TRADE UNION POWER</b>	<b>STRENGTHENING EMPLOYERS' ORGANISATIONS</b>	<b>SUPPORTING AND STRENGTHENING SECTORAL COLLECTIVE BARGAINING</b>
Improved rights of access to employees and companies for trade unions and works councils	Strengthening of employers' organisations at sectoral level	More extensions of collective agreements
Measures against Union Busting	Ban on so called OT membership status	Public contracts and economic subsidies only for companies which accept and apply collective agreements
More possibilities to provide certain benefits in collective agreements only for trade union members	Obligation for public craft guilds (Handwerksinnungen) to negotiate collective agreements	Improved validity of collective agreements in the case of a company restructuring such as spin-offs, transfers of undertaking or outsourcing
The right for associations to take legal action (Verbandsklagerecht)	The right for associations to take legal action (Verbandsklagerecht)	Extension of collective bargaining to groups of employees which were excluded so far (e.g. employees in church-related welfare organisations)
Full tax deduction of trade union fees		

Source: Own composition in the basis of Müller/Schulten 2024



For the German trade unions, the strengthening of their own associational power is a core issue also for the strengthening of collective bargaining. Recently, they have developed various organizing projects for specific companies aimed at increasing union membership, setting up works councils and forcing the employer to enter into collective bargaining. To support these efforts, unions are also demanding some legal changes such as a better rights of access to employees and companies, stricter measures against union-busting, a trade union right to take legal action as well as full tax deductibility of union fees. In addition, many unions are demanding that certain benefits in collective agreements should exclusively be reserved for trade union members in order to increase incentives for workers to join a union.

Regarding the employers' organisation a core demand is a ban on the special OT membership status, which has become a major obstacle to strengthening collective bargaining coverage in Germany. With the increasing spread of OT memberships, employers' associations have increasingly moved away from their original function as collective bargaining organisations and have evolved into general lobbying organisations for which collective agreements are only one form of regulating working conditions and by no means the privileged one. For this reason, all legal options should be used to restrict or completely prohibit OT memberships. A first step would be to introduce an obligation to disclose OT memberships of companies to the trade union responsible for collective bargaining. In addition, collective bargaining obligations for all members of an employers' association can be established by law and the statutory waiver of coverage by the employers' association's collective agreements can be prohibited.

Finally, there are several political measures under discussion with which the state can support collective bargaining. One key instrument is the introduction of a federal law on “Public Procurement and Collective Bargaining” (Bundestariftreuegesetz) according to which the federal government may only award public contracts to companies that comply with collective agreements in the respective sector. The instrument is based on similar regulations in a number of federal states, whose collective bargaining compliance requirements aim to compensate for possible cost disadvantages of companies bound by collective agreements in the competition for public contracts (Table 2).

**Table 2: Federal States Laws on Public Procurement and Collective Bargaining in Germany**

	<b>CURRENT LEGAL SITUATION</b>	<b>PLANNED LEGAL INITIATIVES</b>
<b>Comprehensive collective bargaining guidelines for all sectors</b>  7 Federal States	Berlin, Bremen, Hamburg, Saarland, Saxony-Anhalt, Thuringia, Mecklen- burg-Western Pomerania,	Brandenburg, Hesse, Lower Saxony  <b>Federal State</b>
<b>Comprehensive collective bargaining guidelines only for public transport</b>  7 Federal States	Baden-Württemberg Brandenburg, Hesse, Lower Saxony North Rhine-Westphalia Rhine-land-Palatinate, Schleswig-Holstein	Saxony
<b>No collective bargaining guidelines</b>  2 Federal States	Bavaria, Saxony  <b>Federal State</b>	

Source: WSI Collective Agreement Archive (Schulten 2023)



In addition to the area of public procurement, there are also proposals and demands that collective bargaining guidelines should also be used in the area of economic development. In the new funding rules for the “Improvement of Regional Economic Structures” (GRW) programme, which is financed equally by the federal and state governments and came into effect on 1 January 2023, collective bargaining coverage or at least pay in line with collective agreements was included as a supplementary funding criterion for the first time. Overall, there is a general demand that public money should only be given to companies that comply with existing collective agreements.

Another hotly debated issue is how to make better use of the extension of collective agreements. Today only a very small number of collective agreements in Germany are declared generally binding. In 2022, only 0,8 per cent of all newly registered sectoral agreements were extended. The low number is mainly due to the restrictive attitude of the employers’ organisations which have a double veto option to block an extension. First of all, a collective agreement can only be extended if both employers and trade unions requested it. Second, even when both bargaining parties request an extension it has to be approved by the so-called ‘Collective Bargaining Committee’ at the Ministries of Labour which is composed of representatives from the peak-level trade unions and employers’ associations. In this process, it can happen that the national peak employers’ association votes against the wish of its own sectoral affiliate to extend the sectoral agreement. In order to

remove the employers' veto positions, the unions are calling for a comprehensive reform of the procedural rules governing the extension of collective agreements.

Another issue under discussion to support collective bargaining is to strengthen the validity of collective agreements in the case of organisational restructuring measures such as spin-offs, transfers of undertakings or outsourcing. In the last two decades, the outsourcing of certain activities to subsidiaries not bound by collective agreements has been a widespread strategy in both the private and public sectors to circumvent collective agreements. The existing regulations have not been an obstacle to this, as they only protect the status quo for existing employees, but are not binding for new employees. This has often created a two-tier system for employees in the outsourced areas. In order to minimise the incentive to escape collective agreements through outsourcing and other means of organisational restructuring, the unions want stronger regulation that ensures continued validity of the existing collective agreement in such cases also for newly hired employees. In addition, public institutions and companies should generally be bound by public sector collective agreements, and the application of low-cost agreements or even the absence of collective bargaining coverage should generally be prohibited.

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# GREECE

IOANNIS KATSAROUMPAS

## 1. Introduction

Since 2010, the Greek industrial relations system experienced a major shift away from the previously dominant sectoral bargaining owing to a series of IMF/EU-led legislative reforms requested in the context of bail-out agreements (Katsaroumpas 2018). There has been a disorganised decentralisation towards enterprise bargaining and an overall de-collectivisation of labour relations has occurred as the terms and conditions of less workers are determined by collective agreements (Katsaroumpas and Koukiadaki 2016; Katsaroumpas 2018).

Legal reforms targeted three key elements of the pre-crisis legal regime which were of vital significance in supporting sectoral bargaining in the context of the traditionally low union density rates: administrative extension of sectoral agreements/arbitration awards; principle of favourability in cases of concurrent application of enterprise and sectoral agreements; unions' right of unilateral recourse to binding arbitration. Although some of these elements have been partially restored in recent years, sectoral bargaining coverage is low with very few agreements concluded.

Against this background, policy proposals for strengthening sectoral bargaining relate to the restoration of the pre-crisis model. Five key proposals for reform are considered here:

- (a) **Eliminating administrative discretion in the extension of sectoral agreements** when they are binding on employers employing 50% of workers in the sector and **establishing a framework** for other sectoral agreements.
- (b) Introducing **collective safeguards** in the operation of existing exemptions (from extension and favourability) for companies facing financial difficulties;
- (c) **Abolishing** the legal competence of associations of persons to conclude enterprise-level agreements.
- (d) **Restoring the possibility of unilateral recourse to arbitration** for the party that accepts a mediation's proposal if the other refused.
- (e) **Prohibiting** the declaration of a strike as '**unlawful** and **abusive**' in application of the civil law doctrine of abuse of rights.

## Proposals for Reform

### 2.1. Administrative Extension of Sectoral Agreements

#### Background

The extension of sectoral agreements is important not only for securing high levels of coverage but also for their comprehensive effect. It incentivises employers to affiliate to sectoral organisations since they know that otherwise they will be bound by the concluded agreement without exercising any voice in its negotiation.

The pre-crisis framework granted the Minister discretion to declare sectoral agreements universally applicable at the request of one of the parties and if the collective agreement was binding on employers representing at least 51% of employees in the sector.

This possibility was suspended during the programs of fiscal consolidation. After Greece's exit from bailout programmes, a new framework was put into place based on two conditions. Administrative extensions currently require the submission of an application by one of the parties and the issuance of an opinion by the tripartite Supreme Council of Labour (Ανώτατο Συμβούλιο Εργασίας). The latter is composed by five members appointed by the Government and two members representing the parties (1 from the national federation of employees and one of employees).

In its opinion, the SCL shall take into account various factors, including the application and a certificate from the Ministry that the sectoral agreement binds 51% of the employees in a sector. However, the Minister still enjoys wide discretion in determining extensions. Consequently, there is a risk that extensions are subject to each Minister's political whims.

#### Proposal for Reform

The law should simplify and reduce administrative discretion in extensions and the role of SCL whose majority is appointed by the Government. Towards this end, the law should establish a Ministerial *duty* (rather than discretion) to extend a sectoral collective agreement if two conditions are met:

- (1) one of the parties submits a relevant application;
- (2) it is already binding on employers representing 50% of employees in the sector (as certified by the Ministry).

However, it is also critical that the law establishes an extension framework that governs sectoral collective agreements that are not binding on employers employing 50% of employees.

Various policy options exist here. As the majority of the Committee of Independent Experts proposed in 2016, extensions shall be possible 'in cases of severe problems in the labour market, high turnover, high share of low wage earners, distortion of competition' and public interest (see Committee of Independent Experts 2016).

Various policy options exist here. As the majority of the Committee of Independent Experts proposed in 2016, extensions shall be possible 'in cases of severe problems in the labour market, high turnover, high share of low wage earners, distortion of competition' and public interest (see Committee of Independent Experts 2016).

In addition, the **National General Collective Agreements** (negotiated by peak-level confederations) should be allowed to **specify further instances** where such extensions are possible, such as in the context of low unionisation rates.

Moreover, the law may consider the **establishment of Tripartite Sectoral Councils** (with independents and representatives of employers and unions to consider a framework for collective bargaining in sectors with low bargaining coverage). These bodies will be composed of independents and representatives of employers and employees. They will be encouraged to negotiate their own procedural agreements, but a default procedural agreement shall be in place for failure to do so. These sectoral councils should be granted the power to conclude agreements with automatic and universal normative effect in the relevant sector.

Finally, a **reliable institutional framework** should be introduced to **monitor the shares of each bargaining unit**. Relevant monitoring bodies shall have a bipartite or tripartite composition and gather the trust of the parties.

## **2.2. Collectivising Exemptions to Administrative Extension (and favourability)**

### **Background**

The current legal framework permits exemptions from collective agreements declared universally applicable (and from favourability) for businesses ‘facing serious economic problems’ and subject to bankruptcy-related proceedings or under economic restructuring programs. This is regardless of the presence of such opening clauses in sectoral agreements. Businesses shall merely apply to the Supreme Labour Council to be exempted after a reasoned opinion.

### **Proposal for Reform**

**The law should provide collective guarantees in exemptions by requiring opening clauses in sectoral agreements, a National General Collective Agreement or at least in the form of enterprise agreements (but subject to the abolition of the role of associations of persons described above).** The advantage of this reform is that social partners will substitute the SCL thus giving them a role in the process and also reducing the scope of potential abuse of these exceptions.

### **(c) Associations of Persons: Abolishing their Competence to Conclude Enterprise-Level Agreements**

### **Background**

Under the pre-crisis framework, in the absence of an enterprise agreement a sectoral union had the legal power to negotiate a firm-level agreement. Crisis reforms granted ‘associations of persons’ this power ahead of sectoral unions. Associations of persons can be formed by 3/5 of members of employees in the enterprise and generally lack traditional union guarantees (see Katsaroumpas 2018).

### **Proposal for Reform**

The law must revert to the pre-crisis framework by abolishing the power of associations of persons to negotiate enterprise-level agreements. Such a reform will benefit sectoral unions by giving them more powers and strengthening their presence in enterprises (with potential benefits in terms of coordination).

## **2.3. Restoring the Pre-Crisis System of Unilateral Recourse to Arbitration**

## Background

In the Greek system characterised by industrially weak unions, arbitration played a critical role in ensuring a collective determination of terms and conditions. Arbitration provides an *ultimum remedium* (last resort remedy) for collective regulation, strengthens the bargaining power of the traditionally weak in industrial terms Greek unions in allowing them to negotiate collective agreements in the shadow of arbitration rather than the typically less favourable individual regulation, and assists in maintaining social peace by ensuring a collectivist form of dispute resolution.

Mediation and arbitration are **conducted by OMED, an independent and self-administered private law entity**. Arbitration awards are equated as to their legal effect to collective agreements, which in Greek law have generally an automatic normative effect. Unions' unilateral recourse to arbitration was first abolished during the crisis but was re-introduced following a judicial decision of the supreme administrative court (*Simboulitis Epikrateias* [Council of State]) that declared the abolition unconstitutional (2307/2014).

The current law has significantly tightened the criteria. It allows it only in relation to public enterprises, whose function is vital for basic societal needs and if the negotiations have 'definitely failed' and their resolution is necessary due to a material reason of social or public interest related to the function of the Greek economy.

## Proposal for Reform

**Restoring the pre-crisis system of unilateral recourse to arbitration** is critical for ensuring a more equitable sectoral collective bargaining in the Greek context. The knowledges that unions have the power to resort to binding arbitration could provide an incentive for employer organisations to conclude more equitable sectoral agreements with better terms and conditions. However, this reform is not without challenges. It is vital that OMED independence is guaranteed. Arbitrators should also be capable of gathering the trust of the parties and given considerable freedom in determining the context of arbitration awards.

### 2.4. Preventing Courts from Declaring Strikes 'Abusive and Unlawful'

## Background

In theory, Greek law established a very permissive framework for industrial action (Katsaroumpas and Koukiadaki 2018). However, in practice this is severely undermined by the judicial application of the civil law doctrine of 'abuse of rights' in order to declare strikes 'unlawful and abusive' on the unclear grounds of exceeding the bounds of good faith, morality or the social or economic purpose of the right (Koukiadaki 2014).

## Proposal for Reform

The law shall explicitly prohibit the application of the 'abuse of rights' doctrine to industrial action or at least reserve it in exceptional cases of 'acute emergency' as defined by the ILO (2018, paras. 824-825). A clearer legal framework is needed to provide unions with certainty when planning an industrial action and assessing the best strategy for maximising its disruptive effect.

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# HUNGARY

SZILVIA BORBÉLY

## 1. State of play and tendency

In Hungary, there have always been very few sectoral/multi-employer/extended collective agreements.<sup>12</sup> During the last two decades, their number has even decreased. The company-level bargaining has remained dominant. Currently, only the electricity and the water services are covered by sectoral collective agreements. The overall trends are far from favourable. We face declining trade union density (19.7% (2001); 9% (2015); 7.4% (2020))<sup>13</sup>, declining collective agreement coverage (28% (2016); 22 % (2019))<sup>14</sup>, declining number of bargaining partners such as trade unions (1096 (2005), 574 (2021)) and employers' organisations (2076 (2005), 1724 (2021)).<sup>15</sup> The legal framework and legislation weaken the bargaining power of trade unions. They are too flexible and do not encourage employers to conclude agreements. The representativeness criteria are very complex and difficult to meet.

### 1.1. Previous attempts to institutionalise sectoral/subsectoral (bipartite) social dialogue

At the beginning of 2000, as an external stimulus, an *EU PHARE programme* (2001, assessed by Irish experts) promoted the creation of sectoral/subsectoral (bipartite) social dialogue. As a success, from 2004 to 2010, 35 *Sectoral Dialogue Committees* (SDC, *Ágazati Párbeszéd Bizottság*) were established to facilitate sectoral/subsectoral social dialogue and bargaining.<sup>16</sup> In recent years, the government has significantly reduced financial (and moral) support for SDCs which has jeopardised their operation. By 2020, their number had fallen to 22. In practice, SDCs have not achieved the objective of increasing the number of collective agreements.

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12 Previously operating sectoral agreements: Collective Agreement on Hospitality and Tourism, Collective agreement for the bakery sector, Sectoral collective agreement in the construction; Agricultural Sectoral Collective Agreement.

13 CSO, in Gyulavári-Kártyás (2023), p.7.

14 OECD/ICTWSS

15 CSO [https://www.ksh.hu/stadat\\_files/gsz/hu/gsz0014.html](https://www.ksh.hu/stadat_files/gsz/hu/gsz0014.html)

16 Act LXXIV of 2009 on Sectoral Dialogue Committees and Certain Aspects of Midlevel Social Dialogue entered into force. In the given sectoral social dialogue committee only one sectoral collective agreement can be concluded. All stakeholders on the two sides (employees and employers) are collectively entitled to conclude a collective agreement. A collective agreement concluded in an SDC covers the members of the employer's representative body that concluded the collective agreement and the employees who are employed by it.

## 1.2. Probable causes of failure to negotiate sectoral/multi-employer collective agreements

Among the reasons for the failure to negotiate sectoral collective agreements, we find circumstances such as a lack of negotiating partners (lack of appropriate employers' organisations, bargaining organisations) or weak negotiating partners (non-representative organisations). "Business" (professional) organisations have no collective bargaining rights.

Even if the organisations were available, the human capacity to negotiate with the right skills is lacking. There is also a lack of acceptance of the need for transparency: confidentiality requirements on the part of the employer are an obstacle to bargaining (obtaining the data needed to bargain). Employers/businesses often resist, arguing that the situation, performance, opportunities and circumstances of companies in the sector are very different and that there is no point in a sectoral bargain. The situation is also very different between firms in the same sector (or even within the same company) in different geographical regions. Last but not least, we mention the unfavourable legal background to promote collective bargaining. The 2012 Labour Code was a turning point, making labour legislation too flexible. It should also be mentioned that the 2011 amendment to the Strike Act and other laws re-regulating essential services have made effective strikes almost impossible.

## 2. Conditions and steps to promote sectoral collective bargaining

### 2.1. Supporting Sectoral Dialogue Committees (SDCs)

Among the conditions and steps to be taken to promote sectoral collective bargaining, the most obvious is to strengthen the functioning and capacity of the already existing sectoral dialogue committees. It would include restoring and strengthening material and human resources (hiring experts, preparing studies, etc.) resources. Another very important measure would be to simplify the participation/representation criteria for both trade unions and employers' organisations to participate in sectoral bargaining committees and be entitled to conclude collective agreements. It is the so-called *sectoral participation committee* that examines the legality of the creation or abolition of sectoral bargaining committees. Eligibility to participate in SDCs should be reviewed every five years. The Sectoral Dialogue Committee shall automatically terminate if no new decision is taken by the Sectoral Participation Committee by the end of the fifth year. However, extremely complex representativity calculations are set up.<sup>17</sup> A simplification of the representativity calculations<sup>18</sup> and criteria for participation<sup>19</sup> in SDCs and an extension of the five-year deadline would be very welcome. In a SDC a representative body is entitled to conclude a collective agreement if it is authorised to do so by its statutes or by its highest decision-making body.

### 2.2. Data transparency/free flow of information

To bargain effectively, unions need access to adequate data and information, both at a company and multi-employer level. However, they often do not have access to basic data such as the number of employees in a

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17 A highly complicated method to calculate social partners' representativeness carried out by Sectoral Participation Committee is regulated by Annex No 1 to Act LXXIV of 2009.

