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

Volume II

—

Edited by

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

**etui.**



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## Chapter 12

### Germany: parallel universes of collective bargaining

Torsten Müller and Thorsten Schulten

Until the early 1990s, the German model of industrial relations was widely regarded as a resounding success. This is because of its robustness, its potential to provide social cohesion and business competitiveness and its low record of conflict. A central pillar of the German model was the dual system of interest representation, based on works councils at company level and multi-employer bargaining at industry level by encompassing trade unions and employers' associations, which ensured high bargaining coverage and the effective implementation of collective agreements. Since then collective bargaining in Germany has undergone far-reaching changes. In addition to the neoliberal restructuring of the German model of capitalism, the main driving force of these changes has been a more assertive approach on the part of the employers. They have striven for a 'flexibilisation' of collective bargaining in order to improve cost competitiveness against a background of severe economic crisis and intensifying international competition. The introduction of new business models, such as decentralisation and outsourcing, and the political transition in central and eastern Europe have enabled the employers to increase pressure on the trade unions because they have made the threat of relocating production more credible. In their quest to improve cost competitiveness, the employers have gradually retreated from the traditional model of multi-employer bargaining, which they have increasingly perceived as a 'straitjacket' restricting their capacity to adapt to rapidly changing economic conditions.

Table 12.1 Principal characteristics of collective bargaining in Germany

Key features	2000	2017
Actors entitled to collective bargaining	Trade unions, individual employers and employers' associations	
Importance of bargaining levels	Dominance of industry level, but increasing importance of company level	
Favourability principle / derogation possibilities	Favourability principle but over time increasingly hollowed out by opening clauses in industry-level agreements	
Collective bargaining coverage (%)	68	55
Extension mechanism (or functional equivalent)	Extension possible if requested by one bargaining party and if agreement covers at least 50% of employees in the respective bargaining area	Since 2015 extension possible if requested by both bargaining parties and if in public interest
Trade union density (%)	20	15
Employers' association rate (%)	63 (2002)	58 (2011)

Source: Appendix A1.

This has contributed to the decentralisation, fragmentation and erosion of collective bargaining. This involves, first, a gradual but steady increase in the relative importance of company-level bargaining; second, a substantial decrease in bargaining coverage, from 68 per cent in 2000 to 55 per cent in 2017; and third, an increasing hollowing out of existing industrial agreements by the frequent use of opening clauses, allowing for company-level derogations (see Table 12.1). The intensity and form of these processes, however, have varied substantially across regions and industries. This has led to the emergence of parallel universes of collective bargaining, with great variation in its regulatory capacity. The key focus of this chapter is on exploring the different factors that led to this state of affairs.

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

German industrial relations are an integral part of the complex political and institutional arrangements that characterise German capitalism. Traditionally, the ideological underpinning of German capitalism is provided by strong political and societal support for the concept of the ‘social market economy’, developed by the ordoliberal economist Alfred Müller-Armack after the Second World War (Müller-Armack 1947). This concept is based on the idea of combining the principle of free enterprise and free competition with that of social equity and cohesion. This implies a commitment to the concept of a capitalist market economy as the organising principle of economic activity, alongside a recognition that markets are imperfect and need to be regulated to achieve social equity and cohesion. The role of the post-war state in the traditional German social market economy is neither *laissez-faire*, as in the United Kingdom, nor statist, as in France, but is described as ‘enabling’ (Streeck 1997: 38). This means that the state defines the rules of the game to ensure competitive markets by protecting the freedom of all market participants. This also means that the state supports a dense network of institutions and civil society actors in generating ‘most of the regulations and collective goods that circumscribe, correct and underpin the instituted markets of ... the social market economy’ (Streeck 1997: 39).

This recognition of the need to rein markets in underpins the following traditional features of German capitalism (Berghahn and Vitols 2006). First, a strong focus on ‘diversified quality production’ (Streeck 1991), with a highly competitive manufacturing sector. At its core are the automotive, machine-building and chemical industries, which are the backbone of Germany’s ‘high quality/high wage’ economy and of an export-led growth model. Next, a specific form of corporate governance, which involves a dense network of cross-shareholdings and interlocking directorships between major German companies and the large universal banks, as well as the participation of the employees’ side in company decision-making through the presence of employee representatives on the supervisory board. Both factors have served to limit the influence of capital markets on company decisions and have guaranteed a high degree of stability with a focus on long-term strategic developments (Streeck and Höpner 2003). In addition to this, a relatively comprehensive public sector, including some important national monopolies. While trade surpluses traditionally were a major driver of Germany’s economic development, a relatively strong public sector, combined with continuous growth in

real wages, ensured a balance between the internationally exposed and the domestic sectors. And finally, an industrial relations system based on ‘conflictual cooperation’ (*Konfliktpartnerschaft*) (Müller-Jentsch 1999) between trade unions and employers, based on a dense legal framework that defined the rules of the game. In this model, industry-level collective agreements fulfil a protective and distributive function for employees by ensuring wage growth and a relatively even wage distribution, as well as order and industrial peace for employers, by taking wages and other working conditions out of competition (Bispinck and Schulten 1999).

Since the 1980s, however, a number of profound policy changes have been implemented in reaction to increased international competition and the new economic challenges arising from German reunification in October 1990. Germany chose to pursue neoliberal restructuring that, while not as dramatic as the neoliberal assault in the United Kingdom (see Chapter 29), has transformed some of the basic socio-economic features of German capitalism described above (Lehndorff *et al.* 2009; Streeck 2009). First, a deregulation of financial markets has prompted far-reaching changes in the ownership structure of major German companies and an increased short-term shareholder-value orientation in German corporate governance (Streeck and Höpner 2003). Second, deregulation in social and labour market policy has led to a significant weakening of social and employment protection and, as a consequence, to a strong increase in precarious employment. Third, the liberalisation and privatisation of public services led to a significant shrinking of the public sector (Brandt and Schulten 2008). Fourth, in the field of industrial relations, employers gradually retreated from the ‘conflictual partnership’ with trade unions and the corresponding forms of joint regulation of the employment relationship (Behrens 2011). All these changes to the core elements of German capitalism have contributed to the decline and fragmentation of the traditional model of industry-level collective bargaining.

In the field of industrial relations the enabling role of the state is reflected in the importance of the law (*Verrechtlichung*) in defining actors’ rights and responsibilities. The most fundamental feature of German industrial relations is its dual system of interest representation, with two distinct arenas for the autonomous regulation of the employment relationship: collective bargaining and employee representation at the workplace level.

The legal basis of collective bargaining is the Collective Agreements Act of 1949 (Tarifvertragsgesetz, TVG) and employee representation at workplace level is based on the Works Constitution Act (Betriebsverfassungsgesetz, BetrVG). These two laws establish a formal division of labour between trade unions, which, as a rule, negotiate collective agreements with employers’ associations at industry level,<sup>1</sup> and works councils, which are statutory, non-union bodies elected to represent employees at

1. The TVG stipulates that trade unions can conclude collective agreements with employers’ associations or individual employers which includes the possibility of company-level collective agreements. In practice, the majority of employees covered by a collective agreement were, and still are, covered by a multi-employer agreement at industry level.

workplace and company level.<sup>2</sup> In contrast to trade unions, works councils are not allowed to negotiate collective agreements. They are only allowed to conclude so-called ‘works agreements’ (*Betriebsvereinbarung*), which, according to § 77 (3) BetrVG, ‘may not deal with remuneration and other conditions of employment that have been fixed, or are normally fixed, by collective agreement’. But even though works councils are not allowed to negotiate collective agreements, they are responsible for monitoring their implementation at company level. Despite this formal legal separation between trade unions and works councils, there are close ties of mutual dependency between the two, both personally and functionally. Trade unions provide training and legal advice for works council members, most of whom are trade unionists and are often ex officio lay officials actively involved in internal union policymaking. As union members, works councillors are also often members of union collective bargaining committees (*Tarifausschuss*), which formally have to approve new collective agreements. Works councils furthermore play an important role in recruiting members for the trade union at workplace level (Jacobi *et al.* 1998: 190).

The organisational principle of German trade unions, implemented after the Second World War, is that of a ‘unitary trade union movement’ (*Einheitsgewerkschaft*) led by the German Confederation of Trade Unions (Deutscher Gewerkschaftsbund, DGB). The DGB originally had 16 affiliates organising all workers irrespective of status, profession and political or ideological orientation. Following various union mergers in the 1990s the number of DGB-affiliated unions was halved to eight. The union mergers undermined the traditional ‘industrial unionism’ and prompted the ‘rise of conglomerate unions’ (Streeck and Visser 1997), which extend their organisational domain to various industries. The two largest DGB affiliates are the German Metalworkers’ Union (IG Metall) and the United Services Union (ver.di), which have about 2 million members each and represent together around 70 per cent of all DGB affiliated trade union members. IG Metall has its main constituency in metal manufacturing, including the automobile industry as its organisational stronghold. IG Metall also covers the steel, textile and wood processing industries. Ver.di is much more diverse and represents, apart from the public sector, about 200 industries in private services (Dribbusch *et al.* 2018; Dribbusch and Birke 2019).

In relation to its affiliated unions the DGB is relatively weak and is largely restricted to representational matters and political lobbying. The DGB does not negotiate collective agreements. Affiliated trade unions that organise workers are active at the workplace and are engaged in collective bargaining and industrial action. Total DGB membership reached its all-time high, almost 12 million members, in 1991, following the integration of East German union members, only to slump shortly afterwards (Dribbusch *et al.* 2018). In 2017, the DGB represented about 6 million members, who account for more than three-quarters of all trade union members in Germany (Table 12.2). There are two more trade union confederations in Germany: the German Civil Service Association

2. Works councils, which enjoy far-reaching information and consultation rights, can be established in any firm with at least five employees. The public sector equivalent to works councils in the private sector, although with somewhat fewer rights than works councils, are the staff councils, which are based on the Federal Staff Representation Act (*Bundespersonalvertretungsgesetz*, BPersVG), with supplementary Acts in the various Länder (Jacobi *et al.* 1998: 198).

Table 12.2 Trade union membership in Germany

	2001	2008	2017	2001– 2008	2008– 2017
<b>Deutscher Gewerkschaftsbund (DGB)</b> (Confederation of German Trade Unions) DGB affiliates:	7,899,000	6,265,000	5,995,000	–20.7%	–4.3%
Industriegewerkschaft Metall (IG Metall) (German Metalworkers' Union)	2,710,000	2,301,000	2,263,000	–15.1%	–1.7%
Vereinte Dienstleistungsgewerkschaft (ver.di) (United Services Union)	2,807,000	2,138,000	1,987,000	–23.8%	–7.1%
Industriegewerkschaft Bergbau, Chemie, Energie (IG BCE) (Mining, Chemicals and Energy Industrial Union)	862,000	701,000	638,000	–18.7%	–9.0%
Industriegewerkschaft Bauen-Agrar-Umwelt (IG BAU) (Building, Agriculture & Environment Workers' Union)	510,000	336,000	255,000	–34.1%	–24.1%
Gewerkschaft Erziehung und Wissenschaft (GEW) (German Union of Education)	268,000	252,000	278,000	–6.0%	10.3%
Gewerkschaft Nahrung-Genuss-Gaststätten (NGG) (Food, Tobacco, Hotel & Allied Workers Union)	251,000	206,000	200,000	–17.9%	–2.9%
Eisenbahn- und Verkehrsgewerkschaft (EVG) (Railway and Transport Union)	306,000	219,000	190,000	–28.4%	–13.2%
Gewerkschaft der Polizei (GdP) (German Police Union)	185,000	169,000	185,000	–8.6%	9.5%
<b>Deutscher Beamtenbund und Tarifunion (DBB)</b> (German Civil Service Association)	1,211,000	1,280,000	1,312,000	5.7%	2.5%
<b>Christlicher Gewerkschaftsbund Deutschlands (CGB)</b> (Christian Trade Union Confederation of Germany)	n.a.	275,000	271,000	n.a.	–1.5%
<b>Unions not affiliated to the DGB*</b>	220,000	255,000	280,000	+15.9%	9.8%
Among them: Marburger Bund (MB) (Union of Salaried Medical Doctors)	70,000	106,000	120,000	51.4%	13.2%
<b>In total</b>	9,330,000	8,075,000	7,858,000	–13.5%	–2.7%
<b>Net union density (%)</b>	20	17*	15*	n.a.	n.a.

Note: \* Estimation by WSI.

Source: Dribbusch *et al.* (2018); Dribbusch and Birke (2019) based on membership information from the respective trade unions; union density: Appendix A1 as for 2001, WSI as for 2008 and 2017.

(Deutscher Beamtenbund und Tarifunion, DBB) with 1.3 million members, including 915,000 civil servants, and the small Christian Trade Union Confederation of Germany (Christlicher Gewerkschaftsbund Deutschlands, CGB) with approximately 280,000 members. More recently, occupational unionism has enjoyed a renaissance with several organisations that do not belong to any confederation (Schröder *et al.* 2011; Keller 2018). The largest among them is the Union of Salaried Medical Doctors (Marburger Bund, MB) with around 120,000 members. Other small, but influential occupational unions are the pilots' union (Vereinigung Cockpit) with 9,300 members and the DBB-affiliated train drivers' union (Gewerkschaft Deutscher Lokomotivführer, GDL) with 34,000 members (Keller 2018).



Union density varies considerably across industries, job categories and regions. The core of the traditional metalworking industry, which is dominated by blue-collar workers, is still comparatively well organised, with some car plants having density levels of 90 per cent or more. Density levels are on average much lower in small and medium-sized enterprises. In services, the picture is equally diverse. While utilities and the former state-owned companies in the rail, telecoms and postal services are comparatively well organised, the picture is much bleaker in companies that entered the market only after the liberalisation of these industries (Dribbusch *et al.* 2018). Health care and education have seen positive membership development as nurses and child care workers have become the focus of increased union activity since the mid-2000s. In these industries, comparatively strong organising levels in metropolitan areas contrast with weaker levels in small towns, rural areas and among staff in church-owned facilities (Schulten and Seikel 2018). Public administration remains a very difficult terrain for ver.di. The same applies to retail, where organising efforts meet structural hurdles and widespread employer resistance (Dribbusch 2003).

The organisational structure on the employers' side is more complex and rests on three pillars: chambers of industry and commerce (Industrie- und Handelskammern), business associations and employers' associations (Jacobi *et al.* 1998; Schröder and Weßels 2017). Of this three types of organisation only employers' associations negotiate industry-level collective agreements with trade unions. The German Employers' Association (Bundesvereinigung der Deutschen Arbeitgeberverbände, BDA) is the national peak-level organisation, comprising 48 national industry associations and 14 regional cross-industry associations. Like the DGB, the BDA is not directly involved in negotiating collective agreements. Negotiations are undertaken by the industry-level affiliates. Information on employers' association density rates is notoriously difficult to come by because most associations treat it as confidential (Silvia 2017). The available data suggest that, despite a decline from 63 per cent in 2002 to 58 per cent in 2011 (see Table 12.1), the employers' association rate is still substantially higher than union density. In order to prevent a further membership decline about half of German employers' associations introduced a special so-called 'OT membership' (Behrens and Helfen 2019). 'OT' stands for '*ohne Tarif*', which means membership without being bound by a collective agreement. This essentially gives employers the opportunity to remain a member of the association and to choose whether they want to be covered by an industry-level agreement signed by the respective employers' association. There is little information about the actual uptake of this kind of special membership. Evidence from the metalworking industry, however, shows that the proportion of companies making use of OT membership increased from 24 per cent in 2005 to 52 per cent in 2017 (Schulten 2019).

## Security of bargaining

Security of bargaining is concerned with all the factors that support negotiations between trade unions and employers and determine the unions' bargaining role. Traditionally, the most important factors that support multi-employer bargaining in Germany are the legal framework, which defines the bargaining parties' rights and obligations, and

the ideological underpinning of multi-employer collective bargaining, based on support from the state, employers and trade unions for the idea of the social market economy.

The most fundamental legal basis of bargaining security is Article 9(3) of the German Constitution (Basic Law), which guarantees freedom of association and, thus, the autonomy of the bargaining parties in regulating employment conditions (*Tarifautonomie*). Article 9(3) thus excludes direct state intervention in determining terms and conditions of employment. Article 9(3) protects *Tarifautonomie*, as one of the most important principles of collective bargaining in Germany, and all activities necessary for the conduct of collective bargaining, including the rights to strikes and lockouts (Kittner 2009). Despite the otherwise dense legal framework of collective bargaining, strikes (and lockouts) are not regulated by codified law but by case law. Against this background, the key principles of strike activity can be summarised as follows. First, a strike can be called only by a trade union, never by a works council, and must be related to an issue dealt with in a collective agreement. This means that political strikes, aimed at changes of government policies, and solidarity strikes are illegal. The same applies to ‘wildcat’ strikes. Second, for the duration of an agreement there is a peace obligation (*Friedenspflicht*). This means that strikes can only be called in the period between the expiry of an existing agreement and the conclusion of a new one and after the breakdown of negotiations has been declared. Exceptions to this rule are short warning strikes and work stoppages, which take place when the peace obligation has expired, but negotiations for a new agreement are still ongoing. Third, strikes should always be a last resort and they have to follow the principle of proportionality, meaning that strike action is legitimate only if it is not deemed excessive in relation to the issue at hand. Fourth, although in principle the same rules apply to the public sector, civil servants (*Beamte*) have no right to collective bargaining and are, therefore, excluded from the right to strike. Fifth, a strike can be called only if, in a strike ballot, at least 75 per cent of union members vote in favour of strike action.