18 A highly complicated method to calculate social partners' representativeness carried out by Sectoral Participation Committee is regulated by the Annex No 1 to Act LXXIV of 2009. Scores up to 100 can be collected by employers' and employees' organisations.

19 The criteria to take part in social dialogue committees (Act LXXIV of 2009 on Sectoral Dialogue Committees (Article 7)) include that the sectoral trade unions must have representatives in at least 10 companies whose members cover at least 1% of the workers in the concerned sector, or in at least three companies whose members cover 10% of the workers in the given sector; the sectoral employers' organisations must have members representing at least 5% of the employees in the concerned sector or at least 40 member companies (employers) with main activity in the concerned sector.

given (sub)sector. In this sense, not only employers but also organisations such as the Central Statistical Office (CSO) and Eurostat can play an important role. One of the main obstacles to multi-employer negotiations is also the reference to the confidentiality of company data. Hungary has an online labour information system based on the online registration system for collective agreements. At present, its data are unusable. It should be updated and used.

### **2.3. Promotion of sub-sectoral bargaining**

Encouraging the practice of small - homogeneous - groups of companies in a sector/sub-sector to initiate collective bargaining - could deactivate one of the main objections from employers' part which is about the diversity of interests among the participating companies.

### **2.4. Strengthening social partners' organisations**

For both sides of social partners, ways and means of strengthening staff, expertise and local presence should be sought. Note here that weak, understaffed labour organisations are common not only in trade unions but also in employers' organisations.

### **2.5. Widening the mandate to bargain on the employers' side**

It often happens that there is a strong business organisation in a sector/sub-sector, but no employers' organisation with the right to negotiate with trade unions. Business organisations are not bargaining organisations, they focus on collaboration between companies, setting industry standards, lobbying, etc., but have no right to bargain and conclude collective agreements. The sectoral/sub-sectoral bargains would be significantly strengthened if they had such a right.

### **2.6. Strengthening (employer's) interest in collective bargaining**

The current Labour Code does not encourage the conclusion of (sectoral) collective agreements, there are no rules that can only be implemented through sectoral regulation.

### **2.7. Strengthening collective bargaining in general – through legislation – making it more favourable**

The 'New' Labour Code (Act I of 2012) made it more difficult to conclude a collective agreement than the previous. According to the new labour code, the union has collective bargaining rights if at least 10% of the workers are members of the union in the given company (article 276. (2). Sectoral-level collective agreements can be concluded outside the sectoral bargaining committee too, but the 10% organisation rule still applies in this case. We have no precise information on how many unions have at least 10% membership. In 2/3 of companies, there are no unions at all, and union density is well below 10%. *It means that the 10% rule should be revised and the threshold should be lowered.* This would affect the sectoral/multi-employer collective agreements negotiated outside of the Sectoral Dialogue Committees.

### **2.8. Promotion of the tripartite Sectoral social dialogue and improvement of the political atmosphere**

It is uninspiring that there is no reconciliation of interests with the ministries at the sectoral/professional level, and in most cases, initiatives remain unanswered or are rejected. But this requires political will, as do many of the other proposals mentioned here.



## 2.9. Improving the image of the trade unions and ‘marketing’ the benefits of collective (and wage) agreements

Often workers in a company are not aware that there is a valid collective agreement. Indeed, the existing *erga omnes* principle does not encourage new members to join (and so to increase union density), but without it, collective agreement coverage would be even (significantly) lower than at present.

### 3. Some examples (competitive sector)

In June 2023 the social partner of the Graphic industry met in the Sectoral Dialogue Committee and agreed that no sectoral collective agreement is realistic to be concluded at present but that a joint "ethical agreement" could be developed.<sup>20</sup> In the Light industry, there is no sectoral collective agreement, but a sectoral social charter has been concluded. The employers' federation has no mandate from its members (companies) to conclude sectoral collective agreements.

In the Construction industry, the formal signature of the sectoral agreement took place in November 2005 by ÉVOSZ, IPOSZ, VOSZ (employers' organisations) and on ÉFÉDOSZSZ, ÉTSZOSZ (trade unions). The Minister of Economics extended<sup>21</sup> it to the whole sector in March 2006. The agreement was amended several times. The last extension took place in 2011 and the last amendment took place in 2013. Its *amended parts could not be extended*, as the conditions for extension meantime changed, *and ÉVOSZ lost its right of representativeness (signatory employers' associations or associations together had to employ more than half of the total number of workers covered by the extension)*. Recently (spring 2023), *the extended collective agreement was officially cancelled*. In the road transport subsector, there has been a multi-employer collective agreement since 1992. It has an indefinite character and has been modified many times but with low effect. *Not successful negotiations are going on a possible new multi-employer collective agreement* within the framework of a subsectoral social dialogue committee.

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20 Graphic industry includes mostly Sme-s. Only 10% of companies, i.e. 4-5 large companies, have (company-level collective agreements)

21 The Minister may, at the joint request of the representatives of the two sides of the sectoral social dialogue committee (SDC), extend the agreement concluded in the given SDC to employers classified in the sector based on their *main activity* (NACE).

# IRELAND

VINCENZO MACCARRONE

As it is now well known, the directive on adequate minimum wages (Directive (EU) 2022/2041 – henceforth ‘the directive’) has the twofold objective of ensuring the adequacy of statutory minimum wage for those countries which have it, as well as increasing the coverage of collective bargaining. In particular, art. 4 of the directive requires that those countries with a collective bargaining coverage lower than 80% ‘shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them. Such a Member State shall also establish an action plan to promote collective bargaining’. Ireland is affected by both objectives.

While the Irish government has already announced the phased introduction of a living wage that will be set at 60% of the median wage (one of the parameters of adequacy defined by the directive), the increase in the coverage of collective bargaining will be more challenging, and the role of the Irish trade union movement will be fundamental. Collective bargaining coverage in Ireland is currently estimated at around 34% (OECD/AIAS database, 2017 latest year available<sup>22</sup>), one of the lowest in Western Europe. Because of the limited role played by extension mechanisms in Ireland, collective bargaining coverage correlates with union density that, like in many other European countries, has been decreasing over the last decades in Ireland. According to the labour force survey data, trade union density currently stands at 22% overall (CSO, 2023), and the most recent estimates put it at 16% in the private sector (Walsh, 2018).

Increasing collective bargaining coverage in Ireland will thus require the parties to industrial relations to:

- Increase the role played by sectoral collective bargaining/extension mechanisms
- Facilitate unions in gaining employer engagement in parts of the private sector and increase union density

Ireland has been one of the forerunners in the implementation of the directive on minimum wages, as the government (currently led by a centre-right coalition government of Fianna Fáil, Fine Gael and the Greens) did not only announced the phased introduction of a ‘living wage’, but in March 2021 also established a tripartite High-level group on collective bargaining under the auspices of the Labour-Employer Economic (LEEF), a social dialogue forum. The High-level group produced its final report in October 2022, with recommendations which might affect positively both sectoral collective and enterprise bargaining, as well as union density.

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22 The 2021 UCD Working in Ireland survey has a higher estimate of 43% (Geary and Belizon 2022)

To be effective, the recommendations should be now implemented through law. The LEEF has met to discuss advancing the proposals. Thus, the approval of the EU directive opens a strategic opportunity for the Irish trade union movement to improve collective bargaining in Ireland. The deadline for transposing the EU directive into law is November 2024. Unions should now be focusing on securing an expansive transposition of the EU directive on minimum wages into Irish law.

In the following pages, I outline some policy proposals that might help in this respect. I start from the first objective (increasing the role of sectoral collective bargaining) to then move to the second (increasing access to bargaining and union density).

## **1. Increasing the role played by sectoral collective bargaining/extension mechanisms**

After the collapse of the national tripartite wage agreements known as ‘social partnership’ in 2009, wage setting in Ireland takes place at the sectoral level in the public service. In the private sector collective bargaining takes place mostly at the firm level, if takes place at all. There are a few exceptions in low-paid sectors such as cleaning, security and childcare, which are regulated by sectoral wage setting mechanisms establishing minimum rates of pay (in excess to the national minimum wage) and employment conditions known as ‘employment regulations orders’ (EROs). In addition, the construction and electrical contracting industry are covered by Sectoral Employment Orders (SEOs), which sets statutory minimum pay of rates, sick pay and pension entitlements. Both EROs and SEOs, however, have been subject to several legal challenges by different employers’ groups<sup>23</sup>, mostly representing small businesses competing on costs.

The final report of the High-level group on collective bargaining has several recommendations affecting sectoral wage setting mechanisms:

- To improve the functioning of the EROs, by removing the de facto employers’ veto to the establishment of new sectoral wage setting mechanisms that was introduced in the reform process that followed some employers’ legal challenges and the EU-IMF conditionality requirement (see Maccarrone et al., 2019). The group proposed to establish ‘a process for proceeding with a ERO in the event employers, in accordance with fair procedures, are given all reasonable opportunity to engage, but decline to do so’ (LEEF, 2022: p. 10).

The final report of the High-level group on collective bargaining has several recommendations affecting sectoral wage *setting mechanisms*:

- To improve the functioning of the EROs, by removing the de *facto* employers’ veto to the establishment of new sectoral wage setting mechanisms that was introduced in the reform process that followed some employers’ legal challenges and the EU-IMF conditionality requirement (see Maccarrone et al., 2019). The group proposed to establish ‘a process for proceeding with a ERO in the event employers, in accordance with fair procedures, are given all reasonable opportunity to engage, but decline to do so’ (LEEF, 2022: p. 10).
- To improve the functioning of the tripartite bodies drafting the EROs, known as Joint Labour Committees (JLCs), providing technical assessors as well as training to the chairs.
- To clarify and refine the scope of the sectors in which JLCs might be established in the future

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23 These legal challenges have, broadly speaking, been based on the following constitutional argument. According to the Irish Constitution, the Irish parliament is the only law-making body. Since EROs and SEOs are initiated by other actors (a Joint Labour Committee, the Labour Court) and establish legally binding wage rates and working conditions, they are unlawfully substituting the parliament (the Oireachtas) in the law-making process.

- To consider other policy/legal changes which could be made to incentivise participation in JLC mechanisms.

In implementing these recommendations into legislation, particular attention should be paid to:

- Making sure that the **employers' veto** to the establishment of new EROs is removed, as recommended by the report.
- Avoiding the removal of the employers' veto being tempered by the introduction of more **opt-outs** for employers (the legislation already provides for opt-outs from the terms of the EROs for employers in financial difficulty). On this, the wording of the report of the High-level group is ambiguous. As the experience of other countries such as Germany has shown, the provision of opt-out clauses can seriously weaken collective bargaining agreements (see Baccaro and Benassi, 2017).

Moreover, there are other legislative provisions to strengthen collective bargaining that might be introduced following the spirit of the directive, and which were not under the remit of the High-level group on collective bargaining. One example is **public procurement**. Art. 9 of the EU minimum wage directive recommends member states to take appropriate measures so that in the awarding of public contracts the awardee and their sub-contractors 'comply with the applicable obligations regarding wages, the right to organise and collective bargaining on wage-setting'. Ireland is a laggard in the deployment of 'social clauses' in public procurement (Thomas, 2022). In economic sectors heavily based on tenders, introducing social clauses in procurement legislation can function as de facto extension mechanism (Eustace, 2021).

Once these legislative improvements to sectoral wage bargaining are hopefully implemented, unions should take advantage of them to increase sectoral collective bargaining coverage. In particular:

- The number of sectors covered by EROs is currently limited to three (cleaning, security and childcare). In the past, EROs extended to other low-paid sectors which employ thousands of workers, such as agriculture, hairdressing, hospitality and retail. These fell through following employers' legal challenges and the reform process that ensued. Once the employers' veto is removed, unions should campaign to reinstate EROs in these sectors, and extend them also to others which were previously not covered by the terms of EROs and where there are vulnerable workers, such as meat processing and language schools.
- EROs apply to low-paid sectors with vulnerable workers. However, the benefits of sectoral wage bargaining could be extended also to other sectors through the use of SEOs. Currently, there are SEOs covering the construction industry. Their use could be extended to other industries.

In both cases, unions would also need to increase their density in the targeted sector, as they would need to be considered as 'substantially representative' of the class/type/group of workers for which an application is lodged at the Labour Court. According to recent estimates, hospitality has the lowest union density in the private sector, around 7% (Geary and Belizon, 2022). The increased in density would be hopefully helped by other legislative provisions introduced in the shadow of the directive discussed below. Yet, it would also require additional union resources for organising.

As the political landscape in Ireland has been shifting towards the left (Mueller and Regan, 2021), it is possible that some of the left-leaning parties that currently sit in opposition might be in government following the next general election, which will be held at the latest in 2025. This might also offer further opportunities to strengthen sectoral collective bargaining. Indeed, the electoral manifestos of all centre-left/left parties for the last general elections – held in 2020 – contained more expansive provisions on collective bargaining than the current government is probably going to concede.

For what concerns sectoral collective bargaining, this might be thus an opportunity for:

- Reinforcing the legal status of sectoral wage setting mechanisms, which have been subject to constant legal challenges by different employers' groups which have slowed down their implementation (see footnote 2)
  - Either through an expansion of the scope of the existing mechanisms, which at the moment is quite limited. For instance, the SEOs only cover minimum rates of pay, sick pay and pension schemes.
  - Or through a broader reform, similar to what has happened in other common law systems, such as the New Zealand with the recently introduced legislation on 'Fair Pay Agreements' that essentially established a two-level bargaining system (sector and enterprise) with primacy for the sectoral agreement.

However, given the numerous employers' legal challenges on the constitutionality of sectoral wage agreements (see footnote 2), introducing such changes might require a constitutional referendum, which would require further strategic assessment from labour's side. Whether this is necessary remains moot among Irish labour and constitutional lawyers (Thomas, 2022). However, any significant slippage from the objectives of the Directive and the proposals of the High-level group, could open this path as a political possibility. Limited relevant public opinion data suggest that such a referendum might be carried.

Moreover, moving towards a collective bargaining system which gives more importance to sectoral bargaining would most likely also require a restructuring of the current fragmented landscape of the Irish trade union movement. After the 2008 financial crisis, ICTU established a commission that proposed to reduce the number of affiliates to six larger federated sectoral organizations. Although its 2013 biennial conference adopted a plan to move in this direction, little has happened, with few exceptions (see Maccarrone and Erne, 2023).

## **2. Facilitate unions in gaining employer engagement in parts of the private sector and increase union density**

Like in other EU countries, union density in Ireland has been constantly declining over the last decades (see Maccarrone and Erne, 2023). In 1990 approximately 50 per cent of employees were union members, whereas currently only 22 per cent are, and even less in the private sector. Among other factors such as de-industrialisation, this trend is explained also by a weak legislative framework for collective bargaining rights. Although the Irish Constitution recognises the right to form an association, including a trade union, it does not require employers to recognize or negotiate with a union.

The High-level group final report (LEEF, 2022) aims also to partially address this issue and proposes the following:

- To introduce a '**good faith engagement**' process that would attempt to address the issue of employers refusing to negotiate with trade unions. This would not compel the parties to reach any outcomes or agreement but would require engagement, as per a procedure set down and to be subject to Labour Court adjudication, if a union alleges that it has not been observed.
- To provide training to union and employers involved in collective bargaining.
- To introduce a Code of Best Practice on Enterprise Collective Bargaining.

In ensuring an expansive transposition of the EU directive, unions should therefore make sure that a strong version of the '**good faith engagement**' process as delineated by the High-level group report is transposed into legislation and that there are no opt-outs for non-union employers.

Moreover, there are other legislative provisions to strengthen firm-level collective bargaining and union density that might be introduced following the spirit of the directive, and which were not under the remit of the High-level group.

- **Right to access.** Recital 24 of the directive lists among the measures to improve collective bargaining coverage ‘measures easing the access of trade union representatives to workers’. In the past, attempts to introduce a right to access bill by opposition parties have been resisted by the government (see Maccarrone et al., 2019). The directive offers an opportunity to introduce such measures, so that union officials would have the possibility to access workplaces to meet employees (members and not-members), consult members on union business, provide information on union membership and recruit new members. Unions have indicated their determination to pursue this issue.
- **Other measures favouring union density:** the directive in general requires those countries with a collective bargaining coverage below 80% to ‘provide a framework of enabling conditions for collective bargaining’. In the Irish case, union density and collective bargaining coverage are related, hence this should lead to other measures favouring the increase of union density. One example is a tax relief on union membership costs. This is a measure that is present in other European countries and was also present in Ireland until 2011. It was then abolished in the context of the financial crisis, but it might be re-introduced. Unions have pressed for its re-introduction.

If these legislative improvements are implemented, unions should take advantage of such improvements to increase unionisation and take-up collective bargaining at firm level. As in the case of sectoral bargaining, this would also require an organising effort, as it is quite likely that the ‘good faith engagement’ legislation, if implemented, will require some representativeness threshold to lodge a claim to negotiate.

If a more union friendly government comes to power in the next general election, it could provide the possibility to negotiate further provisions on collective bargaining rights, such as introducing statutory union recognition. Like the provisions on sectoral collective bargaining, however, also this measure might be liable to employers’ legal challenges<sup>24</sup> and might require a change in the constitution through a referendum.

### 3. Concluding remarks

The approval of the EU directive on minimum wages opens up a strategic opportunity for the Irish trade union movement to ameliorate the status of collective bargaining rights in Ireland and improve collective bargaining coverage, both at the sectoral and the firm-level. In this report, I have provided policy advice to do so.

In the short term, the Irish labour movement should aim for an expansive transposition of the directive. Particular attention should be given to avoid that improvements in the legislation for collective bargaining are not traded with more opt-outs for employers at the sectoral and enterprise level. Once this will be hopefully reached, efforts should be directed to increasing unionisation and collective bargaining coverage at both levels. If the next general election provides a more union friendly political landscape, the labour movement should seek more ambitious reforms on statutory union recognition and on sectoral collective bargaining, along the lines of other common law countries such as New Zealand.

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24 In 2007, the low-cost airline Ryanair obtained a favorable ruling by the Supreme Court against the ‘right to bargain’ legislation. This legislation provided that in workplaces where collective bargaining would not take place unions could obtain binding determinations on pay, working conditions and conflict resolution practices from the Labour Court. The Court accepted Ryanair’s argument that it would not be bound by the determinations of the Labour Court, as Ryanair’s engagement with its internal staff committees would be ‘collective bargaining’ in the sense of the law, despite union remarks on lack of independence of said staff committees from the company management.

## 4. Acknowledgments

I would like to thank Stan De Spiegelaere, Bill Roche and Tom Gormley for their very helpful feedback on previous version on the report, which has also benefitted from comments from colleagues at a workshop organised by UNI Europa. Needless to say, all errors are mine.