More specific ‘rules of the game’ for collective bargaining are set out in the Collective Agreements Act (*Tarifvertragsgesetz*, TVG). According to §4(1) of the TVG, collective agreements are legally binding for all members of the bargaining parties concerned; that is, for employees who are members of the signatory trade union and all companies affiliated to the signatory employers’ associations, or a single company in the case of a company agreement. In practice, employers bound by a collective agreement usually voluntarily follow the *erga omnes* principle by applying the agreed provisions to all employees, regardless of whether they are trade union members or not.

According to §5 of the TVG, collective agreements can be extended by the federal or regional Ministries of Labour to include those employers and employees in the relevant industry who are not directly bound by the agreement.<sup>3</sup> According to the TVG, extensions need to be based on a joint request of the bargaining parties and require the approval of the bipartite Collective Bargaining Committee (*Tarifausschuss*), which

3. Collective agreements can also be extended under the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*, AEntG). Under the AEntG, extensions are restricted to the minimum wage and other minimum standards. Extensions, furthermore, require nationwide collective agreements and are administered at national rather than at regional level (Schulten 2018).

is headed by a government representative and comprises six representatives, with the DGB and the BDA each nominating three. Until 2015, extensions under the TVG were possible only if the agreement covered more than 50 per cent of the employees in the relevant bargaining area. With the adoption of the Act on the Strengthening of the Bargaining Autonomy (Gesetz zur Stärkung der Tarifautonomie), in August 2014, this condition was dropped. Instead, since 2015 the extension of an agreement needs to be in the public interest. One important criterion for this is the ‘predominant importance’ of the agreement, which takes account of the actual coverage rate. The latter includes companies formally covered by the agreement and those that take the agreement as orientation in setting their own standards. Although the intention of this legislative change was to increase the use of extensions, in practice, extensions are still rarely used and only in a limited number of industries (see Extent of bargaining for more details).

Another important legal provision in support of multi-employer collective bargaining is §4(3) TVG, setting out the favourability principle (*Günstigkeitsprinzip*). According to this, departures from industry-level agreements are possible only when these favour employees. The bargaining parties may, however, agree on so-called ‘opening clauses’ (*Öffnungsklauseln*) in collective agreements that allow, under certain conditions, a derogation from collectively agreed standards, even if this changes employment conditions for the worse (see Level of bargaining for more details).

In addition to the institutional support provided by the legal framework, bargaining security was also based on the shared understanding that multi-employer bargaining was an integral part of the German social market economy. For most of the post-war era, employers have valued multi-employer bargaining as a source of industrial peace and orderly industrial relations (Jacobi *et al.* 1998: 206). This perception changed in the 1990s, however, following German reunification and the associated transformation of the German model of capitalism more generally. At the same time, neoliberal perceptions of globalisation and intensified international competition dominated the political discourse, calling into question all labour market institutions and regulation (Schulten 2019). The clearest expression of this trend was the debate about ‘*Standort Deutschland*’ (Germany as a location for investment), which took place in the context of the severe economic crisis at the beginning of the 1990s. This debate involved a change in the employers’ view of collective bargaining. They increasingly complained that labour costs are too high, supposedly as a result of ‘overregulated’ and ‘non-flexible’ industry-level agreements (Hassel and Schulten 1998). As a consequence, the employers increasingly pushed for more decentralised bargaining and a shift from industry- to company-level bargaining by gradually increasing the scope for company-level derogations from industry-level agreements through opening clauses (see Level of bargaining). While still paying lip-service to the concept of the social market economy, employers gradually retreated from multi-employer bargaining, thus eroding the underpinning of bargaining security. In contrast to many other EU countries, in which the state actively intervened to reduce bargaining security, in Germany the key actors in undermining the regulatory capacity of collective bargaining were the employers.

## Level of bargaining

The TVG stipulates that collective agreements have to be negotiated by trade unions and employers' associations or individual employers, thus explicitly allowing company-level agreements. In 2017, there were 76,043 valid collective agreements, of which 28,981 were industry-level agreements and 47,062 company-level agreements. Because company-level agreements are found mainly in smaller companies, the number of workers covered by a company-level agreement is substantially smaller than that covered by an industrial agreement. Table 12.3 illustrates that, since 2000, the contribution of company-level agreements to overall bargaining coverage has remained fairly stable at 7–8 per cent in western Germany and 10–11 per cent in eastern Germany. At the same time, the proportion of workers covered by an industry-level agreement decreased considerably between 2000 and 2017: in western Germany from 63 to 49 per cent and in eastern Germany from 44 to 34 per cent. This illustrates that, while the industry level still dominates, the relative importance of company-level agreements has increased. The increasing proportion of employees covered by company-level agreements compared with industry-level agreements illustrates the quantitative dimension of the decentralisation of collective bargaining in Germany.

Table 12.3 Relative importance of bargaining levels, 2000–2017 (percentage of employees covered by industry-level agreements (ILA) and company-level agreements (CLA))

Year	West Germany			East Germany		
	Total	ILA	CLA	Total	ILA	CLA
2000	70	63	7	55	44	11
2001	71	63	8	56	44	12
2002	70	63	7	55	43	12
2003	70	62	8	54	43	11
2004	68	61	7	53	41	12
2005	67	59	8	53	42	11
2006	65	57	8	54	41	13
2007	63	56	7	54	41	13
2008	63	55	8	52	40	12
2009	65	56	9	51	38	13
2010	63	56	7	50	37	13
2011	61	54	7	49	37	12
2012	60	53	7	48	36	12
2013	60	52	8	47	35	12
2014	60	53	7	47	36	11
2015	59	51	8	49	37	12
2016	59	51	8	48	36	11
2017	57	49	8	44	34	10

Source: WSI (2018) based on the IAB Establishment Panel.

There is also a qualitative dimension, because where industry-level agreements still exist the frequent use of opening clauses transfers regulatory capacity to the company level and may undermine the function of industry-level agreements in ensuring a level playing field for the whole industry. Overall, decentralisation of collective bargaining is not new. It can be traced to the 1960s and 1970s, with opening clauses on work organisation and additional payments, and continued during the 1980s, when employers secured more working time flexibility in exchange for a reduction in weekly working hours (Schulten and Bispinck 2018: 110). The next step in extending the catalogue of issues for which derogations are possible followed the post-reunification crisis in the early 1990s, with the introduction of so-called 'hardship clauses', mainly in eastern Germany. These allowed companies in financial difficulties to derogate from collectively agreed pay increases in exchange for safeguarding jobs. General opening clauses, which delegate the regulation of certain issues to the company level and specify the conditions under which this is possible, became more common in the 2000s when derogations were possible in order to 'maintain or create employment' or 'to improve a company's competitiveness'. The turning point that accelerated the use of general opening clauses was in 2004 when IG Metall, which had been very critical of opening clauses, concluded the so-called Pforzheim agreement, which for the first time contained a general opening clause for the whole metal industry and provided the blueprint for agreements in other industries (Bispinck and Schulten 2010). The Pforzheim agreement was a response to the proliferation of so-called 'wildcat' derogations from industry-level agreements in the 1990s and early 2000s, when more and more company-level derogations were agreed between management and works councils without the involvement of the industry-level bargaining parties (Bahnmüller 2017). The ultimate push for the agreement came from the centre-left coalition government under Chancellor Gerhard Schröder, which, in response to mass unemployment and a looming election, threatened to introduce statutory opening clauses if the bargaining parties did not agree on enhanced possibilities for company-level derogations (Bispinck and Dribbusch 2011). Thus, the Pforzheim agreement can be seen as an attempt by IG Metall and the Federation of Metal Industry Employers' Associations (Gesamtmittel) to regain control over company-level developments and to prevent state intervention in collective bargaining (Müller *et al.* 2018). As a consequence, the use of opening clauses became a standard feature in German collective bargaining.

The use of opening clauses varies considerably across industries. In 2015, approximately one-fifth of all companies covered by a collective agreement made use of an opening clause. The use of opening clauses is most widespread in manufacturing (28 per cent) and in transport and hotels and restaurants (23 per cent). They are less common in construction (14 per cent) and financial services (10 per cent) (Amlinger and Bispinck 2016). The most common issues dealt with by opening clauses are working time (14 per cent) and quantitative issues, such as wages, allowances and additional bonuses (10 per cent each) (Amlinger and Bispinck 2016).

Usually, the establishment of an opening clause involves the following steps. It is based on a joint application by the management and works council of the respective company addressed to the industry-level bargaining parties, which take the final decision on the derogation. This joint application must be supported by comprehensive information

and documentation clearly showing why derogation is needed. If the bargaining parties agree, a company-level bargaining committee, consisting of works council members and full-time officials, negotiates a so-called ‘supplementary company agreement’ with the company, which needs the approval of union headquarters. Usually, the trade union agrees to the derogation only if it is temporary and the company offers something in return: in most cases these are job guarantees or new investment in the company (Bispinck and Schulten 2018).