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# LUXEMBOURG

THOMAS ADRIEN

## 1. Current state of play

Collective bargaining in Luxembourg is characterized by relative stability. The current provisions related to collective labor agreements mainly stem from the laws of 12 June 1965, 12 February 1999, and 30 June 2004. Since the enactment of the Labor Code in 2006, no major new regulations have significantly impacted these provisions.

Luxembourg's labor law governing collective bargaining borrows essential principles and characteristics from two very distinct legal systems: the German and the French system. For instance, Luxembourg labor law adopts the concept of social peace and the legality of lockouts from German law, and the obligation to negotiate from French law. Luxembourg's collective labor law thus attempts to strike a balance between the German model of tariff autonomy ("*Tarifautonomie*") and the French model, which involves significant legislative intervention<sup>25</sup>.

Collective agreements can be concluded at different levels, primarily at the industry (sector) and company level, encouraged by provisions that make it possible to legally extend collective agreements at industry level<sup>26</sup>. The trade unions that are considered representative have the sole right to conclude collective agreements at the different levels, including the company.

State intervention in collective bargaining occurs through the validation of collective agreements and dispute settlement. Collective agreements negotiated between trade unions and employers have to respect a number of formalities and must be filed with the Mine and Labour Inspectorate (ITM, Inspection des Mines et du Travail) for approval by the Ministry of Labour, Employment and the Social and Solidarity Economy.

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25 Robert F. (2022) *Die Normsetzungsbefugnis der Kollektivvertragsparteien in vergleichender Sicht : deutsches, französisches und luxemburgisches Recht*. Thèse de doctorat en droit, Université de Jena.

26 The extension takes place through a declaration of "general obligation" by the Ministère du Travail, de l'Emploi et de l'Economie Sociale et Solidaire (Ministry of Labour, Employment and the Social and Solidarity Economy). If a collective agreement is thus extended it applies to all companies in a given sector, industry, occupation or type of activity. Currently, a significant number of agreements have been extended, such as for construction, banking, insurance and private security services, and for particular occupations, such as taxi drivers and electricians. Cf. Thomas A., Kirov V and Thill P. (2019) Luxembourg: an instance of eroding stability?, in Müller T., Vandaele K. and Waddington J. (eds.) *Collective bargaining in Europe: towards an endgame*, Brussels, ETUI, 403–421.



Estimates of collective bargaining coverage rates have only slightly decreased over the last decades. OECD figures on the coverage rate of collective agreements in Luxembourg have changed from 60% of covered employees in 2000 to 58.4 % in 2010 to 56.9 % in 2018 (59 % according to the national statistical office STATEC).

Significant sectoral disparities are notable regarding the coverage rate of collective agreements. The coverage rate is high, or even very high, in the public administration and education, healthcare and social work, transportation, and construction sectors. In contrast, the coverage rate is low or very low in sectors such as commerce, HORECA (hotels, restaurants, and catering), or professional and scientific activities such as legal, accounting, or research. Often, sectors with low coverage rates also have low unionization rates, such as commerce or the restaurant and hospitality industry. According to the STATEC's analysis, a certain level of stability over the last decade can be observed in the majority of sectors in the Luxembourgish economy regarding the coverage rate by collective agreements<sup>27</sup>.

Unsurprisingly, an analysis conducted by STATEC also showed that the coverage rate of collective agreements varied depending on the size of the companies. The larger the company, the more likely its employees were to be covered by a collective agreement. The coverage rate ranged from 30% for companies with 10 to 49 employees to 79% for companies with over 1,000 employees<sup>28</sup>.

It is notable that Luxembourg has a wage indexation mechanism as well as a mandatory minimum wage. Thanks to the automatic salary indexing system, wages increase regularly in line with overall inflation, which limits the room for maneuver during wage negotiations. The law also provides for a periodically adjusted minimum wage for unskilled workers and a separate one for skilled workers.

## **2. Main challenges in collective bargaining**

The EU encourages member states to aim to achieve collective bargaining coverage of 80% of workers in the context of the European directive on the minimum wage. However, it is difficult to see how this level of coverage could be achieved in the framework of the current system given the transformations of the morphology of the labour market and of Luxembourg's economy and the patchy unionization rates.

Changes in the Luxembourgish labour market and developments in the economy's structure, such as the growth of the service sector, increased levels of qualification, and the rise in the number of small and medium-sized enterprises are increasingly challenging established models of collective bargaining. According to the OECD, unionization has declined from 44% in 2003 to 28% in 2019 in Luxembourg.

While the percentage of unionized workers in Luxembourg remains higher than the OECD average, the decline in Luxembourg has been more pronounced between 2010 and 2019 than in other OECD countries (Hartung 2022). This is mainly due to the fact that the recruitment of new members has not kept pace with the rapid creation of new jobs. Furthermore, job creation has been most significant in the business services sector, where union presence has traditionally been low.

Regarding employers' organizations, we are not aware of any studies on their representativeness over time. As the umbrella organization for employers, the umbrella employer organization Union des entreprises luxembourgeoises (UEL) brings together employer federations and two professional chambers with mandatory affiliation, the Chamber of Commerce and the Chamber of Crafts. According to its own information, UEL represents companies that account for 80% of employment and generate 85% of the GDP.

27 Hartung A. (2022) Les syndicats en déclin dans un monde du travail en mutation. STATEC, Regards, n°1.

28 Ries J. (2013) Regards sur la couverture des conventions collectives de travail, Luxembourg, Statec.

The industry-wide collective agreements that are currently of 'general obligation', meaning that they have been extended by the Ministry of Labour and Employment to all companies in a given sector, industry, occupation or type of activity, are often either long established (as in the banking sector) or the result of a shared interest between employers and trade unions to limit potential competition on wages from new entrants in a specific industry or industrial segment, for instance in hospitals or in private security services.

Trade unions have encountered difficulties to negotiate new industry level collective agreements. For instance, in the retail sector, trade unions are asking for instance to enter into negotiations over a sector-level collective agreement that would cover all companies (at present the coverage rate in retail stands at 40 % of workers). The employer organization in charge of the retail sector refuse to enter into negotiations. Union representatives declare that it will be very difficult or impossible for them to reach a much stronger collective bargaining coverage rate by negotiating company by company.

### 3. Possible policy proposals

**Strengthening industry-level bargaining.** It seems complicated for unions to significantly increase the present collective bargaining coverage by only relying on new company level agreement. Given the fact that unions are often not strongly present in many small and medium sized companies, concluding new collective agreements at the industry level would allow to increase the bargaining coverage. Especially, in industries such as Hotels, Restaurants and Catering, Information and communication technologies as well as Specialized scientific and technical activities, a low union presence makes it unlikely that a strong bargaining coverage will be achieved by negotiating at the company level alone. At present, trade unions in the retail sector are asking to enter into negotiations over a sector-level collective agreement that would cover all companies (at present the coverage rate in retail stands at 40 % of workers). The employer organization in charge of the retail sector refuse to enter into negotiations. At the same time, unions currently accept a collective bargaining coverage of 60 % in the manufacturing industry sector (which is below the EU threshold of 80%), given that the existing, long-established company-level collective agreements seem to them adapted to the situation of the various companies.

- **An obligation to negotiate at industry level?** Trade union representatives currently ask for the introduction of a requirement for employer organizations to conduct negotiations at the industry level (at present, employers and unions consider that there is an obligation to negotiate only at the company level). Some union representatives consider such an obligation as a decisive element in expanding the coverage rate of collective labor agreements, as it would make it possible for them to rely on the mediation by the National Conciliation Office (Office national de conciliation, ONC). Although trade unions believe that there is no requirement for employer organisations to negotiate at industry level, the text of the law is not entirely clear on this point (Art. L. 162-1 and Art. L. 162-2 of the Labour Code). It would be good for the unions to clarify why they believe that there is not duty to bargain at industry level (previous court decisions?). Beyond the topic of the obligation to negotiate at the industry level, it is noteworthy that the issue of the representativeness of employer organisations is not addressed by the law. Clarifying through legislation the missions and roles of employer organisations might be a means to encourage their involvement in collective bargaining.
- **Strengthening the favourability principle.** The favourability principle refers to the fact that when conflicting provisions exist between different sources of labor law, such as labor laws, industry-level collective agreements and company-level collective agreements, the most favorable terms and conditions for employees should prevail. The favourability principle generally applies in Luxembourg, except for the regulation of various dimensions of working time, providing for a certain degree of flexibilisation in terms of length of working time, maximum daily and weekly working time, and reference period. Regarding the favourability principle there is potential to enhance the quality of negotiated collective agreements by

strengthening the legal tools and resources of both unions and employer organisations. Another possible initiative would be to establish a directory of collective bargaining agreements, which could serve as a basis for the preparation of an annual report on collective bargaining.

- **Public procurements.** By linking public procurements to the existence of a collective agreement, public policy makers could further encourage collective bargaining.
- **Extending unionization.** Currently unions' presence in the Luxembourg economy is unequal, with a risk of a gradual marginalization of unions in some sectors of the economy, which could, in turn, lead to an incremental dualization of union representation and policies, limiting unions' influence to a few strongly organized segments of the economy<sup>29</sup>. By targeting low-organized sectors for unionization drives, unions could increase their capacity to negotiate new collective agreements especially in sectors where employment creation has been strongest, such as in business services and retail. Giving staff delegations the legal right to send via email messages by trade unions to workers would be a way of furthering union organizing at company level, especially in the context of the widespread implementation of telework, which complicates communication with employees.

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29 Thomas A., Trade unions in Luxembourg: Residual institutional strength and declining mobilization capacity, in Waddington J., Müller T. and Vandaele K. (eds), *Trade unions in the European Union. Picking up the pieces of the neoliberal challenge*, Brussels: Peter Lang, 2023, 731-762.

# MALTA

GODFREY BALDACCHINO & MANWEL DEBONO

## 1. Context

Malta's tradition of industrial relations has been inspired by enterprise level collective bargaining in limited parts of the private sector (mainly manufacturing, commercial banks, large hotels) and national level bargaining in the public sector. This leaves a sprawling private sector – composed mainly of large corporate entities with hardly any trade union representation (such as e-gaming and insurance); small and family-owned business; and a considerable 'gig economy' with large pools of migrant and female labour – that remains almost totally non-unionised and not covered by collective bargaining. The percentage of collective bargaining coverage in the private sector has decreased from around 33% in 1995 to 27% in 2008 (Baldacchino & Gatt, 2009).

Multi-Employer Bargaining in Malta is not popular or widely known; nor is it part of the policy agenda of either local employers or trade unions. We know of only one collective bargaining agreement that involved multiple employers, namely car import companies. The agreement, signed by the General Workers' Union and ten companies, expired in 2004 and appears not to have been renewed (Debono, 2016; Debono & Farrugia, 2008). We also know of two sectoral trade unions (out of around 40 currently registered unions) with a significant presence in the private sector, and which operate on an industry wide basis: The Malta Union of Teachers (for staff in the education sector, both public and private) and the Malta Union of Bank Employees (for staff in the banking sector, both public and private) Other unions, like the Medical Association of Malta and the Malta Chamber of Pharmacists may have members in both private and public sector, but these membership details are not public and hard to quantify. The two largest trade unions – the General Workers' Union or GWU and the *Unjon Haddiema Magħqudin* [Union of United Workers] or UHM – both have 'sections' that operate as sectoral trade unions in the non-public sector on their own right with a considerable degree of autonomy: (GWU has 7; UHM has 5). Their insider knowledge of and oversight over specific industrial sectors allows them to benchmark bargaining for pay and other working conditions. As the only two general (catch all) unions in Malta, the GWU and UHM sign over 90% of all collective agreements, and "their pressure for extensions and precedents, from one catchment group or industry to another, leads to both 'pattern bargaining' and 'bargaining coordination' across industries" (Debono & Baldacchino, 2019, p.432). Such experience could be beneficial for future multi-employer collective bargaining.

From the employers' side, most of the large corporate sector is affiliated to the Malta Employers Association (MEA) which provides professional support to employer bargaining on a needs basis. The Malta Hotels and Restaurants Association (MHRA) comes in second. Here too, it is easy for the MEA or the MHRA to offer

advice that is grounded in national or sectoral developments and trends. The Malta Chamber of Commerce, Enterprise and Industry (MCCEI) is another prominent organisation promoting and protecting business interests at a national level in Malta. But, unlike the MEA and MHRA, the MCCEI is not registered as an employers' association in accordance with the provisions of the Employment and Industrial Relations Act (EIRA, 2002), and therefore not legally empowered to enter into collective bargaining.

We do not exclude the fact that some multi-employer representation exists, under the aegis of a few sectoral employer associations or the MCCEI. We however do not know of any collective bargaining undertaken, or collective agreements secured, by any such employer association.

## **2. Existing initiatives that might facilitate multi-employer collective bargaining**

Trade unions in Malta, as in other countries across the globe, face the challenge of maintaining and increasing membership levels. The basis for working out trade union membership – and therefore the right towards official recognition and representation for the purposes of collective bargaining – is fraught with controversy, and some creative practices. Some trade unions make it hard for members to resign; others continue to consider workers to have remained their members even after they have stopped paying their membership dues over many years: they would be asked to pay their 'arrears' should they wish to 're-join' their union again or solicit its support on their behalf. Some unions also include retired workers as their members, thereby augmenting their membership figures.

A few years ago, the GWU proposed an additional initiative to promote collective bargaining and trade union representation in Malta. This proposal involves enrolling all workers as trade union members by default; while also providing them with an opt-out option. In the event of opting out, their trade union membership dues would be directed towards a worker education and training fund (Micallef, 2019). This proposal has been endorsed by the Labour Government that listed it in the current Electoral Manifesto (Borg, 2022), and by the UHM which supports mandatory membership for low-income workers who are particularly vulnerable to exploitation (Micallef, 2022). The measure would be an effective foil to the considerable 'free riding' that is rife in the workplace: why bother to join a trade union when one benefits from the outcomes of collective bargaining anyway? However, employers' organisations - including the MEA, MCCEI and MHRA - have been vehemently against it, arguing mainly that it would clash with the freedom of affiliation and representation as a basic right (Agius, 2018, November 1). Notwithstanding the negative sentiment expressed by employers towards what they consider to be compulsory trade union membership, the fact that the government and the two largest unions are in favour of such an initiative provides some credibility to its eventual introduction. The focus on trade union membership by default also aligns with the goals of multi-employer collective bargaining to ensure fair and equitable treatment for all workers.

Another initiative, never formally endorsed but nevertheless practised in Malta, has been to enter into collective bargaining arrangements even when the trade union representing most of the employees in a particular place of work lacks 'majority representation' (50%+1 of the workers in the company, or distinct occupational category, as specified at law). Employers are not obliged by law to enter into discussion or negotiation with any trade union that does not meet the '50%+1' threshold – except to deal with individual cases. However, this has been a practice for some time, especially in the manufacturing sector in the late 1970s-early 1980s in Malta and where German management and investment is concerned (Baldacchino, 2009). It appears that, in some situations, employers prefer the familiar territory of collective bargaining even though the main trade union at the place of work could only command say 40-45% of employees as its members. The willingness of at least some employers to engage in collective bargaining even if the membership threshold is not met reflects a desire for inclusivity and stability in labour relations. This aligns with the goals of multi-employer collective bargaining, which aims to bring together multiple employers and trade unions to create a more comprehensive and stable bargaining framework.

Another practice, copied from the British tradition, is to have Wage Regulation Orders governing the basic conditions of employment of workers in non-unionised sectors (e.g. cinema workers, sextons, cleaning staff, woodwork and so on). Almost all of these Orders are nearly 50 years old and were the outcome of tripartite negotiations and discussions at national level, held by so-called Wages Councils (Grech, 2020). The Digital Platform Delivery Wages Council Wage Regulation Order (2022) is a rare recent addition to these orders. It was discussed within the Employment Relations Board, a tripartite body coordinated by the Department of Industrial and Employment Relations (DIER, 2022). The use of Wage Regulation Orders to govern basic employment conditions in non-unionised sectors demonstrates a commitment by major social partners to ensuring fair working conditions even in industries with lower union presence. This inclusivity aligns with the goals of multi-employer collective bargaining, which seeks to bring together various employers and workers in sectors that might not necessarily have high levels of union representation.

### **3. Suggestion for a pilot project introducing multi-employer collective bargaining in Malta**

As stated above, there is nearly no experience of multi-employer collective bargaining in Malta. In order to introduce the system, one can consider implementing a pilot program to demonstrate its benefits and feasibility. A successful implementation of the pilot project could serve as the first step in a gradual implementation of the system across various industries. The first task would be to choose the best sector for such an experiment. In which sector would such a system most likely be successful and in which would it be particularly beneficial? The ultimate choice of sector would need to be discussed and agreed between stakeholders, including employers' associations, trade unions, government and industrial relations experts. Having said that, we are here suggesting the hotels and restaurants sector as a possible choice for the pilot. The following subsections delineate the rationale for such choice and potential government support that would facilitate the project.

#### *Rationale for the choice of sector*

The chosen sector should ideally have a strong presence of social partners that already unite the interests of employers and employees. The MHRA fulfils the role of such an employers' association very well as its members cover a wider proportion of the sector. On the other hand, the largest two trade unions in Malta, namely the GWU and the UHM, are also present in the sector. Out of all unions, these two have the best human, financial and material resources to carry out multi-employer collective bargaining.

Most of the sector is currently not covered by collective bargaining. Thus, a multi-employer agreement may drastically increase the coverage of collective agreements. Hotels and restaurants experience considerable seasonal fluctuations and tend to employ many foreign workers with low working conditions. Indeed, the sector has high levels of precarity, and its workers would particularly benefit from the stability and job security that may be offered by collective agreements. These would particularly benefit from more stability and continuity in employment during the tourism industry's shoulder months.

The chosen sector should have a good level of organisation and standards in order to facilitate collective agreements. Hotels and restaurants in Malta already have some industry-wide standards and regulations, such as food (HACCP) and occupational health and safety guidelines. Multi-employer bargaining could help formalise and enforce these standards. Similarly, the chosen sector would ideally have already-existing common occupational categories that would facilitate the transition towards the establishment of common terms and conditions of employment. The hotels and restaurants sector in Malta draws from a common pool of workers, such as chefs, waiters, and housekeeping staff. A multi-employer collective agreement could help establish standardised wages and working conditions, thus reducing competition between employers for the same human resources. A multi-employer bargaining approach could establish uniform standards for job responsibilities and career progression.

## Government support

The Maltese government needs to appraise the existing legal framework to determine how it can be improved to facilitate multi-employer bargaining. The concept of multi-employer bargaining and relevant parameters regulating it should be added to the EIRA (2002). These parameters could include among others clarifying: the procedures for unions to gain recognition as representatives of employees across multiple employers; the duties of unions and employers involved in such bargaining; and the scope of bargaining and agreements (by for example, limiting the agreement to those employers who voluntarily agree to be part of it).

The Maltese government can provide incentives for companies to take part in the pilot project, and subsequently in more widespread multi-employer collective bargaining initiatives. There could be special incentives to join the multi-employer bargaining process and to finalise collective agreements such as: 1. Tax incentives (such as tax breaks or credits) can be given to employers who actively engage in multi-employer bargaining. These incentives can offset some of the costs associated with negotiations and help employers appreciate the financial benefits of collective bargaining; 2. Training and development funds can be established to support training and skill development programs for employees in sectors that engage in multi-employer bargaining. This may enhance the skills and productivity of the workforce and may benefit both employers and employees; 3. The government can also strengthen the existing support and resources offered by the Department for Industrial and Employment Relations (DIER) for dispute resolution processes, assisting parties to navigate conflicts that may arise during multi-employer bargaining; 4. There needs to be monitoring and evaluation mechanisms to monitor the implementation of a multi-employer bargaining pilot project and evaluate its impact. The generated data should be used to make adjustments and improvements to the system as needed; 5. If the pilot is successful and a decision is taken to implement multi-employer bargaining more widely, there would need to be public relations support to promote the benefits of such a system to a wider range of stakeholders and the broader public, and foster a positive perception of the approach.

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# ROMANIA

AURORA TRIF & RADU STOCHITA

## 1. The context of collective bargaining in Romania in 2023

There are two interrelated preconditions for the existence of collective bargaining (CB) between representatives of workers and employers. The first one is that the legal provisions do not prohibit their freedom of association, rights to bargain collectively and to take industrial action. The second one is the existence of representatives of workers and employers who can either voluntarily or be obliged by statutory provisions to jointly regulate labour standards. In Romania, there is a strong tradition of relying on statutory provisions that specify the procedural aspects of CB, including the eligibility criteria for representatives of workers and employers to be involved in negotiations at the company, sectoral and cross-sectoral levels and, the extension mechanisms of collective agreements.

Until the 2008 crisis, the statutory rights of unions and employers' associations, such as negotiating legally enforceable collective agreements that cover all employees in the bargaining unit (i.e. *erga omnes* extension at cross-sectoral, sectoral and company levels), led to widespread multi-employer CB. There was a multi-layered CB system based on the favourability principle, meaning that lower-level agreements could only improve employees' terms and conditions set at higher levels. The starting point was the cross-sectoral collective agreement negotiated by the representative unions and employers' confederations, which covered all employees. The second layer consisted of sectoral agreements, negotiated by the representative unions and employers' associations in 20 (out of the 32) sectors eligible for CB in 2008. Finally, the actual terms and conditions of employment were established at company level, as the cross-sectoral and sectoral agreements set only the minimum standards. The law required employers to initiate CB annually within any company with more than 20 employees.

The reliance of Romanian trade unions primarily on institutional support for their role and influence in CB is a double-edged sword. On the one hand, the supportive legal context has led to a very high CB coverage (over 90%) until 2010. In exchange for the unions' acceptance of economic reforms seeking to transform the centrally planned economy into a market-economy during the 1990s, Romanian governments accepted unions' demands for a favourable institutional environment. On the other hand, despite having one of the most supportive institutional contexts for unions in the region *de jure* until 2008, *de facto* it was often difficult to enforce labour regulations particularly in non-unionised companies (Goran et al., 2023). Also, it was difficult for unions to improve working conditions at company level due to low capacity of mobilisation of members. Furthermore, it made it easy for a centre-right government to undermine the fundamental union rights in 2011, including the prohibition of cross-sectoral bargaining (Trif and Paolucci, 2019).

While the preconditions for international financial assistance imposed by the Troika have contributed to undermining the role and influence of unions, the EU instruments adopted after 2017 have triggered important legal changes in 2022 strengthening *de jure* fundamental union rights in Romania (Goran et al., 2023). In order to get over €14 billion in EU grants to support the green and digital transitions, the Romanian government had to specify in the 2022 national recovery and resilience plan how it implemented the 2019 and 2020 country-specific recommendations concerning social dialogue and CB (Goran et al., 2023). Moreover, the payment of the first instalment was contingent on compliance with the deadlines for the implementation of the EC country-specific recommendations. As the agreed deadline for strengthening social dialogue and multi-employer CB was in 2022, the Romanian government decided to adopt a new law (367/2022), that led to radical legal changes in fundamental union rights.

As regards the freedom of association, it removed the restrictions to organise workers based on the size of the company and some types of contracts. While previously it was stipulated that a union could be formed by 15 employees working in the same company or workplace, the new provisions allow at least 10 employees (directly employed by a company) and workers (e.g. indirectly employed by a company) working in the same company or workplace, or at least 20 employees/workers from different companies in the same sector to form a union (Goran et al., 2023). Accordingly, it provided new opportunities for unions to organise over 1.5 million workers in small and medium sized companies.

As regards CB, the 2022 legal provisions strengthen the negotiation at each level. At the company/workplace level, the representativeness threshold for unions (required to be eligible to negotiate a collective agreement) was reduced from over 50 percent to 35 percent in 2022 and, CB became mandatory for undertakings with at least 10 employees/workers (reduced from 21 employees). The 2022 legal provisions also allow (in certain circumstances) non-representative unions to negotiate collective agreements. Finally, a company/workplace collective agreement applies to employees and other workers indirectly employed by the organisation.

At the sector level, union federations representativeness threshold decreased from seven percent to five percent in a context where the sectors eligible for CB have become more specific. These amendments made it possible for smaller union federations, such as the Free Trade Union Federation in Romania, to become representative and eligible to negotiate a sectoral collective agreement in the shipbuilding sector (this sector was previously part of the metal sector). Nevertheless, there is no sectoral employers' federation to bargain with in the shipbuilding sector.

At the cross-sectoral level, the 2022 law reinstated the right of representative confederations of unions and employers to negotiate collective agreements. The five union confederations started discussions about the reintroduction of a cross-sectoral agreement in 2023, while it is unclear whether employers' confederations will be willing to start negotiations. The multi-employer collective agreements apply automatically solely to all employees/workers employed by the member organisations of the signatory employers' organizations, while before 2011 there was an *erga omnes* extension of the cross-sectoral and sectoral collective agreements.

Still, the 2022 law made it possible to extend sectoral agreements to all employees/workers, if the labour force of the companies affiliated to the employer organizations signing the sectoral collective agreement exceeds 35 percent of the total number of employees/workers in the sector. Respectively, the cross-sectoral agreement can be extended to the entire labour force, if the labour force of the members of employer confederations that signed the cross-sectoral agreement exceeds 20 percent of the total labour force working in the private sector and commercial companies owned by the state. Besides, the extension of the cross-sectoral and sectoral agreements needs to be approved by the Tripartite National Council and the government.

As regard industrial conflicts, the 2022 law broadened the circumstances under which strikes can be initiated. Prior to 2022, strikes were allowed only during the CB process. In addition, the current provisions allows

unions to initiate a strike (i) when the employer does not provide the unions with relevant information (e.g. regarding the economic and financial situation or about planned measures that would affect the terms and conditions of work during the duration of the collective agreement); (ii) when an employer refuses to implement provisions of collective agreements that have been negotiated on their behalf as well as in few other circumstances not directly linked to CB (Goran et al., 2023). Still, the new provisions make it very difficult for workers in small firms to take industrial action when an employer refuses to implement the provisions of a collective agreement, as unions need to prove that at least 10 workers have been negatively affected by it.

Summing up, the restoring of fundamental union rights in 2022 did not result in major changes in CB coverage in 2023, while the 2011 legal changes led to a sudden decline in CB coverage from over 90% in 2010 to circa 36% in 2011 (Goran et al., 2023). Accordingly, developments in Romania suggest that legal changes can suddenly destroy multi-employer CB, while its (re)development is a gradual process. Increasing the CB coverage requires the (re)consolidation of relevant actors at each level to have the capacity and willingness to negotiate and conclude collective agreements. Moreover, the quantity (e.g. coverage rate) and the quality (e.g. improvement of working conditions for low paid workers) of CB is generally contingent on unions' organisational resources and their willingness to address the interests of all workers.

## **2. Practical recommendations on how to strengthen multi-employer bargaining**

### **2.1. Strengthening institutional resources**

The most feasible way to reach 80% CB coverage is to amend the 2022 laws by (re)introducing a statutory *erga omnes* extension mechanism for the cross-sectoral agreement. As the 2022 legal provisions allow solely a cross-sectoral collective agreement to be negotiated annually together by all representative confederations of unions and employers at the national level, this agreement could cover the entire labour force, as it was the case until 2010. Similarly, as the current legal provisions allow solely a sectoral collective agreement negotiated by all representative federations of unions and employers at the sectoral level, this agreement could cover the entire labour force in a specific sector by adopting a statutory *erga omnes* extension mechanism. In addition, the law should allow unions to receive a bargaining fee from non-unionized workers benefiting from the provisions of these collective agreements (e.g. 33% of the average value of the annual union dues at each level, where there is extension *erga omnes*) to address the 'free riding' issue. This bargaining fund could be used by unions to hire experts to help them negotiate and/or do relevant research for unions.

In addition, there could be a stronger role for both social partners in setting minimum wage by obliging the government to consider their views on minimum wage by setting a tripartite low pay commission consisting of representatives of unions, employers and experts that decides the annual increases in minimum wages. These legal amendments would strengthen *de facto* the role and influence of the social partners in setting the minimum wage as well as in negotiating other minimum labour standards to reduce inequality by improving conditions for the most vulnerable groups of workers. Still, strong(er) trade unions are needed to ensure that labour regulations are implemented by companies.

### **2.2. Strengthening organisational resources of trade unions**

Considering the current legal context and recent empirical evidence in Romania, there are three (inter-related) ways that could contribute to strengthening multi-employer CB by improving unions' organisational resources. The first recommendation is for unions to focus more on organising workers, in the context in which a nationally representative survey shows that over 60% of respondents support the establishment of unions (Bădescu et al., 2022), while the unionization rate is below 20%. On the one hand, the 2022 legal changes made it easier for unions to organize workers by allowing unions to organise workers in small companies and by providing union activists access to non-unionised companies once a year. On the other hand, there

is an increased demand for union representation, especially to fight against the precarization of working conditions for young workers and migrants on non-standard contracts. Up to 100,000 non-EU migrants (e.g. from Nepal, India and Vietnam) work in Romania mostly in hotels, restaurants and the construction sector (Stochita, 2023). As their legal right to work in Romania is contingent on having a contract with the employer that applied for their work visa, migrants are often exploited (e.g. not paid the agreed wages or asked to pay back certain fees). Accordingly, non-EU migrant workers are in desperate need to be represented, as they face deportation when they are fired by employers. Thus, there are new opportunities for unions to organise workers, which in turn would enable them to increase their role and influence in CB.

The second recommendation is to strengthen public trust in union leaders, given that more than 40% of respondents of a nationally representative survey believe that union leaders primarily seek to further their own interests (Bădescu et al., 2022). Union leaders could regain legitimacy by taking actions to remove or distance themselves from the few officials who primarily seek to obtain personal benefits. Also, unions could improve their communication with the public regarding the success and failure of their actions by using multiple social media platforms. At the same time, unions could promote young leaders, who often communicate very well on social media, increasing the likelihood of attracting young people to join unions. In addition, we recommend for experienced union leaders to work together with young ones to learn from each other. Moreover, unions could also involve non-unionised workers in their actions, including those on non-standard contracts, to gain their trust and to encourage them to join a union. These actions could help unions to mobilise workers for actions needed to support them during the collective bargaining process.

Thirdly, we recommend strengthening the union's cooperation with other national unions and international, non-governmental organizations or even with employers for actions that promotes common interests (e.g. obtaining European funds for specific projects). This could be done by the union leaders adopting a win-win discourse highlighting opportunities for all parties involved (Trif et al., 2023). By strengthening their organisational capacity, trade unions could contribute to the improvement terms and conditions of work through CB and the implementation *de facto* of the legal rights of workers and the provisions of collective agreements.

There are several policy changes that could strengthen trade unions by expanding their role and making it easier to support and organise vulnerable workers. First, the government could set up a bipartite (or tripartite) industrial tribunal in each county constituted from representatives of trade unions, employers, and experts as a court of first instance responsible for resolving individual disputes between employers and workers (e.g. dismissal, wage dispute, leave, etc). Also, individual workers, including migrants and other vulnerable workers, should be allowed to be represented by unions when they lodge a complaint to this bi/tripartite industrial tribunal. Moreover, in order to make it possible for non-EU migrant workers to lodge a complaint when their employment rights have been breached by their current employer, the law should allow them to change employers within the first year of employment without the written consent of their current employer. Finally, the labour inspectorate could be strengthened by becoming a bipartite (or tripartite) institution constituted from representatives of trade unions and employers (and the government). Apart from expanding the role of the social partners, a bi/tripartite labour inspectorate could have benefits for all parties involved (e.g. employers would avoid unfair competition from rogue employers who use illegal practices to cut labour costs; unions could reach out and protect vulnerable workers; and, the state could collect more taxes, if there are less illegal employment practices, such as workers without a contract).

### **3. Concluding remarks**

As Romania has a CB coverage below 35%, it needs to strengthen both institutional (external) support as well as the (internal) capacity of social partners to engage in multi-employer CB to reach the 80% coverage required by the EU Directive on Adequate Minimum Wages. The most feasible solution to achieve 80% CB coverage is to (re)introduce a statutory *erga omnes* extension of cross-sectoral collective agreements to

cover all workers. Still, as unions have more control over their internal resources, we recommend unions to focus on (a) organising workers; (b) strengthening their leadership; and, (c) developing and/or improving co-operation with other domestic and international unions and other organisations defending workers' interests. Strengthening unions' organisational resources would also help (i) to improve the minimum labour standards set by multi-employer agreements via collective bargaining at the company level and (ii) to enforce the statutory workers' rights and the provisions of collective agreements. Furthermore, changing the structure of the labour inspectorate to a bipartite (or tripartite) body and setting up a new bipartite (or tripartite) industrial tribunal would also strengthen social partners capacity to enforce the statutory and voluntary regulations, particularly for the most vulnerable groups of workers.

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# SLOVAKIA

ADAM ŠUMICHRÁST AND MARTA KAHANCOVÁ

## 1. General overview

Collective bargaining in Slovakia is legally anchored in Act No. 2/1991 on collective bargaining. It was one of the first acts of the post-1989 regime change that institutionalized the voluntary principle for bargaining. Since 1991, the legislation on collective bargaining underwent at least 11 amendments, e.g., regarding the extension of bargaining coverage.

According to Act No. 2/1991 on collective bargaining, the negotiation and conclusion of collective agreements are carried out by employers and representative trade unions on a voluntary basis. Unions are authorized through union statutes or internal union regulations. In situations where multiple representative unions operate at a workplace, these unions must come to an agreement on the negotiating provisions.

In the case of higher-level collective agreements, employers' associations have the option to enter into agreements with unions representing the largest number of employees among member companies. Information pertaining to negotiations and approval procedures within employers' organizations is limited and not publicly available, as these processes are detailed in internal regulations accessible only to members.

At the establishment level, union representatives take on the role of negotiators and also supervise the enforcement of collective agreements. Notably, union representatives possess the authority to call for a strike following a majority vote in a secret ballot, a right that sets them apart from works councils or work trustees. Meanwhile, at the industry level, unions typically appoint a chief negotiator to lead negotiations.

For example, the metalworkers' union, OZ KOVO, determines its chief negotiator and overall bargaining strategy by way of its Presidency of the Council of the Trade Union Federation. This Council serves as the union's statutory and executive body. The internal appointment process for these roles is often unique to the union's constitution, and there is a dearth of comprehensive studies that accurately describe these appointment procedures. These mechanisms may involve voting or formal approval, but specific details are rarely documented. As a result, the depth of collective bargaining at the industry level is typically less prominent compared to the establishment level. Union representatives responsible for negotiating collective agreements with industrial or higher-level employer organizations are frequently, and in most cases, professionals employed by industry-level unions. In certain instances, a representative from the higher-level union might also serve as a representative of an establishment-level union, such as in the banking sector, even though industrial wage bargaining has ceased to exist in that industry (Kahancová and Uhlerová 2023).

## 2. Extent of bargaining

The collective bargaining system in Slovakia is referred to as co-existence of company and sector level bargaining (Eurofound 2022; Kahancová et al. 2019; Aumayr 2019). The erosion of collective bargaining is exemplified by the sharp decline in bargaining coverage in Slovakia after 1989. Over the past two decades, bargaining coverage has dwindled significantly, plummeting from over 50 percent in 2000 to just 24.9 percent in 2013 and 24.4 in 2015. For 2016, the collective agreements were signed in 70.9 per cent of public sector organisations and in 20.7 per cent of private sector ones. Although Eurofound data in 2017 estimated bargaining coverage in Slovakia at 30 percent and there has been a pattern that in recent years that the situation regarding collective bargaining coverage has been relatively stable (also in terms of trade union density), the most recent data (Eurofound 2019) estimate bargaining coverage in Slovakia at 14%, with a predominance of company collective bargaining.

The decline in bargaining coverage can be attributed to various factors, such as privatization of state-owned enterprises and incorporation of labour interests in policy-making as a trade-off for labour cooperation in economic reforms since the 1990s. Slovakia also underwent a significant inflow of foreign direct investments since late 1990s and throughout the 2000s; and the extent to which foreign companies were interested in collective bargaining differed extensively based on their home country. Still, foreign investors were looking for accommodation to local standards rather than exporting their domestic practices to a host country. After the 2008 economic crisis, which had a modest effect on the Slovak economy, legislative efforts concentrated on changes to extensions in bargaining coverage. The basic conflict evolved around voluntary extensions vis-à-vis *erga omnes* extensions onto the whole sector. Depending on the political colour of the government, extension rules were undergoing several changes.

According to the Ministry of Labour, Social Affairs and Family, 30 and 37 new multiemployer collective agreements and amendments to existing agreements were registered in 2018 and 2019, respectively. 11 sectoral collective agreements and 11 amendments to sectoral agreements, a total of 22, were registered in 2020. Eight of the sectoral agreements were signed in the private sector and three in the public sector; while all the 11 amendments related to the private sector. The commerce sector lacks a sectoral collective agreement, it is part of the trade union strategy to conduct wage negotiations at the company level, individually with each larger commerce company. In addition, the majority of large commerce companies formed a new association (*Slovak Alliance of Modern Trade, SAMO*) yet under a different legal status, which does not oblige them to enter into collective bargaining (they are not registered as an employers' association). A similar trend was observed in the banking sector already in 2016, where the members of the Slovak Banking Association (SBA) accepted a change in the association's statutes that excluded it from multi-employer collective bargaining<sup>30</sup>. The total number of employees directly covered by a higher-level collective agreement in 2019 was 139 895 (Benedeková et al. 2022).