Concerning relations between different bargaining levels, the use of opening clauses has far-reaching implications for the more general architecture of German collective bargaining because the traditional division of labour between trade unions and works councils has become increasingly blurred. The opening up of industry-level agreements means that works councils are increasingly involved in negotiations on wages and working time, which previously, at least formally, was the prerogative of trade unions at industry level. This *de facto* transition to a two-tier bargaining system has changed the character of industry-level agreements, which increasingly function as framework agreements with reduced regulatory capacity, potentially paving the way for increased differentiation of wages and working conditions (Bahmüller 2010: 83). The use of opening clauses helped the bargaining parties in metals to regain some control over developments at company-level because the industry-level agreement defines the conditions under which company-level derogations are possible. This organised decentralisation was possible, however, only because of the close articulation between industry-level trade unions and company-level works councils in metals, where in 2014 approximately 70 per cent of all works council members within the organisational domain of IG Metall were members of the union (Schulten and Bispinck 2018: 116).

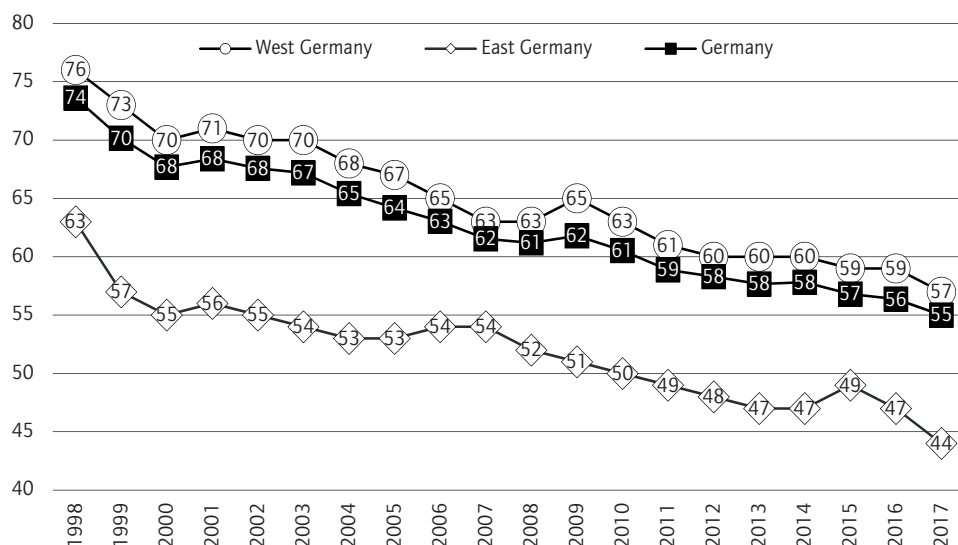
The metalworking experience illustrates that a strong union presence at the workplace, ensuring close articulation between the industry and the company level, high overall bargaining coverage and supportive employers’ associations are central prerequisites for organised decentralisation. In many other industries, particularly in private services, these preconditions are not met. In consequence, collective bargaining in Germany is characterised by the parallel existence of organised and ‘disorganised’ forms of decentralisation. The primary example of the latter is retail, where trade unions and works councils are much less prevalent and employers are increasingly abandoning multi-employer bargaining by leaving the employers’ association or opting out of the industry-level agreement. This, in turn, has led to a dramatic decline in bargaining coverage over the past 20 years (Schulten and Bispinck 2018; Ibsen and Keune 2018). There have been opening clauses in retail along the lines of the Pforzheim agreement in metalworking, but, because of the much weaker coverage and articulation in retail, ‘disorganised’ decentralisation dominates, with company-level negotiations becoming increasingly detached from industry-level bargaining.

## **Extent of bargaining**

According to the data provided by the Establishment Survey of the Institute of Employment Research of the German Federal Employment Agency (IAB), over the past



Figure 12.1 Geographical breakdown of collective bargaining coverage, 1998–2017 (workers covered by collective agreements as a percentage of all workers)



Source: IAB Establishment Panel.

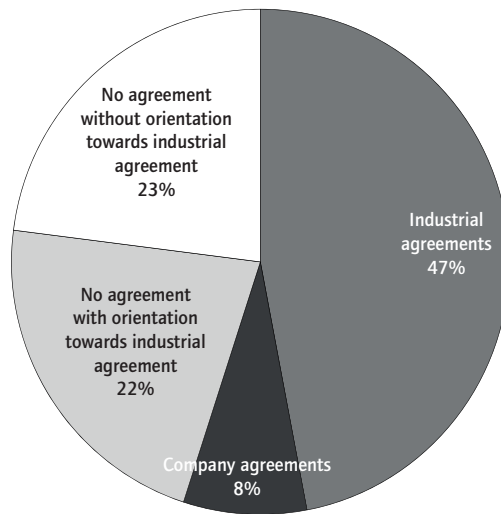
20 years Germany has experienced a dramatic decline in bargaining coverage, from 74 per cent in 1998 to 55 per cent in 2017 (see Figure 12.1). Other data sources, such as the German Socio-Economic Panel (SOEP) and the German Structure of Earnings Survey (SES), come up with even lower figures: 53 per cent in 2016 (SOEP) and 45 per cent in 2014 (SES). Considering the different results of the three sources there is a possibility that the IAB data underestimate the real decline of bargaining coverage in Germany.<sup>4</sup>

There are, however, considerable differences in bargaining coverage regarding region, industry and company size. As Figure 12.1 illustrates, bargaining coverage is traditionally about 15 percentage points higher in western than in eastern Germany. The decline during the past 20 years, however, has been more or less the same: in western Germany from 76 per cent in 1998 to 57 in 2017, and in eastern Germany from 63 to 44 per cent.

For about half of the 45 per cent of employees who are not covered by collective agreements, the companies claim that they regard prevailing industry-level agreements as ‘orientation’ for the determination of wages and working conditions at company level (see Figure 12.2). The regulatory capacity of collective agreements, therefore, seems to go beyond the extent of formal bargaining coverage. Recent studies found, however, that in many companies taking their bearings from prevailing industry-level agreements,

4. For a more detailed discussion of the different data sources see Schulten (2019). The following analysis will be based on the IAB data, because the IAB Establishment Survey is the only one conducted annually and therefore the only one that allows the creation of more long-term data series.

Figure 12.2 Collective bargaining coverage as a percentage of workers employed by companies covered by collective agreements, 2017



Source: IAB Establishment Panel.

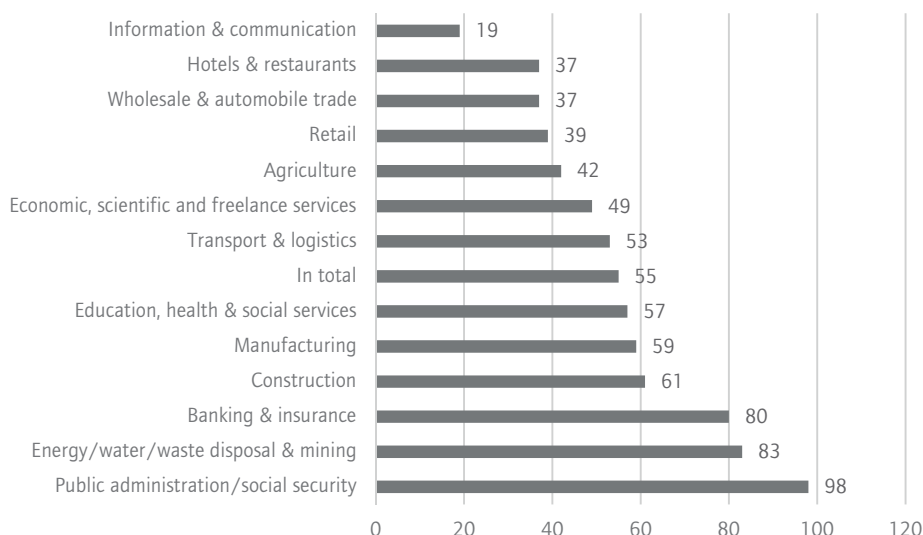
wages and conditions are well below collectively agreed standards, so that ‘orientation’ is not an adequate substitute for formal coverage (Addison *et al.* 2016; Berwing 2016; Bossler 2019).

There are, furthermore, substantial differences in coverage by industry (see Figure 12.3). In some industries, such as public administration, financial services or energy, the vast majority of workers, 80 per cent or more, are still covered by collective agreements. The same applies to some core manufacturing industries, such as automobiles or chemicals, in which around two-thirds of workers are still covered by collective agreements. In a large number of private service industries, such as retail, hotels and restaurants, wholesale and automobile trade or IT services, only a minority, less than 40 per cent, of workers are covered by collective agreements.

The differences by industry are closely related to the size of establishment. The industries with high bargaining coverage are in the public sector, or privatised formerly public industries, and are characterised by larger companies. In contrast, all the industries with low bargaining coverage are fragmented and compartmentalised into smaller units. This has a significant impact on the extent of bargaining. While 85 per cent of larger establishments with 500 or more employees are covered by a collective agreement, in smaller establishments with fewer than 10 employees bargaining coverage is only 22 per cent. Given that the vast majority of establishments in Germany are small or medium-sized it is no surprise that, on average, only 29 per cent of all establishment are covered by a collective agreement (Schulten 2019).