Since 2004, the Confederation of Trade Unions of the Slovak Republic (Konfederácia odborových zväzov Slovenskej republiky, KOZ SR) is negotiating two important higher-level collective agreements, one for civil servants and one for public servants. In total, these agreement cover over 360,000 employees in the public and state sectors. This approach was adopted because KOZ SR represents multiple national public-sector trade unions, and negotiating individual collective agreements with the government would lead to increased budget expenditures due to benefits and wage increases. Therefore, coordinated bargaining for public and state employees has proven to be more effective. In 2018, KOZ SR played a role in modifying the remuneration system for public servants to prevent wage rates from falling below the statutory minimum wage. In certain wage levels of public services and state administration, additional bargaining rounds have been es-

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30 Source: <https://www.sbaonline.sk/novinka/slovenska-bankova-asociacia-chce-pokracovat-v-socialnom-dialogu-s-odborarmi/> [accessed 4.2.2024].

tablished, allowing for upward deviations from higher-level collective agreements. This practice is observed in the negotiations of police officers, firefighters, and prison guards with the Ministry of Interior Affairs (Kahancová and Uhlerová 2023).

In the context of the presented decrease of multi-employer bargaining, trade unions increasingly turned their strategy onto legal regulation, seen as the most crucial form of coercion. As unions faced a decline in their associational power and uncertainties in bargaining, they increasingly championed legal regulations, which have, to some extent, supplanted collective bargaining. For example, wage setting in the healthcare sector were completely removed from multi-employer bargaining and is now regulated via legislation. Alongside unions' focus on national-level legislative changes, another noteworthy trend is the increasing importance of the statutory minimum wage which was always at the centre of tripartite social dialogue at the national level. To avoid failures to negotiations, unions actively advocated for an automatic legal mechanism for minimum wage setting at 60% of the average wage from 2 years ago. This regulation was implemented in 2019 and unions considered it their victory of the decade (Kahancová and Kirov 2019).

### **3. The problem of employers' organisations**

The extent of the presence of employers' organisations in the commerce sector plays a crucial role in their presence and effectiveness in coordinated bargaining beyond the enterprise level. In the Central and Eastern European Member States, the lack of diversity of employers' organisations may be due to the fact that employers prefer to bargain at company level without the presence of trade unions, or may operate entirely without the presence of trade unions and regulate matters through collective bargaining. In Slovakia, in 2014, the largest and most influential multinational companies in the commerce sector left the established sector-level employers' association, Union of Commerce and Tourism (*Zväz obchodu a cestovného ruchu*), which in 2017 changed its name to the Association of Commerce of the Slovak Republic, and created their own business association, Slovak Modern Commerce Alliance (*Slovenská aliancia moderného obchodu*, SAMO). Unfortunately, SAMO does not meet the legal requirements to engage in collective bargaining. As a result, bargaining in SAMO member companies occurs exclusively at the company level (Szüdi et al. 2018).

This is part of a broader phenomenon where when an employer's association changes its legal status, such as becoming a non-profit organization of independent entities, it may no longer be eligible to sign collective agreements formally. Therefore, the low coverage of collective agreements in the sector (around 6%) is related to weakly established trade unions and employers' associations (Šumichrast and Bors 2023).

An interesting case is the Lidl supermarket chain. Until March 2019, the sectional union operated solely in the logistics center, and membership remained stagnant. As a result, Lidl's union remained under OZ KOVO (manufacturing), the most powerful sector union in Slovakia. The employer clearly opposed the presence of a trade union, and there was a negative attitude towards the growing unions. Establishing a collective agreement was a challenging endeavor, especially given the company's structure and low union membership. In July 2020, the trade union proposed a collective agreement, and negotiations with a mediator's assistance took place in February 2022. An agreement was eventually reached on March 28, which included granting the union chair long-term paid leave to carry out her union activities. The agreement covers essential non-wage matters, which the union sees as the foundation for future negotiations in the core topics (Šumichrast and Bors 2023). In 2023, unions were also established in another large retail chain, Kaufland, but also under a branch of OZ KOVO.

### **4. Extension of collective agreements**

Extension was possible according to the Act No. 2/1991 on collective bargaining, but as summarized above, the extension regulation and practice has been varying depending on government preferences. Since 2017, only representative multi-employer collective agreements could have been extended. Unions have played



an active role in advocating for the extension of collective agreements. *Erga omnes* extensions have been subject to changes in government, resulting in their periodic inclusion or exclusion from legislation. Since 2017, only representative multi-employer collective agreements could have been extended. Representative collective agreements are those that cover the majority of the industry's workforce; and they can be extended to other employers following a committee decision supervised by the Ministry of Labour, Social Affairs and Family (Kahancová and Uhlerová 2023).

After the 2020 elections and government change from social-democratic to centre-right, tripartite social dialogue became much more formalized, and the extension of representative collective agreements was removed from the legislation (Adámek et al. 2021 and the last amendment to Act 2/1991). In February 2021, an amendment to the Labour Code removed the provisions related to representative collective agreements at a higher level and their *erga omnes* binding extension to other employers and their employees within an industry or part of an industry. This, in turn, led to a return to the voluntary basis of extensions to bargaining coverage. The current possibility of extending collective agreements is based on a voluntary request of an employer, which is not part of the employers' association that signed a multi-employer collective agreement, to join this agreement. If the signatories of the agreement agree, they announce the extension of coverage to the Ministry of Labour, Social Affairs and Family in a period of max. 15 days. Such extension is published in the Book of Laws of the Slovak Republic<sup>31</sup>.

Further changes are expected in the question of extensions after the 2023 elections, with two social-democratic parties in the current government (Smer and Hlas) Government representatives indicated that legislative mechanisms will be reinstated to align with the objectives of the Minimum Wage Directive, even though this was not explicitly mentioned in their electoral program.

As mentioned above, in the commerce sector trade unions explicitly preferred not to extend sectoral agreements and later reverted from negotiating wage clauses only at the company level. This is because sectoral agreements typically establish minimum standards, and extending them could disrupt the delicate balance of power relations between unions and employers in the commerce sector. Instead, unions focus on negotiating company-level collective bargaining agreements with higher standards. This approach allows them to accommodate the diverse interests of specific employers and prevents the divisions that existed before the split of the employers' association between domestic and multinational retail chains in commerce. As a result, the extension mechanism was not used in the commerce sector in Slovakia (Szüdi et al. 2018).

## **5. Practical recommendations on how to strengthen multi-employer bargaining**

The following proposals for encouraging collective bargaining, its coordination at the multi-employer level and increases to bargaining coverage can be identified:

- Transpose the European Directive on adequate minimum wages into the Slovak legislation, its application monitored by the Ministry of Labour, Social Affairs and Family and social partners.
- Apply the Directive also in non-organized sectors such as platform/gig work, mainly concerning establishment of collective bargaining (bargaining attempts emerged about 8 years ago, but then social partners jointly turned to legislative solutions, see Kahancová and Martišková (2023)
- Adopt multiple measures (e.g. ensuring guaranteed minimum working hours, limiting certain forms of non-standard employment, strengthening collective bargaining capacities in non-standard forms of employment, introducing vocational education and training, or regulating the possibility of collective disputes

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31 Source: Act 2/1991 and its currently valid amendments.

and their resolution), which would strengthen the role of collective bargaining, as employers and trade unions know best the situation in companies (collective agreements at company level) and also in sectors (higher-level collective agreements). These adjustments may have been to the benefit of employees and, in certain cases, to the benefit of employers. They also raise employers' awareness of the fact that collective bargaining, and the resulting collective agreements, are guarantees of social peace, as well as to emphasize the importance of collective bargaining as a means of prevention and an opportunity for resolving mutual conflicts. - Prevent and regulate the increasing opacity of the social partners entitled to negotiate higher-level collective agreements, the need for a comprehensive reform of the system of industrial relations and a related refinement of the nature and content of the formal outcomes of the social partners' negotiations (e.g. in tripartism, only non-binding recommendations to the government emerge, the minimum wage being an exception)

- Change legislation to avoid employers' associations changing their legal form to business associations and thus no longer being obliged to bargaining higher-level collective agreements with unions (e.g. the case of the Slovak Banking Association or the Association of Modern Retail)
- Considering the limited awareness of the social benefits of collective bargaining in Slovakia, it is recommended to initiate discussions about the necessity and significance of social partnership and collective bargaining. E.g., training courses on collective bargaining techniques and resolving collective labor disputes should be implemented more intensively – both by unions and employers.
- In the face of management resistance to the establishment of trade unions at the workplace and threats of dismissals, it is recommended to enact legislation that provides stronger protection for employees forming unions. This may include, e.g., considering criminal penalties for managers engaging in such practices. Additionally, the possibility of forming a trade union in secret and notifying the employer only after full registration should be explored.
- To increase the bargaining coverage by higher-level collective agreements, several other factors could theoretically contribute: simplifying and reducing the rigidity of conditions for their extension, streamlining the extension process which underwent several legislative changes in the last 15 years (basically a debate between automatic vs. voluntary extensions, the debate centering on the fact if the employer that is subject to extended coverage agrees with this); boosting trade union initiatives to negotiate, raising the level of enforceable provisions agreed upon in sectoral collective agreements, and including all employers with a statistical code for which a higher-level collective agreement has been concluded in mandatory attachments.
- Transparent and unified measurement of bargaining coverage – this debate is currently starting among the unions, and unions also want to open this question in tripartite negotiations and vis-à-vis the current government in office since October 2023. The concern of unions also focuses on the setting of Minimum Wage – median vs. average, and what is feasible for Slovakia, to make sure it facilitates, not hollows out, further wage bargaining.
- Gaining a consent of the government on what increased bargaining coverage means and what the obligations emerging from the Directive are. Some government representatives claimed informally that since minimum wage is subject to tripartite bargaining, and its applicability is nation-wide, this fact 'ticks the box' for a 100% bargaining coverage and thus fulfillment of the Directive's requirements. In reality, bargaining on minimum wages is discouraged due to an existing institutional safeguard that defines the mechanism for minimum wage setting should the social partners not agree about the next years' minimum wage level. Yet the developments in 2023 did bring an agreement, thus minimum wage increase in 2024 occurred upon social partner agreement, not upon the automated mechanism.

- Another sensitive question in relation to bargaining coverage is the topics that are subject to bargaining. Wage bargaining has been disappearing from sectoral/multi-employer bargaining, moving to legislation (healthcare) or company-level bargaining (banking, retail). There is a debate if bargaining on ‘soft’ topics, thus not wages and working time, can resemble a ‘foot in the door’ and facilitate more bargaining in the future. This concerns e.g. topics of training and social benefits. Training becomes an increasingly relevant topic for bargaining in the light of the economy’s restructuring, decarbonization and related re-skilling.
- The recommendation is to achieve at least a doubling of collective agreement coverage within a 5-year timeframe compared to the current state and to approach the goal set by the European directive on adequate minimum wages within a 10-year timeframe (Košč et al. 2023; Benedeková et al. 2022).

From among these proposals, the expected changes relate to changes to extension rules because of the new government with predominance of social-democratic parties. The goal of implementing the Minimum Wage Directive is also triggering more discussion on the increase of bargaining coverage, not only among unions but also among employers’ associations in industry. Finally, the COVID-19 pandemic triggered more collective bargaining in case of wage replacements, which were set at minimum standards by legislation, but actually higher in some employers notably in the metal sector (Kahancová et al. 2023).

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# SLOVENIA

VALENTINA FRANCA

## 1. Introduction

Social dialogue and collective bargaining have a long tradition in Slovenia with well-established structures at different levels. At the national level, social dialogue takes place in the Economic and Social Committee, a tripartite body of the social partners and the Government of the Republic of Slovenia established to discuss issues and measures related to economic and social policy, as well as other issues in specific areas where the partners agree. In the public sector, collective bargaining takes place mainly at the national and sectoral levels; some professions, such as police officers, are covered by professional collective agreements. In the private sector, collective bargaining does not take place at the national level, but collective agreements are concluded at the sectoral and local levels.

Directive (EU) 2022/2041 on adequate minimum wages in the European Union has generally not received much attention in Slovenia. The main reason for this is that the minimum wage is set by law and applies to everyone who has an employment contract and works in Slovenia. Furthermore, the available data suggest that the coverage of collective agreements in Slovenia is around 80 per cent (e.g., the most recent Eurofound data show a coverage of 78 per cent). However, as there are no official records, this is only an estimate. It should also be borne in mind that coverage in the public sector is 100 per cent, as collective agreements apply to all public sector employees. This means that coverage in the private sector is significantly lower, and it is impossible to give even an approximate estimate. Since there is no official data on membership of trade unions or employers' associations in Slovenia, it is also not possible to draw conclusions about the actual coverage of collective agreements from this data. The only relevant data is that there are 29 sectoral collective agreements (data for September 2023) concluded in the private sector, 17 of which have extended validity, i.e., they apply to all employers in the sector. However, it is undeniable that the coverage rate in the private sector is significantly lower than in the public sector and that there are no collective agreements in a considerable number of sectors, which means that there is more than an urgent need to develop appropriate measures to promote multi-level employer collective bargaining in the private sector. The following sections provide some reflections on how this problem could be addressed. In doing so, options for legislative changes and other measures that could be taken are presented separately.

## 2. Possible legislative changes

The Collective Agreements Act (2006) sets out the rules when a collective agreement may have an extended applicability. According to Article 12 of the said Act, this may be the case when a collective agreement

is concluded by one or more representative trade unions and one or more representative employers' associations, which means that the collective agreement is extended to all employers in the sector. Trade union representativeness is defined in the Representativeness of Trade Unions Act (1993; Articles 8 and 9), which requires 10 per cent of workers in each sector if they are affiliated to a trade union confederation, or 15 per cent if the union is not affiliated to a trade union confederation. For employers' associations, the second paragraph of Article 12 of the Collective Agreement Act states that representativeness is given if their members employ more than half of all workers of the employers for whom the extension of the collective agreement is proposed. Currently, there is no legal provision specifying who can be a representative employers' association, which leads to confusion when it comes to collective bargaining. This would certainly be a problem in concluding a general collective agreement for the commercial sector (see below), as many organisations, such as the various professional associations of managers, would want to be involved. Therefore, a clear legal distinction must be made as to who the employers' organisations are and which of them are representative.

It must be stressed that there is **no mechanism** to control the number of members of both social partners; trade unions only must prove the required percentage of members when they apply for representativeness. Once they have achieved this, no one can take it away from them. Therefore, the legislative changes should include an obligation for a representative trade union to review its own status every five years or so.

The problem is that in many sectors the social partners **do not meet the threshold** for extended validity of collective agreements, resulting in lower coverage. The fear, however, is that if a mechanism for reviewing employers' representatives were introduced, there would be no employers' side partner. On the trade union side, there should be merger initiatives. Currently there are 50 representative trade unions in Slovenia, belonging to 6 different confederations and serving a labour market of 996,000 workers. The multiplicity of trade unions in some ways hinders social dialogue and collective bargaining, as it becomes increasingly difficult to reach consensus. Interests are widely dispersed and the ability to unify positions within the unions is extremely difficult. It seems that everyone must speak their own word to consolidate their position, without regard to the damage that a possible collective agreement could have on many workers. This could be addressed by tightening the conditions for obtaining representativeness on the part of the unions, which will certainly meet with great resistance, but would be a step in the right direction. There is no doubt that a way must be found to bring the unions together.

### **3. Possible measure, solutions and policy making for a higher coverage**

**Conclusion of a general collective agreement for the commercial sector** that would apply to all workers in the private sector. In fact, such a collective agreement was in force until 2006 and by then Slovenia had 100 per cent coverage of collective agreements. This was because membership in the Chamber of Commerce was compulsory until then. Yet, when this became voluntary, more and more employers were not members of an employers' association and were therefore not covered by a collective agreement. However, it is questionable whether the conclusion of a general collective agreement for the commercial sector is feasible; opinions are divided. It does not seem realistic to conclude a "traditional" collective agreement setting out workers' rights in favorem. Employers would certainly not agree to this, and trade unions are rather reluctant to do so, as it calls into question the role of sectoral collective agreements. On the other hand, it would be reasonable to consider a different approach to such an agreement. One untapped option would be to start discussing a **general wage** model that does not set the level of individual payments and wages but provides a framework for further determination in sectoral collective agreements. The alternative would be to cover **current issues** such as artificial intelligence and the green transition. From this perspective, the goal of such a collective agreement would be to answer the question of how it is possible to effectively manage and address today's challenges in the labour market together. Perhaps this shift in thinking would take place on issues that are not contentious between the social partners, i.e., where there is scope for joint learning and development of solutions. This could be a first step of cooperation that builds trust, which could lead to bet-

ter collective agreements. New issues could thus find consensus at the national level, which could then be implemented at the sectoral and company levels.

**Introducing new content in collective agreements.** All research on the content of collective agreements in Slovenia has shown that the content of the collective agreements in force is outdated and has not changed much since the post-independence period (nineties of the last century). In other words, not only the recently more discussed topics such as artificial intelligence and the green transition have not found their way into collective bargaining in Slovenia, but also atypical forms of work, digitalisation, lifelong learning, and the like are practically not discussed, with some minor exceptions. Although researchers and other experts have been pointing this out for a long time, nothing has changed. Therefore, it would be reasonable to consider establishing a mechanism that obliges the social partners to discuss current issues as well as the adopted framework agreements of the European social partners and their implementation methods. At the same time, it would be good to establish a method of reporting at least to the European social partners, if not to the European Commission

**Promotion of social dialogue,** especially to explain concretely why it is important. In the Slovenian arena, the prevailing paradigm is that workers with a collective agreement can only gain more rights (the *in favorem* principle). Only rarely has the importance of social dialogue for employers been addressed. The idea that collective agreements bring greater legitimacy to the agreements reached, which is of considerable interest to employers, needs to be reinforced. However, the promotion could be also with more specific measures, such as to get extra points in public call for tenders, including public procurement, if the employer participating in the call is a member of an employer organization. With this extra point, they would improve their position in winning the tender.

The Ministry of Labour could stimulate and promote social dialogue. A special focus could be on the adjustment incentives for employers, such as mentoring programmes, the green transition, the impact of artificial intelligence and the like. At the same time, it would be useful to encourage the social partners to recruit new members. On the trade union side, there remains the problem of attracting young people, which will be exacerbated in the coming years by the predicted mass retirements. Employers' organisations face a similar challenge, noting low interest from companies in joining their organisations. As mentioned earlier, one way to address this challenge is to join forces, which would certainly strengthen the social partners on both sides.

**Capacity building and training.** The small size of the country also affects the number of professionally qualified leaders of trade unions and employers' organisations. A wide range of issues are currently being negotiated in Slovenia, which practically exhausts the social partners, as the same people are present, for example, in the negotiations on pension reform, the amendment of the country's basic labour law, the reform of the public sector wage system, and so on. As it is difficult for social partners to afford new hiring, it would also make sense to consider financial support for social dialogue, but this could be done in such a way that the independence of the social partners is not jeopardised. For example, it could be agreed to reimburse the costs of participating in the negotiations, such as reimbursing the costs of experts' salaries. If the collective agreement is extended, it will apply to all employers and employees, even if only those who are financed by their members' contributions have invested their time, effort and not least their money. It therefore seems appropriate to reimburse at least part of the costs. At the same time, the training of the social partners should be strengthened, as there is a lack of knowledge and understanding of the issues discussed in many areas.

**Expanding the applicability of collective agreements** to persons who do not have an employment contract continues to be overlooked. There has been no activity to date that has led to broader possibilities for the applicability of collective agreements, for example, to the self-employed, platform workers and the like; nor is there any such consideration for *de lege ferenda*.