Figure 12.3 **Collective bargaining coverage in selected industries, 2017 (workers covered by collective agreements as a percentage of all workers)**

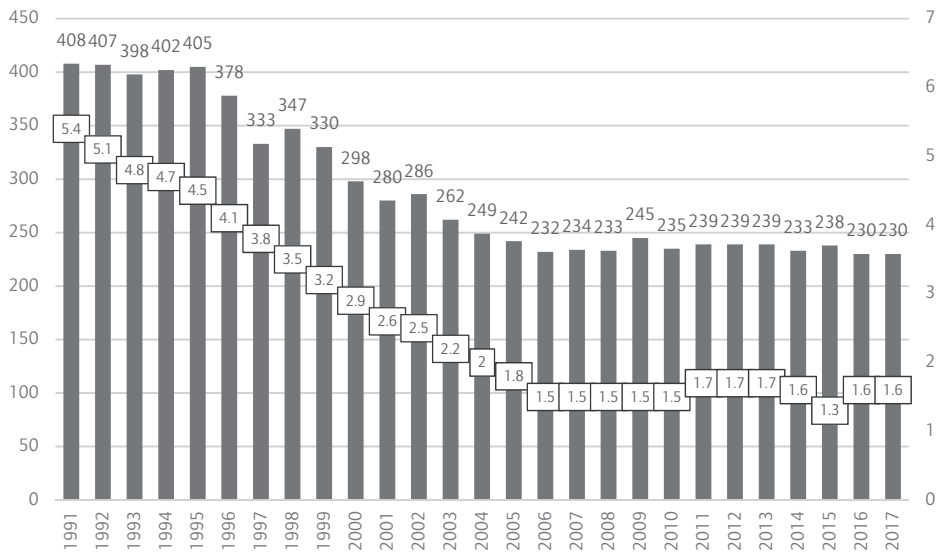


Source: IAB Establishment Panel.

There are four main reasons for the decline of bargaining coverage in Germany. First, the decline of union density and power, so that unions, particularly in some private services, are too weak to force employers to the negotiation table. Second, the position of trade unions has been further weakened by labour market deregulation, which has led to a significant increase of non-standard and precarious employment (Keller and Seifert 2013). This has resulted in a growing dualism, with a relatively well protected core workforce and a much more precarious peripheral group of employees, even in industries with relatively stable collective bargaining structures, such as metalworking and the public sector (Hassel 2014). Third, the declining acceptance of multi-employer bargaining among employers and their incremental retreat from industry-level collective agreements. This involves both the withdrawal from industry-level agreements of companies that were formerly covered and the refusal of newly established companies to opt into the industry-level agreement. The German employers' associations responded to this development by offering OT membership (see above), which enables companies to remain a member of the association while at the same time avoiding coverage by an industry-level agreement. OT membership status has helped to stabilise the employers' association rate, but it has also provided institutional legitimisation for opting-out of industry-level collective agreements and thus has contributed to the decline in bargaining coverage.

This problem has been further aggravated by the lack of state support for collective bargaining, which is the fourth main reason for the decline of collective bargaining coverage. In other countries, the state has supported bargaining coverage, for instance, by the frequent use of extension mechanisms. In Germany, collective agreements are

Figure 12.4 Extended original agreements\* in force, 1991–2017 (in absolute numbers and as a percentage of all original agreements)



Note: \* Excluding agreements amending existing agreements.

Source: Schulten (2018).

rarely extended. Figure 12.4 shows that the low number of extensions at the beginning of the 1990s decreased further thereafter, from 5.4 per cent in 1991 to a mere 1.5 per cent in 2006 and has since stabilised between 1.5 and 1.7 per cent. The limited importance of extension for the extent of bargaining becomes even more obvious when examining the number of extensions of newly concluded agreements per year. This number dropped from around 200 at the end of the 1970s to 27 in 2016 (Schulten 2018: 74). Extensions are highly concentrated in a few industries, such as textiles and clothing, construction, hairdressing, security services and the stone industry and related trades. All these industries share the following characteristics: they are labour-intensive, cover a high number of small- and medium-sized companies and are mainly oriented towards the domestic market (Schulten 2018: 76).

One reason for the limited use of extension is that, for historical reasons, neither the trade unions nor the employers have actively promoted it in the post-war period, viewing it as interfering with the principle of free collective bargaining (*Tarifautonomie*). Another reason is the fact that within the Collective Bargaining Committee (*Tarifausschuss*) the employers' peak-level organisation, BDA, has rejected many applications for extension, although they were strongly supported by their industry-level affiliate. In some years, 2006 and 2013 for instance, almost one-fifth of all extension applications were rejected by BDA. Furthermore, in many cases applications were withdrawn in order to avoid rejection by the Collective Bargaining Committee. This means that, in some years, up to 30 per cent of all extension applications were de facto blocked by either rejections or withdrawals (Schulten 2018: 81).

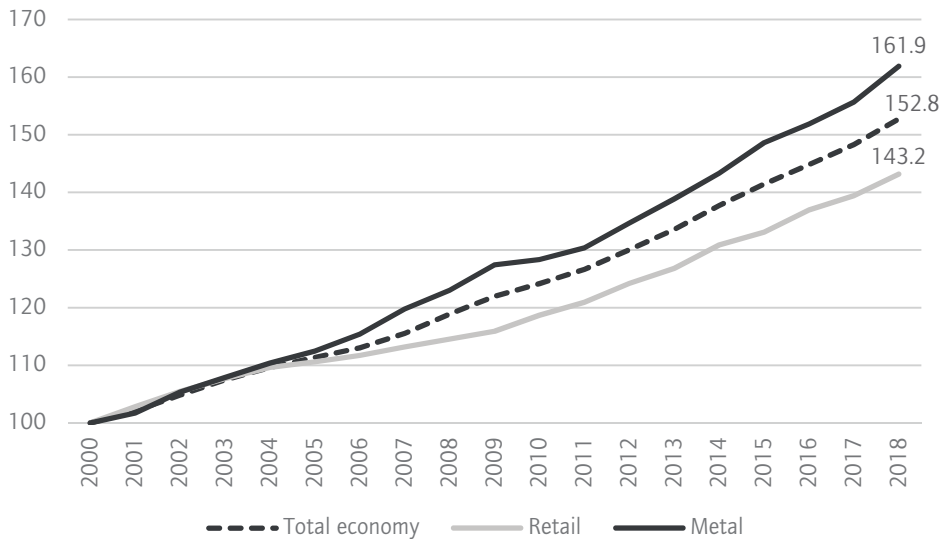
This is possible because only the peak-level organisations, DGB and BDA, are represented on the Collective Bargaining Committee, which needs to approve an extension application unanimously. This procedural rule is also the reason why the new law on the extension of collective agreements, introduced in 2014, has so far had no significant impact on the number of extensions. The new law introduced less restrictive extension criteria (see Security of bargaining), but it left the rules on the composition and role of the Collective Bargaining Committee unchanged, so that BDA can still use its de facto veto power to reject extension applications. Against this background, the trade unions keep asking for procedural changes so that an extension application can be rejected only by a majority of the votes within the Collective Bargaining Committee, which would fundamentally strengthen the position of the applicant and increase the effectiveness of extension as a tool to support the extent of bargaining.

## Depth of bargaining

Depth of bargaining refers to the conduct of negotiations and the intra-organisational processes through which unions and employers formulate their bargaining strategies. Because employer-side information is not readily available, this account focuses on trade unions. The actual procedure varies between trade unions, but, in principle, the negotiation process can be divided into three phases: formulation of claims, negotiations and implementation of the agreement. Months before the agreement expires discussions are held among members, union representatives and works councils at company level about the bargaining demands. The result of the company-level discussions informs the final decision on the bargaining demands taken by the unions' Collective Bargaining Committee (*Tarifausschuss*), which consists of union representatives of the most important companies and local union branches of the bargaining region. Discussions at company level among lay unionists and works council members are an important element of preparing for the negotiations because they create a sense of ownership. This, in turn, is important for the union's capacity to mobilise their members for supportive action during the negotiations. The unions' wage claim is often based on the following elements: compensation for the expected rate of inflation, development of overall labour productivity and a redistributive component aimed at shifting the relationship between capital and labour income in favour of the latter. Usually, the unions' bargaining demands also comprise a 'qualitative' element by addressing issues such as working time reduction, occupational health and safety, early retirement, vocational education and training and work-life balance (see Scope of agreements).

In the comparative literature, Germany has been characterised as a country with cross-industrial pattern bargaining (Traxler *et al.* 2001). The German variant of pattern bargaining, however, was never as comprehensive and formalised as, for instance, in Sweden (see Chapter 28). The various unions exchange information about their bargaining strategies, but they have always insisted on autonomy in deciding their own bargaining strategy and have never ceded any coordinating competences to the DGB (Bispinck 2016: 187). The German variant of pattern bargaining has followed the 'convoy principle': the first agreement signed at regional level in one of the economically most important industries, which is usually, but not necessarily, metalworking, serves

Figure 12.5 Development of collectively agreed wages in metal, retail and the total economy, 2000–2018 (2000=100)



Source: WSI Collective Agreement Archive.

as a point of reference for the ensuing negotiations in other industries (Bispinck 1995). During the 2000s, the gap between wage development in metalworking and in some services, such as retail, grew (see Figure 12.5). This can be seen as an indicator that the convoy principle no longer works.

Once the Collective Bargaining Committee has decided on the demands, they are submitted to union headquarters for confirmation and subsequently conveyed to the employer side. The members of the Collective Bargaining Committee establish a negotiating body (*Verhandlungskommission*), which is responsible for the actual negotiations with the employers. The peace obligation ends with the expiry of the agreement so that the start of the negotiations is often accompanied by union demonstrations and short warning strikes in order to put pressure on the employers by signalling that the union demands have the full support of the membership. If the negotiations are successful, the draft agreement needs to be approved by the Collective Bargaining Committee before it can be signed by the union and the employers' association. Once a so-called 'pilot agreement' (*Pilotabschluss*) has been concluded in a certain region, it is usually transferred to the other bargaining regions negotiating at the same time. In this respect, Germany is characterised by regional pattern bargaining within the same industry. While most sectors follow this pattern, there are also some industries, such as banking and construction, in which collective bargaining takes place at national level and usually leads to the conclusion of nation-wide agreements.

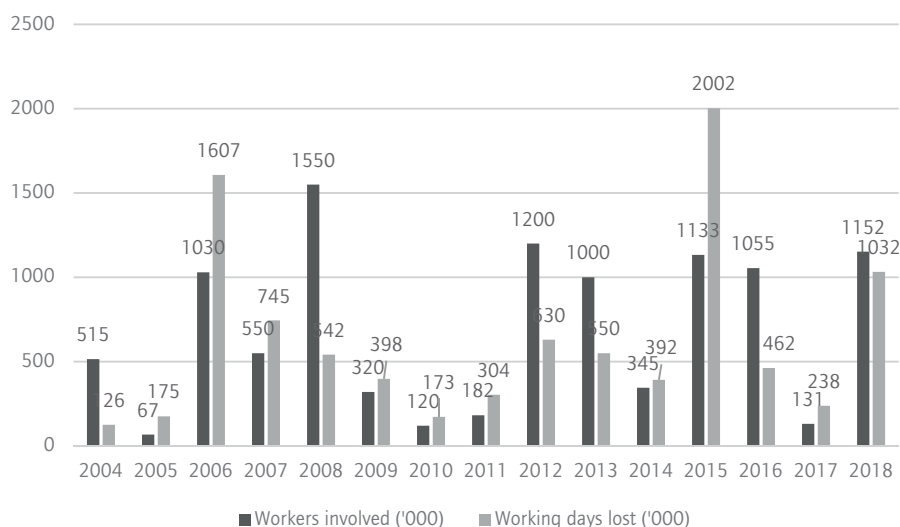
If the negotiations fail, the bargaining parties can start a mediation procedure the details of which are specified in a collective agreement between the bargaining parties.

There are neither statutory rules nor compulsory mediation in Germany. The mediation agreement usually stipulates that one of the bargaining parties can invoke the mediation commission (*Schlichtungskommission*) which consists of an equal number of representatives of the bargaining parties and one or two neutral chair(s). The task of the chair is to find a compromise acceptable to both bargaining parties.

If the trade union declares that the negotiations have broken down, it can call a strike, which needs the approval of 75 per cent of the union members in a secret ballot. The negotiations continue during the strike. If the bargaining parties come to an agreement, the draft agreement needs the approval of 25 per cent of the union membership in a secret ballot and for the strike to end. Most agreements are concluded without mediation and strikes. Germany is one of the least strike-prone countries in the EU (Vandaele 2016). The reasons for Germany's low strike rate include the fairly restrictive strike law, including the prohibition of political strikes; the unitary trade union movement, with a limited number of industrial unions; and the dominance of industry-level collective agreements (Dribbusch 2017).

Over the past 20 years, the development of strike activity has been characterised by three interlinked processes (Dribbusch and Birke 2019). First, German industrial relations have become more conflictual as regards the number of days lost and the number of employees involved (see Figure 12.6), even though in the European context this is still at a fairly moderate level. Second, strike activity has shifted increasingly to the service sector, which since the mid-2000s accounts for more than two-thirds of the working days lost. Most of these conflicts are about the conclusion of company-level agreements, prompted by the employers exiting the industry-level agreement or not joining it in

Figure 12.6 Development of strikes, 2000–2018 (workers involved and number of working days lost)



Source: Dribbusch (2019).

the first place. Third, strikes are spreading to new groups of employees, which used to be less involved in strike activities. With the increasing importance of company-level agreements, strikes can be expected to remain at a higher level.

## Degree of control of collective agreements

Degree of control refers to the extent to which collective agreements determine the employees' actual terms and conditions of employment. It therefore concerns the implementation and monitoring of collective agreements, as well as the various mechanisms for dealing with conflicts about the interpretation of an agreement, such as mediation and arbitration.

In contrast to many other EU Member States, Germany has no comprehensive labour inspectorate responsible for ensuring compliance with collective agreements. Instead, there is a fragmented structure of different control authorities that monitor compliance in specific areas of activity.<sup>5</sup> According to the Works Constitution Act (BetrVG), works councils are responsible for monitoring compliance with collective agreements at company level. Within the German dual system of interest representation this means that there are two important preconditions for effectively ensuring a high degree of control of collective agreements: first, high works council coverage and second, close articulation between works councils at company level and trade unions at industry level.

According to the Works Constitution Act (BetrVG) works councils are mandatory in all private firms with five or more employees. The proportion of establishments that have a works council, however, is traditionally very low and has decreased over the past 20 years, from 12 per cent in 1996 to 9 per cent in 2017 (Bellmann and Ellguth 2018:7). Even more important for ensuring a high degree of control, however, is the presence of a works council in companies covered by a collective agreement. The proportion of employees covered by both a works council and a collective agreement has decreased by 15 percentage points over the past 20 years, from 44 per cent in 1998 to 29 per cent in 2017. At the same time, the proportion of employees working in an establishment without a works council and without being covered by a collective agreement increased from 24 per cent in 1998 to 41 per cent in 2017 (Dribbusch and Birke 2019: 19). This growing representation gap means that the prerequisites for ensuring a high degree of control of collective agreements have deteriorated considerably. Regional and industrial data illustrate that the presence of works councils and collective agreements as the core institutions of the German dual system of interest representation essentially only still exist in the western German manufacturing sector, with the automobile and chemical industries as its core. In eastern German manufacturing and private services as a whole the conditions for ensuring the efficient implementation and monitoring of collective agreements are much less favourable (see Table 12.4).

5. Monitoring compliance of minimum wages with the law and collective agreements, for instance, is the responsibility of the department of the German customs authority dealing with undeclared and illegal employment (Finanzkontrolle Schwarzarbeit).

Table 12.4 Workers covered by a works council and a collective agreement in manufacturing and private services, 2017 (as percentage of all workers)

	Western Germany			Eastern Germany		
	Private sector	Manufacturing	Private services	Private sector	Manufacturing	Private services
WC and CA	31	53	24	22	30	23
WC but no CA	9	13	8	11	19	11
No WC but CA	21	9	27	16	5	19
Neither WC nor CA	39	26	42	51	46	46

Notes: WC = works council; CA = collective agreement.

Source: IAB Establishment Panel (Ellguth and Kohaut 2018).

## Scope of agreements

The scope of agreements is determined by the specific type of collective agreement. There are four broad categories. First, wage agreements (*Lohn- und Gehaltstarifverträge*), which cover the bread-and-butter issue of wage increases. Second, wage framework agreements (*Lohn- und Gehaltsrahmentarifverträge*), which define wage grades and the overall wage structure, as well as general rules on performance-related pay. All these issues can be dealt with more specifically at company level, but the wage framework agreements lay down some ground rules that need to be complied with. In a nutshell, they specify who receives how much and for what. The third type are collective agreements on working conditions (*Manteltarifverträge*), which essentially cover the qualitative issues dealt with in collective bargaining, such as some ground rules on hiring and firing, the duration and allocation of working time, the conditions for night and shift work and holiday entitlements. This type of collective agreement also covers broader social policy issues, such as early retirement and continued payment of wages in case of illness and invalidity. The fourth category of collective agreements comprises more specific regulations on the issues dealt with at a more general level in the *Manteltarifvertrag*. In some industries these more specific rules are already included in the *Manteltarifvertrag*. Until the 1990s most wage agreements had a standard duration of 12 months. Since then there has been a clear tendency towards a much longer duration. In 2018, the average duration of newly concluded wages agreements reached a new peak of 26.5 months (Schulten and WSI-Tarifarchiv 2019: 3). The other three types of collective agreements are usually valid for several years.