### *How to solve the unresolvable or how to understand the purpose of collective bargaining?*

It is often the case that employers in particular perceive negotiations as business negotiations, i.e. that they need to "get something out of it" at the end of the day in order to "improve their position". The inadequacy of this approach is also reflected in the fact that both trade unions and employers' organisations make *unrealistic demands* before and during negotiations, which are then followed up with a bit of precaution during the negotiations. It is therefore necessary to change the discourse and promote the content of the social dialogue. It is also observed that the social partners use blackmail tactics, which have a negative impact on mutual trust. During the epidemic, under the right-wing government, the trade unions left the Economic and Social Committee because they were not considered. Now, under the centre-left government, the employers have left the Economic and Social Committee with the same argument. Moreover, personal views and strong egos of both trade union leaders and leaders of employers' organisations are a major obstacle. Increasingly, populist views are proving to be a strong obstacle to collective agreements, as such discourse has nothing to do with the reality in which we work and live. For example, in some sectoral collective agreements, the social partners have agreed on norms that are against the law, meaning they are null. They do this so that they can say they have negotiated something for their members, even though the worker would win in court in such a case. But no one questions the **responsibility** for such behaviour. One possible solution would be to redefine the term "negotiate" (Slovenian "pogajati") into "arrange" or "reach agreements" (Slovenian "dogovoriti"). We should move away from the narrow economic understanding of negotiations because that is not what social dialogue is. At the same time, we should focus more on the purpose, goals and objectives of the Directives and labour law as such. As mentioned before, one of the options is to create legislative changes that "force" trade unions to merge and thus strengthen themselves professionally. Good interpersonal relations should be strengthened and invoked, and threats should be practically banned, because it is not good that the fate of collective agreements depends on the emotional intelligence of the individual bargaining team. It is the system and structure that must guarantee the strength and quality of collective agreements.

#### **4. To conclude**

Although there is no official data on the coverage of collective agreements in Slovenia, it can be assumed that we are not among the bottom performers among the member states and that the target could be reached with appropriate efforts. Given the current situation, it would be useful to propose **softer measures** to encourage multi-employer collective bargaining. When certain results emerge, it would be reasonable to tackle more concrete measures, in particular a change in legislation that would encourage the social partners to unite and strengthen their power. It is somewhat worrying that the Ministry of Labour is not taking any special measures to ensure 80 per cent coverage with collective agreements, although they are active in the group for the implementation of the Directive.



# SPAIN

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## **1. Introduction: an overview of the Spanish system**

The Spanish collective bargaining system could be considered as a 'mixed' system in the sense that bargaining occurs at national, industrial, provincial and company levels. Social dialogue is included in the Spanish Constitution and confers the right on unions and employers' associations to negotiate and make agreements although there are a range of debates on its efficacy (Molina, 2007; Molina and Rhodes, 2007). The negotiations are driven by employers and works councils but, at the higher levels beyond the local organisation, the agreement can be signed only by representatives of the 'most representative unions' at the national or regional level, namely those that have achieved the strongest support in the works council elections.

Agreements have tended to last two years or more, almost invariably starting from the beginning of the year, although negotiations can begin at any time and vary. Due to the principle of "ultra-activity" (abolished partially in 2012 but reinstated in 2022) the content of the agreements is valid until a new agreement is signed. This has positive features in sustaining collective bargaining coverage but can lead to a lack of strategic engagement and renewal in some cases: a certain institutional inertia can set in.

Collective bargaining in Spain is based on the extension principle: that is, any collective agreement made at higher than company level must be applied to all companies and to all workers at that level. This places the sector level collective agreement in an important position of influence, where this is one, as it can mark a set of minimums across a range of working conditions. Ironically, statutory extension may, paradoxically, have sometimes discouraged workers from joining unions given that they could benefit from agreements anyway.

In contrast to larger firms, SMEs have tended to rely on agreements at other levels, such as the industry or the province, for their wage increases and working hours, but do not always appear to be engaging with broader issues. However, institutions of collective bargaining have played a broad role in relation to health and safety, pay, working time and others.

We have witness in recent years an emerging challenge to the relative consensus regarding collective bargaining. A major challenge to the traditions of labour relations and regulation is being posed not only by the neoliberal agenda of the Spanish right-wing parties, but by further deindustrialisation, outsourcing and offshoring, as is common in various European contexts. The emergence of 'multi-service' companies that traverse sectoral boundaries has been a particular source of disruption (Fernández Rodríguez, et al 2019). There are also shortcomings in the effective application of EU provisions on information and consultation beyond

key industries and larger firms, although one could argue this is the case in much of southern Europe. In later years there has been the increasing juridification of the industrial relations system as the courts and inspectorate are increasingly drawn into a range of disputes and issues related to new forms of work especially in the platform and gig economies (Fernández Rodríguez et al. 2023).

One relevant element to be considered is that the Spanish system of collective bargaining was heavily affected by an austerity-influenced reform in 2012, pushed by the right-wing government at the time and in line with other similar European experiences that positioned the company level over the sectorial level in some exceptional cases. In 2021 there was a new reform pushed by the left-wing coalition government that led a partial return to the pre-2012 scenario, with the prevalence of the sectorial level over the company level, but with some nuances although this has not been a uniform return to earlier contexts as it has not systematically covered a broad set of working conditions.

## **2. Challenges and opportunities in 2023**

1. One of the most relevant outcomes when analysing the current sectorial collective agreements is that trade unions remain concerned with regards to the content of collective bargaining, which seem in some cases to be underdeveloped regardless of the coverage it has in general terms (as in the hospitality sector). Most of them exclusively focus on issues such as salaries and a basic negotiation of the work time but rarely go beyond some core content in a systematic manner, while more developed and detailed agreements are now being discussed at a company level. Issues of health and safety and equality are engaged with, but it is highly variable and depends on the sector. It is critical that unions can gain the initiative and widen further the content of negotiations through more detailed and complex aspects of bargaining. Spanish unions are fully aware of this dilemma and have been developing a range of strategies around health and safety and equality related issues at work with the aim of raising their awareness within negotiations in a more articulated and coordinated manner. That is not to say these topics are not central, but that presence can be variable, and this has led to more systematic approaches to highlight and prepare negotiators. A debate has steadily developed about the need to focus on these issues in an even more explicit manner with regards to policy processes. In any case, there seems to be a consensus regarding maintaining the current situation and, marginally, trying to achieve gains in a number of areas described in part throughout this document.

2. Furthermore, there is an impression that a some key employment themes that used to be critical some years ago as a consequence of state strategies and tripartite institutions such as those related to skills, vocational education, and workplace learning are becoming somewhat disconnected within the spheres of sectorial and local collective bargaining. This steady disconnection between training and lifelong learning at work, on the one hand, and the processes of joint regulation on the other, is of concern given the importance of this dimension at the Spanish and European Union level prior to the austerity reforms and narratives since 2008 (for an outline of such initiatives around training see Martínez Lucio et al, 2007). There is a view amongst many Spanish trade unions that there is a need to reconnect what was a vibrant albeit uneven politics of, and interest in, training with the practices of collective bargaining especially at the sector level where skills and forms of work are often defined and clarified. Given the way the state had been engaging with such training dimensions in the past and the way they maintain certain institutions related to it, this process of reconnection is an important element of the argument for reinvigorating sector level negotiation dynamics. Spain appears to have been experiencing a decline after a peak in the beginning of the 2000s on such matters. For some trade unions employers' associations appear to have lost interest in these relevant policies when there is now more than ever a need for developing skills in critical areas such as digitalization: in this area there remains a need for greater involvement by public institutions. An argument has developed that sector level bargaining could be an important connecting point around these supply side and workforce development issues: and it is likely that questions of productivity could also be engaged with through a broader and renewed system of sector bargaining and dialogue. The role of the EU in returning to a social model and a refocusing on learning

and development, and not just de-regulation or minimal re-regulation, is important. A range of trade unionists and observers have begun to raise the need to reconnect the question of sector level bargaining into the training agenda in a more systematic manner.

3. Whilst health and safety strategies in Spain do see an important role for trade unionists in a range of relevant state bodies their presence in sectorial agreements are uneven and tend towards a minimal set of obligations (although sectors such as the Chemical sector has seen many advances, but this may be mainly due to the nature of its production processes and related risks/dangers). There are often in some sector agreements a lack of systematic references to issues like health and safety. In terms of the broader remit of this subject there is a perception that employers' associations are ignoring discussions about working time and shifts in terms of their effects on workers and the way they could be regulated. This brings a critical need to develop more detailed and complex elements within the sector agreements where they exist and to connect local sector agreements more closely into these strategic themes. Trade unions are calling on governments to create incentives to push employers into broader discussions on these issues and generate sector frameworks that are visible and practical to implement. This also raises issues regarding the need to address management education and interest in the questions of health and safety - especially in terms of mental health and stress - that are often not that clearly addressed within the sphere of regulated industrial relations. This is a more indirect and discreet dimension of concerns within trade unions but there is a sense that sector frameworks and the role of new sets of issues need to be the focus of policy making.

4. Part of the problem, and a growing concern, regards the fragmentation of firms and their structures. The complexity of these new organizational forms leads to difficulties when attempting to locate new companies within a specific sector, bringing many problems in terms of not solely finding the relevant sectorial collective bargaining unit but also in identifying the appropriate sectoral employer partner for initiating company and sector level negotiations, as it is not clear who is the counterpart at the sector level (Fernández Rodríguez et al, 2019). There is an impression that 'multi-sectorial' firms are trying to circumvent collective agreements through the way they locate themselves outside the established sectoral boundaries in a deliberate manner (ibid). Obviously, this issue has negative consequences in terms of the coordination of social agents and in strategic terms for the unions. *Hence trade unions are pushing for a clearer and renewed approach to what is understood to be an industrial sector and beginning to develop strategies, as in the CCOO union and others, to connect bargaining and campaigning across vertical production and supply lines that traverse sectors (e.g., agriculture and supermarkets).* Moreover, the reach of the statutory extension remains unclear, leaving important gaps in terms of a substantial number of workers outside their respective collective agreement. There is a need to reflect upon the concept of the "sector" in a context where many firms are embedded in global chains of production. This ongoing organizational fragmentation remains one of the main challenges in Spanish industrial relations. In this sense, unions are realising the need to articulate clear strategies to overcome these loopholes that sectorial collective agreements are facing. In some senses this has a European dimension too in terms of how different stages of production are aligned through common campaigns and negotiation strategies (the role of European Collective Agreements is being considered as a potential vehicle for this, but they would have to be developed further beyond single employers). Hence, there is an emerging debate and concern with the way policy making processes and systems of regulation with regards to collective bargaining address these anomalies in terms of sectoral boundaries and what is meant by sectors horizontally and also vertically (e.g. supply chains).

5. There is also a growing concern about the activism of employers' associations at the sectorial level, which is preventing the update of the content of collective agreements. There is a political need at the state level according to many trade union officials for the state to understand the increasing fragmentation of the employer classes not just due to new actors in the platform and related economies who seem to be constantly challenging the regulatory status quo (Alonso and Fernández Rodríguez, 2023) but due to competitive imperatives between companies across different regions and the failure to develop a broader view of the needs

of their industry. The impact of austerity led neo-liberal ‘reforms’ in terms of de-regulation have meant that coordination around broader social and long-term economic issues have been weakened – although how strong they were before is open to question (Lopez Andreu, 2019). This ideological and competition-based fragmentation requires greater state intervention, sanctions, and incentives as was partly seen with the earlier interest and investment in training resources and tripartite institutions. There are relevant challenges regarding the articulation between the sectorial level and the territorial level. Spain is a politically fragmented country in which there are relevant unions rooted in specific regions with a strong and separate national identity. This leads to a set of dynamics in which there is a fragmentation of the collective bargaining process which requires not just a reversal of the de-regulation policies of the austerity period but also a renewed commitment to a coordinated and articulated system of joint regulation.

6. Where the Spanish case is interesting is in the way the issue of the minimum wage has impacted on vulnerable workers, particularly in the form of a reduction of professional categories and hence pushing their income higher in most cases to the minimum wage level<sup>32</sup>. The minimum wage has to date not represented a challenge in terms of the role of negotiations in collective bargaining at a sectorial level as what Spanish unions have been able to do in the main is ensure that sector level bargaining as a minimum threshold does not go below that established by the state in terms of the minimum wage. The minimum wage has led to some changes in employee classification systems and grades, but it rarely breaches the sector levels agreed which in turn consider the former. Hence the Spanish case is important in ensuring that the minimum wage is not a challenge to established systems of joint regulation to date. There are no major concerns currently with the potential tensions being generated between the minimum wage and the collective bargaining system, but a review of job classifications and structures seems to be emerging as a possible area for discussion.

7. In terms of union structures and internal matters there are debates within and across union confederations that are important for any discussion on the development of an effective sector level collective bargaining system. The first is that the legitimacy of the trade union movement cannot solely be based on formal systems of union recognition enshrined by the state as in the case of Spain where trade union elections play an important part in determining the composition of works councils and others. In addition, there is a concern about the low levels of union affiliation in Spain. There is also an issue with the fake and company (yellow) unions in specific big corporations which influence, negatively, the negotiations at the sector level. What is therefore needed is active membership engagement and extension to ensure that many of the gaps outlined above in terms of the employment and industrial system have the workplace and locality based representative structures to allow for campaigning and ongoing negotiations around local and sectors level agreements and this is an active debate in Spanish unions. In this sense internal trade union training on such matters is important. Secondly, the internal decision-making processes when coming to negotiating positions and common demands vis-à-vis national and sectoral frameworks and agreements must be inclusive and within key Spanish unions there is a tendency to ensure – to some extent – that pre-negotiation demands are the outcome of some form of internal union deliberation at various levels as otherwise sector bargaining can become disconnected. Thirdly, one major challenge is to ensure that national majority unions are mindful of regional, and local national unions as in the Basque country, and that they are not excluded from broader deliberations on the development and content of sector level bargaining processes across the country. Trade unions in such nations within Spain need to be consulted more often and new frameworks of dialogue developed between social actors across different geographical areas and this is a policy concern at such national-regional levels.

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# SWEDEN

ANDERS KJELLBERG

The policy initiatives are presented into 13 partly overlapping groups:

## **(1) Increase the negotiation strength of individuals and unions.**

- *Fight unemployment.* Decreased unemployment would make the individual worker less dependent upon the employer and by that also less exposed to unfair working conditions and precarity. When unemployment is high, the workers may hesitate to support union actions to force the company to sign a collective agreement, particularly if they also in other respects are in a vulnerable position. Conversely, it is easier for unions to persuade or force companies to sign collective agreements when unemployment is low.
- For the same reason it is important to *reduce the number of unsecure jobs*, particularly such as employment per hour and day labourers, and facilitate the creation of permanent jobs. With an economic policy and a labour market policy that reduce unemployment, the frequency of fix-termed jobs in general tend to decline as it will be more difficult for companies to recruit workers by offering this type of jobs.
- Change the *legislation on employment protection*, particularly with respect to the most insecure jobs. The recent revision of the Law on Employment Protection (Las) weakened Swedish employment protection in many respects. This was a union concession in exchange for radically increased prospects to transition education in the new 2022 basic agreement.
- Improve *education and training* possibilities. From a union perspective the most important part of the 2022 basic agreement is the new transition study support (*omställningsstudiestöd*) to strengthen the position of the individual worker on the labour market, increase the prospects for changing occupation and decrease the risk of unemployment. As the transition study support mainly is financed by the state, the new basic agreement is part of a larger tripartite deal. It is urgent that the Swedish state honours this deal by providing the Board of Student Finance with sufficient economic resources to handle the large number of applications for study support.
- Facilitate for bogus *self-employed (falska egenföretagare)* to become regular employees by revised legislation and a new EU-directive. Many posted workers in construction are not formally employed. The growing 'grey area' of bogus self-employed workers dependent upon a single employer is closely related to 'the frequent use of long subcontracting chains in which self-employed migrant workers are often to be found at the end-point of these supply chains' (Thörnquist 2015: 419). Bogus self-employment is

frequent also among platform workers and in road haulage companies with foreign drivers. In 2009 the centre-right government changed the F-tax rules so it became possible for self-employed to have just one contractor.<sup>33</sup> Another group of workers not covered by collective agreements is self-employed persons who pay A-tax and are linked to a self-employment company which bill the contractor for which the self-employed is obliged to pay a fee. - Encourage a high density of unions and employers' associations "to promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level" (Article 4:1a in the Directive on adequate minimum wages in the European Union), for example by introducing tax reduction for union membership contributions.

## **(2) Change the legislation to reduce the vulnerability of labour migrants and asylum seekers.**

- Revise the law to make the labour migrant less dependent upon the employer.<sup>34</sup>
- Introduce significantly improved information to the labour migrants about their rights.
- Abolish the possibility to change track from asylum seeker to labour migrant.<sup>35</sup>

## **(3) Fight working life criminality.**

- The economists Petter Hällberg and Christian Kjellström at the National Mediation Office have shown that collective agreements have a strong normative influence on wages for the 500,000 or so employees without such agreements: "In practice, the minimum wages settled in collective agreements seem to affect wage levels for all employees, even where employers lack collective agreements" (Hällberg & Kjellström 2020).

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33 The Swedish Tax Agency: "As a rule, entrepreneurs who run business as sole traders are approved for F-tax. An approval for F-tax is based on the fact that the sole trader himself or herself is responsible for paying taxes and social contributions on compensation for any work carried out." <https://skatteverket.se/servicelankar/otherlanguages/inenglishengelska/businessesandemployers/startingandrunningaswedishbusiness/registeringabusiness/approvalforftax.4.676f4884175c97df4192308.html>

34 The introduction of employer-driven labour immigration from third countries in December 2008 resulted in large inflows of migrants in low-skilled occupations in labour surplus sectors. The Migration Agency is not allowed to reject work permit applications only because there is no collective agreement in place. Approval for the permit requires only that the offered wage is not lower than the minimum level stipulated in the agreement, and that the employer provides the employee with sickness, injury, life, and occupational pension insurances. During the first two years of a work permit, the labour migrant is bound to a specific employer and occupation. If the migrant loses the job, expulsion from Sweden will follow unless a new job in the same occupation is found within a few months and a new work permit is granted. After four years, the labour migrant normally receives a permanent residence permit. In the meantime, the migrant may be prepared to accept worse working conditions than promised in the work offer, which until June 2022 was not legally binding (Frödin & Kjellberg 2018). The risk of being exploited could be expected to be greatest in companies without collective agreements. In such situations, unions have virtually no ability to control working conditions. The Migration Agency do some financial controls of the employer before conceding or prolonging work permits but never visits workplaces to investigate the real working and employment conditions. By its very construction, the legislation puts unskilled labour migrants in surplus occupations into a vulnerable position. Therefore, the absence of a collective agreement could be expected to make this category of workers more exposed to abuse than other foreign-born workers. Consequently, there is an urgent need of revised legislation.

35 The vulnerability of labour migrants is reinforced when combined with a high demand for work permits from former asylum seekers, as these persons might be prepared to accept bad working conditions to get a chance to remain in or return to Sweden. Individuals whose asylum applications have been rejected can change tracks and become labour migrants and thus remain in the country. Sweden is one of the few countries where asylum seekers have the right to work pending the asylum decision. A possible legislative measure is to stop changing track from asylum seekers to labour migrant.

- As there in some industries are relatively many companies bound by collective agreements that not fully, or at all, comply with them, a contradictory picture emerges with on one hand companies without collective agreements that follow them, and on the hand companies with collective agreements not complying with them. One should then observe that a collective agreement contains much more than the wage, for example occupational pensions and other insurances).
- According to the Law on Co-determination (MBL) trade unions only have the right to represent their own members. Among the LO unions it, however, exists collectively agreed negotiation arrangements that go further than MBL and give the unions negotiation rights if they suspect that the collective agreement is not applied on non-members (SOU 2005:89, p. 166). Furthermore, the legislation on posted workers today provides the unions access to employment contracts, wage specifications, time reports and certificates of payouts (Sjödén & Wadensjö 2020: 79).
- Above all in construction and particularly among posted workers collective agreements are far from always followed in practice. It is of course easiest for trade unions to monitor the compliance with collective agreements where there exists a union workplace organization or at least union members. Due to limited economic and human resources this is more problematic in industries with a low union density such as the hotel and restaurant sector. A low rate of unionization usually correlates with many small workplaces without union representation, high labour turnover and a high share of fixed-term jobs. In order to fight working life criminality and increase the coverage of collective agreements the following measures are proposed (a list of 69 such measures are presented in Kjellberg 2023g):
  - *Intensify cooperation between state agencies to fight working-life criminality.* A change in privacy legislation is required to facilitate exchange of information between public authorities. Seven regional centres to fight working life criminality are planned, of which three have opened.
  - *Increase resources to the cooperating state agencies:* Swedish Work Environment Authority (increased number of labour inspectors), Public Employment Service, Social Insurance Agency, Tax Agency, Migration Agency, Gender Equality Agency, Police (not the least the traffic police), Economic Crime Authority and Prosecution Authority.
  - *Adjust the legislation to the gig economy.* At present it is not adjusted to the gig economy and the platform companies' frequent use of bogus self-employed and workers in the most insecure employment forms. The law on public procurement is far from optimal to keep away the irresponsible companies. The regulations of subsidised jobs need to be amended to prevent payments to rogue companies.<sup>36</sup> The F-tax system should be reformed to solve the problem of bogus self-employed. The Regulatory framework for labour migration is insufficient to prevent the migrants from ending up in a vulnerable position with a risk of exploitation.<sup>37</sup>

#### **(4) Stop privatisations and transfer tax-financed services like elderly care, home care, personals assistants and schools to the public sector.**

The radical and fast privatisation of schools and care in Sweden has created a large tax-financed part of the private service sector. Union density and the coverage of collective agreements is also lower in the private schools and care companies than in the public sector where the collective agreement coverage is 100 per cent.

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36 *Nationell strategi mot arbetslivskriminalitet* (Regeringskansliet 2022), pp. 15, 19-20.

37 Fastighetsfolket 2023-01-30.



## **(5) Fewer *public procurements* and revised EU directive on procurements, making it possible to demand collective agreements among contractors.**

According to the law on *public procurement* (LOU) it is, as a rule, mandatory for contracting authorities to demand that wage, holidays and working hours (but not insurances) are the same as in the collective agreement if there is a risk of unfair working conditions when the contract is to be performed. They have, however, no right to demand the company to sign a collective agreement, but only require the minimum levels stipulated in the collective agreement if the procurement exceeds a certain threshold value. This is possible also for procurements below this level. The risk for unfair working conditions and unfair competition is relatively large in the construction and cleaning industries. It is particularly high in occupations with low training and qualification requirements and where there is often a foreign labour force, where collective agreements have a low coverage rate and where there are long subcontracting chains. Anyhow, the companies offering the lowest price very often win the contracts also in industries with high risk of unfair working conditions and unfair competition. The Maintenance Workers' Union argues that the LOU law will not be effective until the EU directive on public procurement is revised.<sup>38</sup> The need of procurements would of course diminish if public authorities would perform the services themselves (cf. point 4 above)

## **(6) Expand the area of *semi-dispositive legislation*, making it possible to find more flexible and advantageous solutions by collective agreements.**

- In case of redundancies the *Law on Employment Protection (Las)* allows the local parties (employers and workplace unions) to negotiate a *redundancy list* deviating from the law.

- Another example is the introduction of short-term work during the pandemic year 2020.<sup>39</sup>

- *The Working Hours Act* is a third example illustrating the advantages of the Swedish model of collective agreements. It allows the labour market parties to find solutions deviating from the law.

## **(7) Introduce establishment jobs (collective agreements obligatory).**

Public agencies are involved in three types of jobs where collective agreements not are obligatory, but the terms of employment more or less should be in accordance with such agreements: (1) jobs aimed at third country labour migrants applying for work permits issued by the Migration Agency (*Migrationsverket*), (2) 'new start jobs' for recently arrived migrants or long-term unemployed conceded by the Public Employment Service (*Arbetsförmedlingen*), and (3) public procurements in industries where there exists a risk of unfair working conditions have to follow legislation (LOU) under supervision of the National Agency for Public Procurement (*Upphandlingsmyndigheten*).

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38 Europaportalen 14 September 2022: Debatt: Låt kollektivavtal bli möjlighet vid offentlig upphandling i EU (europaportalen.se)

39 In the beginning, the state financed three fourth of the labour costs (from 1 January 2021 one third) for employees with reduced working hours but keeping 90 per cent of the wage. The unions and employers' associations very soon concluded collective agreements on short-term work covering most of the labour market. At the end of 2020 the state had conceded short-term support for almost 590,000 employees, but the use of the support declined rapidly when the general economic conditions improved in the autumn 2020. To get short-time support a company must have a contract with the employees about short-time work, which states how much the working hours and the wage are reduced. As this is much easier if there is a collective agreement more companies than usual joined employers' associations during the pandemic. In companies without collective agreements, it was required that at least 70 per cent of the employees accepted the proposal on short-term work. Furthermore, the reduction of working hours and wage had to be the same for all with short-term work. By concluding local collective agreements about short-term work, the scheme could be used with greater flexibility and better adjustment to the industry and to local circumstances than in companies without collective agreements which must adhere to the letter of the law. With a collective agreement, for example the degree of short-term work may vary between different groups of employees.

In contrast, collective agreements will be obligatory in a new form of state-subsidized jobs, *establishment jobs (etableringsjobb)*, which like the new start jobs are aimed at recently arrived migrants or long-term unemployed.<sup>40</sup>

After getting a green light from the EU Commission in May 2022, the final agreement on establishment jobs was signed by LO, Unionen and SN in December the same year and is in force since 1 January 2023. The agreement includes a board aimed at preventing the establishment jobs from being used solely to bring down wage costs without offering learning. The parties shall jointly prevent abuse of this new form of subsidised employment. Furthermore, it is required that the union first gives the go-ahead for establishment jobs at workplaces where they are introduced. For the unions, it is also important that the participants will be trained on working hours and that the wage and state compensation (paid directly to the worker) together provide a contractual minimum wage.

The introduction of establishment jobs could be expected to reduce the widespread abuse of subsidized employment in the form of unfair working conditions and unfair competition, at least if the other types of subsidized jobs become less frequent. This would be conducive for increased coverage of collective agreements in for example the cleaning and restaurant industries, particularly as no establishment jobs without collective agreements will be allowed.

### **(8) Intensify information about the Swedish model of collective agreements.**

By schools (in history and social studies) for young people, by the National Mediation Office, the Public Employment Service and the Migration Agency for newly arrived immigrants and others. In addition, measures to facilitate the access of trade union representatives to workplaces to reach out to and inform the workers may be required to increase the coverage of collective agreements (cf. SOU 2023:36, p. 61). Cf article 4:1 on promotion of collective bargaining on wage-setting and point 24 in the Preamble to the Minimum Wage Directive, according to which “measures promoting collective bargaining on wage-setting (...) might include, among others, measures easing the access of trade union representatives to workers.”

### **(9) Increase the financial support to education and training of trade union and safety representatives.**

The government subsidies to working environment education and other union education have since long successively been cut (Kjellberg 2021: 44-45). To monitor the compliance with collective agreements the presence of well-educated union workplace representatives is decisive.

### **(10) Give union regional safety representatives access to workplaces with collective agreements but without union members.**

Few workers posted to Sweden are union members. Several hundred foreign construction companies employing posted workers have collective agreements, but no union members or union representatives. Consequently, it is hard for the Building Workers' Union to check whether the agreements are being applied. According to law, the regional safety representatives appointed by the unions have no access to workplaces without union members, even if there is a collective agreement. There is plenty of evidence suggesting a

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40 That collective agreements are required is not surprising given that this kind of jobs has its origin in a 2017 agreement between LO, the white-collar union Unionen (Sweden's largest union, affiliated to the white-collar confederation TCO) and SN (the Confederation of Swedish Enterprise). After deliberations with the government, a joint statement of intent about the introduction of establishment jobs was signed in March 2018. Due to the 2019 January Agreement between the social democratic-led government and two neoliberal parties it was decided that also companies without collective agreements should be included. After one of the neoliberal parties resigned from the January Agreement it ceased and establishment jobs will again include only companies with collective agreements.

high prevalence of poor working conditions at many sites with posted workers. After issuing a strike notice in 2020 the Building Workers' Union managed to obtain access right. The Confederation of Swedish Enterprise (*Svenskt Näringsliv, SN*), however, would like to abolish regional safety representatives and replace them with local non-union safety representatives, assisted by officials from the Swedish Work Environment Authority (*Arbetsmiljöverket*). Obviously, the employers wish to exclude regional union safety representatives, who, with some authority, can demand improvements in the working environment in companies without local union safety representatives. Non-union safety representatives at such workplaces would hardly be able to represent the workers effectively in relation to the employer, particularly because workers are often afraid of being dismissed if they contact a union. This is a problem for Swedish unions trying to organize posted workers in construction. If the workers don't even dare to contact union representatives, they will hardly contact safety representatives that are not independent of the company.

### **(11) Introduce a mechanism that extend collective agreements to whole industries (not recommended).<sup>41</sup>**

Introducing such an extension mechanism would mean a departure from the Swedish labour market model, which is dominated by self-regulation on the part of the labour market parties themselves. It would probably also have a negative effect on the willingness to join unions as the terms of employment would be in accordance with the collective agreement, at least on paper. If so, the result would be fewer union workplace organizations, reduced bargaining strength and increasing difficulties monitoring compliance with collective agreements, not to speak with respect to all the workplaces that now would be covered by agreements.

### **(12) Appoint a new public inquiry on the compliance with collective agreements similar to the one presented in 2005 (SOU 2005:89), *Bevakning av kollektivavtals efterlevnad*.**

At that time, the scope of posted workers and the problems with unfair competition and working life criminality were much smaller than today.

### **(13) Assess the impact of new reforms with respect to the coverage and compliance of collective agreements.**

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<sup>41</sup> In Norway extension of collective agreements is used since 2004 in sectors where foreign workers are subject to less favourable wage and working conditions than are usual in manufacturing industry (Kjellberg & Nergaard 2022). Usually only minimum wage rates and some other provisions are generalized, meaning that the negative effect on union density is expected to be relatively small.

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# NETHERLANDS

MAARTEN KEUNE & WIKE BEEN

## 1. Declining coverage rate and its causes (DRAFT)

Up until a few years ago the common view was that collective bargaining coverage in the Netherlands was quite stable, around 85% of employees and 75% of working persons, with frequent ups and downs over time (de Beer & Keune 2018). This coverage was made up by sectoral agreements (some 65% of employees), extensions of these agreements (some 10%) and company agreements (some 8%). However, since 2010 there is a more steady decline in coverage, declining to 69% for employees and 61% for working persons in 2022 (Figure 1).<sup>42</sup>

Coverage rate collective agreements (1970-2020)



Source: update of figure 1 in de Beer and Keune (2018)

42 Data on collective bargaining coverage and membership of employers' organisations in the Netherlands should be treated with some caution. There is no authoritative source for such data. Here we use data on coverage mainly from the Ministry of Social Affairs but there may be some problems with their reliability.

There is no one single cause of this decline. Firstly, the number of employees covered by a collective agreement has been relatively stable, but the number of employees not covered has been growing in an expanding labour market. Meaning that growth of the labour force has been taking place outside the reach of collective agreements. Secondly, both sector agreements and company agreements fell (between 2007 and today from almost 198 to 178 for sector agreements and from 515 to 485 for company agreements), while the coverage of extensions increased in recent years. This means that employers are to a lesser extent actively involved in collective bargaining nowadays than they used to be. The decline in coverage rate is taking place in almost all sectors, with the exception of Agriculture. Together, these causes suggest that the main reason for the declining coverage is that employers are in general less interested in being covered by collective agreements. They conclude fewer agreements and there is also evidence that the membership of employers' organisations is falling steadily (Figure 2). With trade unions suffering from low and falling membership (around 16-17% in 2022), they have difficulties forcing employers to sit at the bargaining table. Since there is also no legal obligation to bargain, employers have the option not to do so. Apparently, traditional reasons for employers to conclude collective agreements like labour peace or creating a level playing field matter less and less.

Apart from the general tendency of declining coverage, there are sectors where the speed of decline is higher than in others. Bargaining coverage declines faster in the sectors where employment is growing more and coverage rates are already lower, especially Transport and Communication, and Business Services. In these macro-sectors there are more and more subsectors with no or very low coverage and trade unions are typically too weak to enforce collective bargaining. The changing structure of the economy hence contributes to the decline of collective bargaining coverage.

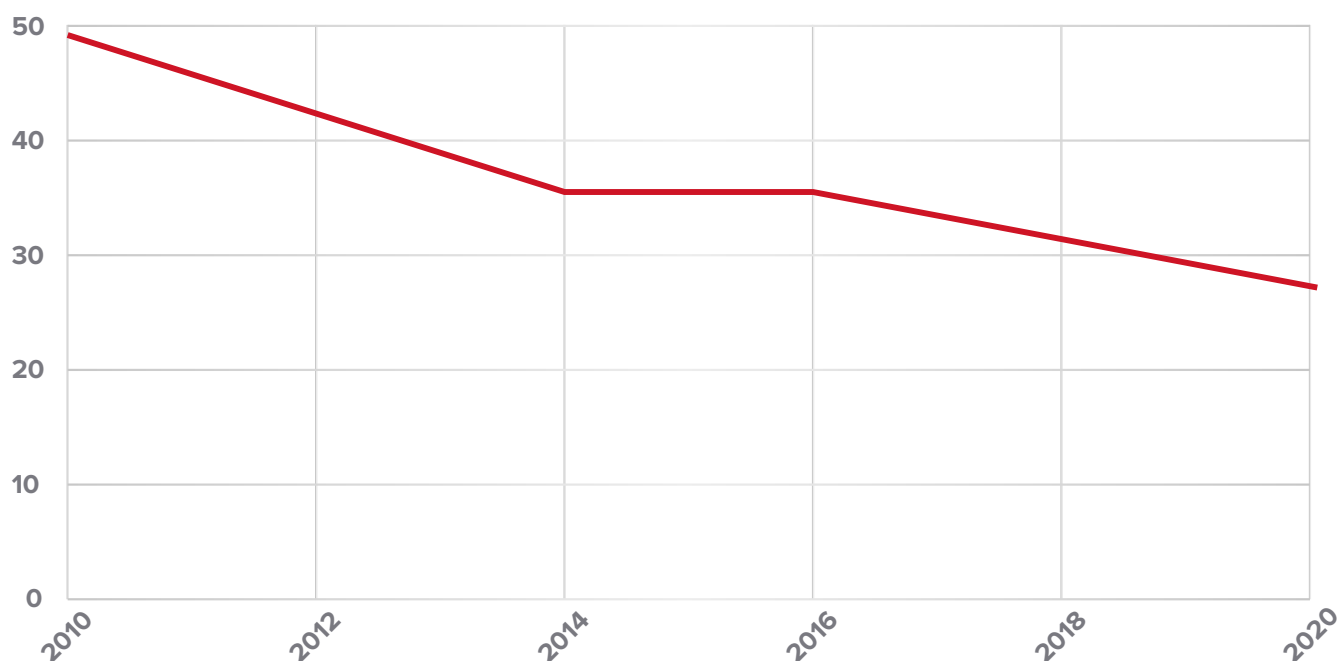


Figure 2: membership rate employers' organizations

Note: These data are collected at the level of establishment and should therefore be treated with caution.

Source: Werkgevers Enquête Arbeid (TNO)

The coverage rate is a valuable indicator. However, it has limitations that need to be considered. The coverage rate does not say anything about the quality of the collective agreements. In cases where such agreements are negotiated in contexts with significant power imbalances between the parties involved, the content of the agreement may lack substantial value for workers. There are instances, for example, where collective bargaining agreements contain only one clause to exploit legal exemptions (Been & Keune, 2022). This is linked to the fact that Dutch law stipulates that anybody can set up a trade union and that any trade union, regardless of its membership numbers, is permitted to negotiate a collective bargaining agreement (Been & Keune, 2019). As a result there are a number of yellow unions concluding low quality agreements with employers. Also, there are problems with the compliance with collective agreements in certain sectors, again showing that coverage is not enough by itself.

In addition, some argue that the agreements between employers and trade unions that govern the second pillar pension funds should be considered collective agreements, artificially inflating the coverage rate. It is indeed essential to avoid an overemphasis on the coverage rate without considering what coverage truly means in terms of the value it creates for workers.

Apart from the above causes, there are several factors that pose a threat to the coverage rate in the future. One is the low and declining trade union membership rate, currently hovering around 16 percent. Further decline of this low membership rate may pose a long-term concern as it erodes the legitimacy of the system and reduces pressure on employers. Consequently, more employers may decide not to engage in collective bargaining.

Secondly, the declining membership of employers' organizations has, as argued above, a direct effect on the coverage rate. However, it may in the future also affect the legal extension of collective agreements, as this is contingent upon the coverage rate of employers' organizations (i.e. the percentage of employees in the sector that work at the members of the employers' organizations). If this rate falls below 55 percent, legal extension is no longer granted (Been & Keune, 2019). Currently, this is not a significant concern in most sectors, but it may become one if membership rates continue to decrease.

Thirdly, the emergence of new types of organizations, particularly in the digital domain, has blurred the boundaries between sectors. For instance, determining whether a grocery delivery service with no physical stores belongs to the supermarket sector is a challenge. As the boundaries between sectors blur, fewer companies automatically fall under legally extended collective bargaining agreements within their respective sectors. This directly reduces the coverage rate and adds pressure to the system: when newly emerging companies directly compete with those covered by sectoral bargaining agreements, the incentive to create a level playing field through collective bargaining agreements loses its relevance. This situation may lead other companies in the sector to withdraw their support for sectoral collective bargaining agreements.