When considering the issues covered by collective agreements it is important to note that bargaining rounds are rarely purely about wages, but usually contain a qualitative dimension. This is not a new phenomenon. Collective bargaining on qualitative issues dates back to the 1980s, when the reduction of working time and protection against the negative impacts of restructuring linked to the introduction of new technologies were key issues (Bispinck 2019). In the 1990s, an important issue was continued payment in case of illness because the state reduced the statutory continued payment in 1996. In view of the economic crisis at the beginning of the 2000s, the key issue at the time was employment protection. The 2000s also saw a complete overhaul of wage framework



agreements in key industries, such as metalworking and the public sector with the objective of establishing uniform wage structures and criteria for blue- and white-collar workers. New issues in the 2010s were the revaluation of work in the social care industry and the introduction of individual options between wage increases and more time-off, to improve the work–life balance.

The scope of collective bargaining therefore has remained fairly stable over time and comprises a whole package of quantitative and qualitative issues. The choice of qualitative issues is determined either by the political agenda, because the trade unions see a need to correct policy measures, or by members' preferences as a result of large-scale surveys conducted by union headquarters or discussions among members, local union representatives and works council members at company level (see Depth of bargaining).

## Conclusions

Writing more than 20 years ago, Jacobi *et al.* (1998: 191) described relatively centralised collective bargaining with high coverage as one of the main features of German industrial relations. Since then, collective bargaining has undergone fundamental changes that have led to an increasing decentralisation, fragmentation and erosion of the bargaining landscape. This is now characterised by the gradual emergence of parallel industrial and geographical universes of collective bargaining. The different universes differ fundamentally regarding the regulatory capacity of collective bargaining, captured by Clegg's analytical dimensions: in particular, level, extent and security of bargaining and the degree of control of collective agreements. Analysis illustrates that the traditional world of collective bargaining, with industry-level agreements and relatively high bargaining coverage, underpinned by supportive employers and strong and well-articulated company-level representation structures, is largely restricted to the core of the western German manufacturing sector, and even there, outsourcing and the use of atypical employment have left their mark in terms of an increasing differentiation of working conditions.

More generally, the past 20 years have been marked by the development of parallel universes of collective bargaining in western and eastern Germany and in manufacturing and private services. Collective bargaining in eastern Germany and in private services is characterised by a lower significance of industry-level bargaining and a higher degree of employers' discretion due to lower bargaining coverage, lower union density and less prevalent company-level representation structures. The reasons for this development are manifold, but one factor stands out and that is the diminishing support from the employers and their retreat from multi-employer bargaining as one of the core institutions of the traditional German social market economy.

More recently, however, after more than two decades of erosion and fragmentation, the negative consequences of this development in terms of the dramatic increase in in-work poverty and various forms of inequality seem to have triggered new thinking. It seems to be dawning even on employers and political actors that the neoliberal transformation



of collective bargaining has probably gone too far and that something needs to be done to stabilise bargaining coverage. The discussions among trade unions, employers and political actors about the revitalisation of collective bargaining are focusing on three different approaches (Schulten 2019). The first, which can be called ‘revitalisation from below’, focuses on strengthening trade union presence and power at company level in order to force employers into collective bargaining. The second, which can be called ‘revitalisation from above’, is concerned with strengthening political support for collective bargaining. The third, which is mainly promoted by the employers, can be called ‘revitalisation through flexibilisation’ and focuses particularly on making collective bargaining more attractive to companies.

‘Revitalisation from below’ is essentially the trade unions’ response to the employers’ incremental withdrawal from multi-employer bargaining either by opting out of industry-level agreements or by not joining them in the first place. Revitalisation from below, therefore, involves unions entering into ‘house-to-house fighting’ (*Häuserkampf*) either to defend or to newly establish collective bargaining coverage. The success of this strategy depends largely on the unions’ organisational strength at company level and their ability to mobilise their power resources. The ‘house-to-house fighting’ approach requires enormous financial and personnel resources and might overtax unions in industries such as hotels and restaurants or retail characterised by SMEs and low union density. Increasing bargaining coverage, in particular in private sector services, therefore, cannot solely rely on building union power at company level, but requires other forms of political support.

The mobilisation of political support for collective bargaining is the objective of the second approach, ‘revitalisation from above’. Compared with other EU countries, state support for collective bargaining has been more restricted and more or less limited to ensuring the principle of bargaining autonomy. This changed to a certain extent in 2014 with the adoption of the Act on the Strengthening of Bargaining Autonomy, which included the introduction of a statutory minimum wage and less restrictive rules on the extension of collective agreements. Because the latter reform failed to achieve the stated objective of increasing the number of extensions, trade unions are demanding further measures to promote multi-employer bargaining, including a change in the decision-making procedure in the Collective Bargaining Committee to remove the employers’ power to veto extension applications (DGB 2017). There are a number of other proposals. First, the introduction of special clauses in public procurement that make awarding public contracts conditional on being covered by a collective agreement. Second, extending the validity of collective agreements after their expiry (*Nachwirkung*) in order to make it less attractive for employers to withdraw from collective bargaining. Third, the more widespread use of optional provisions that allow derogations from labour law through collective agreements (*tarifdispositive Regelungen*). And fourth, introducing some kind of tax relief for companies covered by collective agreements. All this illustrates the more general shift in the unions’ view of the role of the state in the direction of more active intervention in order to reverse the decline of multi-employer bargaining.

The employers, however, are still more critical of any kind of state intervention in collective bargaining. For the employers, the most promising way to increase bargaining coverage is to create positive incentives for companies by making collective agreements more flexible. They therefore suggest ‘revitalisation through flexibilisation’. This would involve using opening clauses even more frequently and pursuing a ‘modularisation of collective agreements’ (Dulger 2018; Kramer 2018). The idea behind modularisation is that employers should no longer be obliged to apply the whole collective agreement, but should have the opportunity to choose only those ‘modules’ of the agreements which they find acceptable for their specific circumstances (Schulten 2019). For the unions, this proposal is not acceptable. It would fundamentally change the character of collective agreements as a tool to set binding minimum working standards. Moreover, the past 20 years have shown that increasing the flexibility of industry-level agreements through opening clauses has not prevented a decline in bargaining coverage.

Improving the regulatory capacity of collective bargaining requires a combination of the first two approaches: revitalisation from below and from above. An important additional factor, however, are the employers’ associations, which have manoeuvred themselves into a fundamental dilemma because their organisational strength depends more and more on ‘OT’ membership status that, at the same time, significantly weakens collective bargaining. To overcome this dilemma, employers’ associations need other forms of organisational support. Experience from other European countries suggests that more widespread use of extensions could be one way to strengthen both the employers’ associations and bargaining coverage. It would therefore be in the employers’ own interests to take a more positive stance towards state support for collective bargaining.

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All links were checked on 10 May 2019.

## Abbreviations

<b>AEntG</b>	Arbeitnehmer-Entsendegesetz (Posted Workers Act)
<b>BDA</b>	Bundesvereinigung der Deutschen Arbeitgeberverbände (German Employers' Association)
<b>BetrVG</b>	Betriebsverfassungsgesetz (Works Constitution Act)
<b>CGB</b>	Christlicher Gewerkschaftsbund Deutschlands (Christian Trade Union Confederation of Germany)
<b>DBB</b>	Deutscher Beamtenbund und Tarifunion (German Civil Service Association)
<b>DGB</b>	Deutscher Gewerkschaftsbund (Confederation of German Trade Unions)
<b>EVG</b>	Eisenbahn- und Verkehrsgewerkschaft (Railway and Transport Union)
<b>GDL</b>	Gewerkschaft Deutscher Lokomotivführer (Train Drivers' Union)
<b>GdP</b>	Gewerkschaft der Polizei (German Police Union)
<b>Gesamtmittel</b>	Federation of Metal Industry Employers' Associations
<b>GEW</b>	Gewerkschaft Erziehung und Wissenschaft (German Education Union)
<b>IAB</b>	Institut für Arbeitsmarkt- und Berufsforschung (Institute of Employment Research)
<b>IG BCE</b>	Industriegewerkschaft Bergbau, Chemie, Energie (Mining, Chemicals and Energy Industrial Union)
<b>IG BAU</b>	Industriegewerkschaft Bauen-Agrar-Umwelt (Building, Agriculture & Environment Workers' Union)
<b>IG Metall</b>	Industriegewerkschaft Metall (German Metalworkers' Union)
<b>MB</b>	Marburger Bund (Union of Salaried Medical Doctors)
<b>NGG</b>	Gewerkschaft Nahrung-Genuss-Gaststätten (Food, Tobacco, Hotel and Allied Workers Union)
<b>SES</b>	Verdienststrukturerhebung (Structure of Earnings Survey)
<b>SOEP</b>	Sozio-oekonomisches Panel (Socio-Economic Panel)
<b>TVG</b>	Tarifvertragsgesetz (Collective Agreements Act)
<b>ver.di</b>	Vereinte Dienstleistungsgewerkschaft (United Services Union)
<b>WSI</b>	Wirtschafts- und Sozialwissenschaftliches Institut (Institute of Economic and Social Research)