## **2. Potential policy measures**

There are no easy or simple solutions to foster an increase of the coverage rate of collective agreements in the Netherlands. The regulations and traditions concerning collective bargaining are liberal and widely accepted: contractual freedom, no obligations concerning collective bargaining, no representativeness criteria for bargaining actors (except where extensions are concerned), a minimal role for the state with the exception of the extension of collective agreements (only possible upon request by (one of) the contractual partners). This was also reflected in a series of interviews we did for this paper with organizations involved in collective bargaining and experts on the issue. They very rarely questioned these regulations and traditions and had only very few ideas concerning immediate and politically feasible solutions. Therefore in this policy section we will provide a wide overview of ideas for possible policy measures that are often outside the proverbial "box" of the persons and organizations engaged in or working on collective bargaining. This means that their



immediate political and/or legal feasibility may often be limited. The measures we discuss are not proposals but merely a range of ideas. We do not necessarily like the options mentioned or agree with them, we just want to create room for discussion by providing a comprehensive range of possibilities, including those that tend to be off the radar

We divide the possible measures in four overarching categories: (i) making certain aspects related to collective bargaining obligatory; (ii) making collective bargaining and membership of collective bargaining parties more attractive; (iii) improving the context surrounding, content of and compliance with collective agreements; and (iv) reorganizing the system of collective bargaining by introducing a national agreement.

## **1. Making certain aspects related to collective bargaining mandatory.**

One of the effects of the adoption of the Directive on Adequate Minimum Wages is that it calls attention to the role of the state in promoting or steering collective bargaining. One instrument that the state has in this respect is to make certain aspects related to collective bargaining obligatory. This goes against the liberal or voluntaristic nature of the Dutch system but may be considered if increasing the coverage rate of collective bargaining is a serious objective. Here we could think of:

- *Make membership of employers' organizations mandatory.* The declining membership of employers' organizations is one of the causes of the decreasing coverage of collective agreements. A legal obligation for employers to join employers' organizations may foster higher coverage. There are international precedents (e.g. Austria).
- *Make collective bargaining mandatory.* The state could make collective bargaining on (certain aspects of) employment and working conditions mandatory, for example in enterprises with more than a certain amount of employees. This may or may not result in a collective agreement. There are international precedents (like France or Romania).
- *Make collective agreements mandatory in the (semi-) public sector.* The state may decide that all public and semi-public employment should be covered by collective agreements. Bargaining coverage is already higher in this sector than in the private sector but can be further increased. This will also give a signal to the private sector that collective bargaining is indeed important.
- *Make coverage by collective agreements a requirement for public financing of private sector activities.* The state can make coverage by collective agreements a requirement for private enterprises that want to benefit from public financing. This may concern public procurement, industrial policy or public subsidies.

## **2. Making collective bargaining more attractive.**

Instead of mandatory measures, measures that make collective bargaining and the membership of collective bargaining parties more attractive. This fits better with the current Dutch bargaining model but is less certain in its outcomes. Here we could think of:

- *Introduce trade union membership by default.* Trade unions membership rates can be increased by making every employee a trade union member by default. In this scenario, employees can choose every year to which trade union they want to belong or to opt out of membership. In this model, payment of trade union membership fees is organized through the tax system. This model is likely to increase trade union membership and in that sense their bargaining position, but not necessarily their effectiveness in pressuring for collective bargaining agreements, since this would require active behaviour of members.

- *Offer trade union membership free of charge.* Making trade union membership free decreases financial barriers for employees to become trade union members. This could potentially increase membership rates. The measure might be limited in its effectiveness though since there are many reasons beyond financial ones for the current low levels of membership.
- *Introduce more semi-dispositive legislation* to make collective agreements more interesting for employers. The state can introduce additional semi-dispositive legislation to incentivize employers' participation in collective bargaining. However, this may lead to an artificial increase in collective bargaining coverage, as it raises the risk of having collective agreements that contain mainly clauses related to the semi-dispositive legislation.
- *Information campaigns on benefits of collective bargaining.* Informing employers and workers on the benefits of collective bargaining might enhance the attractiveness of collective agreements and hence the coverage rate.

### **3. Improve the context surrounding/content of/compliance with collective agreements**

The coverage rate of collective agreements is just one aspect of collective bargaining. Collective bargaining occurs within a broader context that can either enhance or hinder it. Moreover, the content of collective bargaining is just as crucial for workers as its coverage, and the same applies to employer compliance. Several measures might improve these other aspects:

- *Strengthen unions by eliminating flex or precarious jobs.* Workers on flexible contracts and/or holding precarious jobs are less likely to be trade union members, yet at the same time the existence of such jobs is the biggest threat to decent working conditions and thus a major concern of trade unions. This results in a vicious cycle. Eliminating the options for the existence of such jobs might strengthen trade unions.
- *Promote a change of culture by striving for socially responsible employers.* Employers striving for good standards in their company and sector rather than seeking exit options might both increase the coverage rate (since collective agreements are an easy way to set standards) and content of such agreements.
- *Give equal importance to the content of collective agreements and the representativeness of bargaining organizations.* Upon evaluating the system of collective bargaining, equal importance may be given to coverage on the one hand and contents of collective agreements and the representativeness of the bargaining parties on the other. For example, the legal extension of collective agreements could be made conditional on the latter two aspects. This may also hinder the rise of yellow unions and may, as a consequence, be bad for coverage in the short run. It may be good, however, for the content of collective agreements and their legitimacy, and thus for workers that are covered.
- *Stop privatization of the public sector.* Collective agreements in the public sector have better coverage than those in the private sector. Halting privatization of the public sector might therefore contribute to halting the deterioration of the coverage rate.

*Increase compliance through inspection.* Not only the coverage rate and the content of collective agreements are important for decent working conditions, also the compliance of employers with the collective agreements in place. In some (parts of) sectors of the economy, compliance can at the moment only be reached through effective and high levels of inspection.

#### **4. Reorganizing the system of collective bargaining by introducing a national agreement.**

A possible and radical way of increasing the coverage rate would be a change of the system in place. Currently, the system in the Netherlands is based on a mixture of company level and sectoral level bargaining. Organizing bargaining at the national level might increase the coverage rate. Here we could think of:

- *Introduction of a national minimum collective agreement.* In the context of the Labour Foundation, social partners could take up the task of negotiating a minimum collective agreement setting a baseline for the labour market as a whole. Such an agreement would top-up labour legislation and would provide the possibility to adjust to changes in the context, since it needs to be renegotiated every once in a while.

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# UNITED KINGDOM

IOANNIS KATSAROUMPAS & MIGUEL MARTÍNEZ LUCIO

## 1. Part 1 - Ioannis Katsaroumpas

The purpose of this short report, which is in two parts, is to highlight how in the UK there are a range of policy debates and developments aimed at enhancing the role of collective bargaining at the sector level. The UK has seen one of the most significant moves away from sector level collective bargaining and industrial relations institutions since the 1980s in part related to an emergent policy emphasis on de-regulation and the dominance of a neo-liberal ideology. However, there are some continuities especially in the public sector. The report is organised in two parts. The first part is concerned with an emerging discussion regarding the need to enhance and develop collective bargaining at the sector level through a range of policy and regulatory initiatives. This has been driven by various trade union organisations, progressive think tanks and union-oriented academics. The second part is focused on forms of regulation and policy activity that are not explicitly about sector level collective bargaining but which, nevertheless, may facilitate a move to a more coordinated and inclusive approach to industrial relations at the sector level. It points to quasi-forms of regulation and new innovative approaches to industrial relations that try to generate progressive and inclusive benchmarks at the multi-employer level.

## 2. Legal Reforms for Restoring Sectoral Collective Bargaining: Policy Proposals

### 2.1. Introduction

Since the 1980s, there has been a radical collapse of the previously strong sectoral collective bargaining in the UK (see Emery 2015) and a 'wholesale decentralisation' (Howell 2005,132) to the enterprise level. This decline is most acute in the largely de-collectivised private sector. The vast majority of private sector workers are not covered by a collective agreement (20.7% of jobs Department for Business and Trade 2023, 12) and only 1 in 8 are union members (12% in 2022 *ibid*, 17).

The role of law and the state is critical in initiating a process for restoring sectoral bargaining. Towards this end, the Institute of Employment Rights contributed to the public and political discourse a comprehensive set of proposals by leading experts (IER 2016; IER 2018) that featured in flagship Labour Party documents (see Labour Party 2019, 60-61; Labour Party 2022). Drawing on the IER manifesto, three policy initiatives are here discussed that could help support sectoral bargaining:

- establishment of Joint Sectoral Councils (JSCs);

- legal recognition of the principle of favourability and bargaining in good faith accompanied by the provision of automatic extension mechanisms;
- alter the over-restrictive UK strike law framework by aligning it with ILO standards.

Reforms in this area will most likely encounter employers' resistance preferring the current de-centralised mode, the overall absence of strong sectoral institutions and the historical legacy of minimal state interventions in collective agreements (for collective-laissez faire see Bogg 2010, ch 1). However, it is clear that only a radical state-led new approach would be able to generate the necessary momentum for revitalising sectoral bargaining.

## **2.2. Developing Institutional Machinery: Establishing Joint Sectoral Councils**

**The state should promote voluntary sectoral collective bargaining by establishing a supportive institutional framework. This could take the form of Joint Sectoral Councils (JSCs) empowered to set universally applicable and legally binding minimum terms and conditions for all workers employed in the sector.** This is not a novelty for the UK but an adaptation of a previously existing institution, i.e Wage Councils (for an overview see Katsaroumpas 2019, 13-19). Originally set up for 'sweating' industries with high prevalence of low pay, they later functioned more as statutory props to voluntary bargaining (ibid) in sectors with inadequate collective bargaining arrangements. All Wage Councils were abolished in the 1980s/1990s with the exception of the Agricultural Wage Board that was abolished in 2014 (but continued to exist in Wales, Scotland and Northern Ireland).

**(i) Establishment:** The Minister shall be responsible for establishing a JSC. She should invite the representatives of the most representative employer associations and trade unions with the view to forming a Joint Sectoral Council and facilitate the discussion between the parties for reaching a procedural agreement. This should be in sectors where existing procedural arrangements are considered inadequate. In exercising this power (which would be subject to ordinary judicial review requirements on administrative discretion), the Minister should take into account a list of criteria. These could include low existing levels of bargaining coverage, the prevalence of low-pay (that is below living wage standards), the effect of the absence of sectoral agreements on gender and other inequalities, low union density, anti-union practices by employers and the prevalence of precarious forms of employment in the sector.

The law should require before the Minister's exercise of this power the provision of advice by the Low Pay Commission (the body advising the Government on minimum wage rates composed by three independents, three members with employer background and three with an employee background) on low-pay sectors and that of a tripartite institution (that could be National Industrial Council) consisting of three independent members appointed by the Government, three members by the TUC and three members by employer's organisations.

**(ii) Composition and Process:** JSCs shall comprise an equal number of representatives nominated by each side for each sector. The exact number should be adapted to each sector's specificities. Independent members shall also be appointed to provide expert advice but also to break deadlocks if there is a disagreement, essentially acting as an in-built arbitration mechanism. It is also recommended that JSCs have also non-voting members representing relevant constituencies affected by their operation, such as low-paid workers, unemployed workers and women's organisations. This is to ensure that they offer their input into the decisions thus integrating the perspectives of groups of often marginalised and disadvantaged groups of workers. JSCs should have a publicly visible role, including conducting research and open and targeted public consultations.

**(iii) Collective Agreements and Enforceability:** JSCs shall produce collective agreements in the relevant sector (Joint Sectoral Agreements- JSAs) covering a wide range of terms and conditions of employment (ranging from pay to pensions, addressing atypical forms of work to green transitions). JSAs will have an automatic legally binding effect, both individually (in the employment contract) but also collectively between employers and unions. This will in essence amount to a departure from the distinctive feature of UK labour law (Otto Kahn-Freund 1959), namely the legal presumption against the legal enforceability of collective agreements (treated as ‘binding in honour’ only or gentlemen’s agreements). While one could argue for a wholesale recognition of the automatic normative effect of all collective agreements, it is advisable that a more cautious approach is adopted by recognising this effect (at least initially) only to agreements to JSCs/JSAs which can then be extended after a careful and systematic reflection and assessment of this experience.

JSCs will also be responsible for overseeing the enforcement of JSAs and act as a mechanism for resolving in the first instance any allegation of non-enforcement. Deliberate and systematic violations of their terms by employers should be considered a criminal offence (like minimum wage) but should also be grounds for civil claims in the employment tribunals. It is critical that labour inspections are available either on JSA’s own initiative or after a complaint by a trade union, worker, employer, employer organisation or any other interested party.

### **2.3. Legal Supports for a Solid Sectoral Collective Bargaining: Extension, Favourability and Bargaining in Good Faith**

**The extension of collective agreements, the principle of favourability in case of concurrence of collective agreements at different levels and the duty to bargain in good faith are critical legal tools for solidifying a system of sectoral collective bargaining.** Extension mechanisms incentivise employers to participate in sectoral employer organisations. This is because it would be rational for individual employers to prefer ‘voice’, that is having a say in their conclusion since they will know that they will be applicable to them due to extension. Similarly, the favourability principle ensures that employers cannot escape the effect of sectoral agreements through enterprise agreements with inferior terms. Finally, the duty to bargain in good faith could provide a legal safeguard against employer malpractices (such as obstructing or delaying negotiations or bypassing collective routes through individual negotiations) and potentially cover cases of employers preventing sectoral unions’ access to workplaces.

All these principles are currently absent from UK law and their establishment will be a major policy change. SJC offer an ideal institutional framework for this shift. SJAs should be extended to all employees and the statute should provide for their inderogability (save for exceptional circumstances determined by the SJC and related to genuine emergencies and threat of insolvency). In addition, it is important that the duty to bargain in good faith is included as a mandatory term in the procedural agreements by which SJC are established. It will be useful for these agreements to have a non-exhaustive list of practices deemed incompatible with this duty tailored to each sector’s characteristics and specificities.

### **2.4. Reforming the over-restrictive UK strike law framework by aligning it with ILO standards.**

UK law has one of the most restrictive frameworks of industrial action in the developed world with successive legal interventions amounting to ‘death by a thousand cuts’ (Katsaroumpas 2023, 514). Industrial action in the UK is subject to an ever-widening range of legal restrictions that work cumulatively to make less likely its occurrence (such as stringent ballot thresholds, wide scope for injunctions, technical and complex information and notice requirements) or constrain its effectiveness (long notice periods, short ballot mandates and minimum service levels). To strengthen sectoral unions’ bargaining power (and thus affect the employer-labour balance underpinning the JSAs), a modification of the current restrictive approach is needed. And it is imperative the law permits industrial action during the process JSA’s negotiation.

**The UK Government should invite the ILO to review the strike framework to align UK standards with ILO standards and examining their cumulative effect on freedom of association.** The law should remove the general prohibition on solidarity action and the stringent ballot turnout thresholds while the recent law on minimum service levels during strikes in certain sectors (with an effect on private operators in sectors such as transport) shall be repealed. **Towards this end, the UK Government shall develop with the ILO a roadmap for full alignment of UK strike law with ILO standards.** This alignment should be an integral part of any institutional strategy for strengthening sectoral bargaining.

### **3. Part 2 - Miguel Martínez Lucio**

#### **3.1. The context of sectoral collective bargaining in terms of supports and parallel forms of regulation in the UK.**

Although collective bargaining is not as extensive in the UK as in some European countries, sector-level reference points in industrial relations and related activity are beginning to emerge. The sector level is increasingly hard to define due to economic changes and the emergence of new hybrid sectors. Nevertheless, it can be an important space in which trade union and social interventions can generate a favourable climate for a fairer and more just approach to employment conditions.

Joint sector-level regulation has been uneven in the UK, apart from in specific utilities or public services. However, the sector remains an important referent and arena for socio-economic interventions. Initiatives by employers and quasi-regulatory bodies around quality standards and accreditation processes in key sectors such as care and cleaning suggest that this level of the economy is in need of attention and specific forms of regulation. Direct trade union involvement, however, depends on the presence of the union in the sector concerned.

Sector-level developments have also been affected by national and local developments in *employment charters* and living wage campaigns. In North-West England and in cities such as Manchester and Liverpool, for example, voluntary *employment charters* in the form of minimum employment and labour relations practices have set a benchmark for local employers or national employers based locally (see Johnson et al., 2023), although some issues of implementation and development remain (ibid). A call for standards extending beyond the minimum wage approach is increasingly appearing in the local regional space, with living wage campaigns and minimum wage agreements set at a higher and more realistic level in social terms becoming an important feature of the new economy (Heery et al., 2017). Although these initiatives remain primarily voluntary and are not legally binding, some sectors, such as further and higher education (ibid) have sought to adopt them for specific unskilled workers. Local city employers as well as local authorities have also adopted charters and living wage commitments of this kind as part of their 'ethical' approach to human resource management and labour relations. The multi-employer space has thus been the focus of much initiative and even in the absence of systematic joint regulation, soft forms of regulation across these spaces appear to be needed.

A parallel development in the UK since the deregulation that began to accompany privatization and subcontracting in the 1980s has been the growth of regulatory bodies dealing with prices and consumer rights. While regulatory capture has meant these have not been as effective and interventionist as some would like (Majone, 1994 and 1997; Martínez Lucio and MacKenzie, 2005), there is still a need for the sectoral space to be regulated and service quality initiatives to be developed. We have seen this with telecommunications, electricity, and other utilities, although how effective they are is another issue.

New forms of government initiatives dealing with standards of service provision have appeared, for example, in the care sector, which has experienced a crisis of service delivery and labour shortages. Trade unions have filled the space left by the lack of systematic sector-level joint regulation by developing care charters

outlining expectations from employers in such areas as decent work, training, and client care (Marino and Keizer, 2023). Although this quasi-regulation is in contrast with other contexts (ibid), it indicates the importance of sector-related issues and the need to underpin sectors with regulatory standards, even if these are only voluntary. While it continues to evolve and its boundaries are shifting, the sector is important for its common features in terms of employment and services/production, which in their turn require attention and specific benchmarks and regulations.

The UK does not have a strong record on skills and training compared to some Western European countries, but some bodies have nevertheless played a pivotal role in setting training standards and skills-related benchmarks. The last Labour government, which combined social democratic social practices with neoliberal economic policies (Howell, 2005), developed Sector Skills Councils which generated tripartite debates on issues related to skills and training (Stuart, 2019). While the role of these councils has been undermined by Conservative governments since 2010 and their structures have become less interventionist, with negligible trade union influence and presence, they nevertheless show that the sectoral dimension, with the specificities and idiosyncrasies of sectoral labour markets, skills portfolios, and employment characteristics, still requires consideration.

This means that worker voices must address and engage with sector-related issues and ensure that working conditions are synchronized and raised in relation to sector spaces, however much these appear to be changing. Even in the context of the UK's weak sector-level union and bargaining activity, we can see that parallel regulatory processes are important for shaping social outcomes: the question remains as to how worker influence is built into these processes.

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