## Chapter 13

### Greece: 'contesting' collective bargaining

Ioannis Katsaroumpas and Aristeia Koukiadaki

Drawing on the institutional change literature (Streeck and Thelen 2005; Kingston and Caballero 2009; Mahoney and Thelen 2010), this chapter develops a contestation-based account of Greece's legal and industrial relations trajectory during the period 2000–2016. There is, of course, a voluminous body of scholarship on the labour law reforms recently imposed by the International Monetary Fund (IMF) and the European Union (EU), capturing various facets of the radical and substantive transformation of Greek collective bargaining from a worker-protecting system to a more decentralised and deregulated 'market-friendly' variant during the recent economic crisis (Koukiadaki and Kretsos 2012; Papadimitriou 2013; Yannakourou and Tsimpoukis 2014; Jacobs 2014; Katsaroumpas 2017). This chapter seeks to address a notable gap in this extensive scholarship, namely a systematic power-based institutionalist account as a framework for examining the 'hows' and 'whys' of the Greek trajectory.

To be sure, Kornelakis and Voskeritsian (Kornelakis and Voskeritsian 2014; Voskeritsian and Kornelakis 2011) have already applied the 'varieties of capitalism' institutional framework in the context of Greek industrial relations. The so-called 'varieties of capitalism' approach is a prominent enterprise-based institutionalist perspective used to investigate patterns of stability and change from an efficiency viewpoint in terms of institutional complementarities in 'liberal' and 'coordinated' market economies (Hall and Soskice 2011). The account presented here differs in three major respects. The first is 'ontology'. Rooted in the literature on power-based institutional/institutional change (Knight 1992; Moe 2005; Mahoney and Thelen 2010; Campbell 2010; Jenson and Mérand 2010: 82–83) and industrial relations (Hyman 1975; Kelly 1998), it construes industrial relations and institutions as manifesting and mediating the fundamental conflict between capital and labour. It treats unequal power relations rather than efficiency as the key factor in institutional change or continuity. We adopt a dynamic approach to power relations, however. This is why we have taken 'contestation', the activity-form of power conflict, as the organising analytical principle. Second, this study's time frame is broader, as it covers the entire 2000–2016 period.<sup>1</sup> Third, and in particular, our account examines both 'law' and 'industrial relations' as relevant institutions, along with their mode of interaction.

In order to position our analysis within the literature, it is useful to introduce a general periodisation. In elementary institutional-change terms, Greece's overall trajectory in 2010–2016 seems to fit a pattern of 'punctuated equilibrium' (Eldredge and Gould

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1. The chapter thus does not cover changes that have taken place in Greece since 2016, including Greece's exit from the 'financial assistance' programmes in 2018.



Table 13.1 Principal characteristics of collective bargaining in Greece

Key features	2000	2016
Actors entitled to collective bargaining	Trade unions and employers' associations	Trade unions and employers' associations; and non-union associations of persons
Importance of bargaining levels	Industrial level is the dominant level; cross-industry level for bargaining on minimum wage; Company level is present but rare	Collapse of the industrial level; cross-industry level lost significance; increase of company bargaining
Favourability principle/derogation possibilities	Strict hierarchy between bargaining levels based on favourability principle/no derogation possible	Suspension of favourability principle
Collective bargaining coverage (%)	82 (2002)	10 (2015)*
Extension mechanism (or functional equivalent)	Yes	'Temporary' suspension
Trade union density (%)	25 (2001) and (2013)	
Employers' association rate (%)	44 (2008)	n.a.

Note: \* Koukiadaki and Grimshaw (2016).

Source: Appendix A1.

1972; Gersick 1991; Baumgartner *et al.* 2009; Princen 2013) rather than a 'gradualist' model (Streeck and Thelen 2005; Mahoney and Thelen 2010). This is because the overall transformation is, as the punctuated equilibrium thesis suggests, *unevenly* concentrated in a dense period of change (May 2010–December 2014) between two periods of relative legal stasis, during which the preceding equilibrium was sustained, namely in 2000–May 2010 and January 2015–December 2016. Nevertheless, one of the main arguments of this chapter is that this picture should be qualified, taking into account some more nuanced developments, notably gradualist or 'step-by-step' patterns during periods of both stasis and transformation. We submit that these could be better understood by associating them with patterns of contestation.

Let us now turn to the three periods. The first period abruptly ends in May 2010, when Greece entered the EU/IMF bailout regime. In this period, the principal features of the 1980s worker-protective equilibrium were maintained almost intact: the 'favourability principle' providing for the applicability of the most favourable provisions for workers in collective agreements; *erga omnes* mechanisms ensuring high levels of bargaining coverage, which were automatic for national general collective agreements and company-level agreements; an administrative extension option for industry-level/occupational agreements; and compulsory arbitration of disputes by the private law body Organization for Mediation and Arbitration (OMED, Οργανισμός Μεσολάβησης και Διαιτησίας) at the initiative of the employers or the employees.

This legal equilibrium, whose genesis marked the end of the prolonged infancy of Greek industrial relations, previously held back by mostly repressive state juridification and state paternalism in industrial relations (Kritsantonis 1998), operated under a hospitable social democratic constitution (Ewing 2012) and guaranteed express

constitutional labour rights, such as collective autonomy, collective bargaining and the right to strike (Article 22 and 23 of the Greek Constitution). But the legal stasis of 2000–2010 coexisted with a gradual (Karamessini 2008) neoliberalisation of the Greek economy and employment relations (Karamessini 2009), couched in the dominant political and academic discourse as 'modernisation' (Featherstone 2005; for a critical account see Tsakalotos 2008).

In contrast, the second period has the obvious makings of a 'path departure': that is, 'when a juncture is reached at which substantively different laws and policies begin to be followed' (Hepple and Veneziani 2009: 21). Its acute point of discontinuity is the Greek government's signing of the first loan agreement in May 2010 with the EU/IMF institutions. Subsequently, collective bargaining reforms were attached in successive rounds to repeated financial assistance disbursements, urgently needed by the Greek state to prevent a state default on public debts and a threatened expulsion from the euro zone. Regarding their substantive orientation, the conditionality-mandated legislation brought about a multifaceted and far-reaching deconstruction of preceding industrial relations in the direction of decentralisation, individualisation and deregulation (Yannakourou and Tsimpoukis 2014; Koukiadaki and Kokkinou 2016; Katsaroumpas 2017).

But even though the strict IMF/EU conditionality regime still operated at the time of writing, we submit that there exists a third period, namely January 2015–December 2016. Apart from the short-lived restorative legislation of 6 July 2015 introduced by the Syriza – ANEL government (Syriza is the Coalition of the Radical Left or Συνασπισμός Ριζοσπαστικής Αριστεράς; ANEL are the Independent Greeks or Ανεξάρτητοι Έλληνες), elected in January 2015, there have been no major legal changes since the Law 4303/2014 on arbitration. This government suffered a reversal following the July 2015 capitulation to the lenders (Euro Summit 2015) and the signing of a third loan agreement in August 2015. This period, while certainly shorter, contrasts with the preceding one in terms of its apparent stability. Analysis gives us the following periodisation: (i) the 'protective period', 2000–April 2010; (ii) the 'deconstruction period', May 2010–December 2014; and (iii) the 'post-deconstruction period', January 2015–December 2016.

This chapter is structured as follows. Following our analytical framework, subsequent sections describe patterns of contestation and modes of institutional change and associate them with legal and industrial relations developments in six areas, following Clegg (1976): extent of bargaining; security of bargaining; level of bargaining; depth of bargaining; degree of control of bargaining; and scope of agreements. The final section concludes by arguing for a qualified version of the 'punctuated equilibrium thesis'.

## **Analytical framework: 'contestation' and 'modes of institutional change'**

This section clarifies the chapter's key evaluative and explanatory tools, namely, 'contestation' and 'modes of institutional change'. Regarding the former, we adopt a multi-dimensional mapping of 'contestation', as better suited to registering its various

Table 13.2 Contestation as a multi-dimensional concept

Field	Process	Resources	Actors	Object
Political-legislative	Party competition/mobilisation (protest cycles)	Political power	Parties, civil society	Legislation
Industrial relations	Collective bargaining/strikes	Industrial and economic power	Employers and trade unions	Collective agreements
Jurisprudential	Litigation	Legal rational-argumentative power	Litigants	Judicial decisions and other jurisprudence
Intergovernmental	Negotiations	State power (economic, political)	Greek state and international institutions (EU, IMF, ILO)	MoU, reports, decisions

Sources: Authors' compilation.

fields, processes, power resources, actors and objects (see Table 13.2). Hence the following typology of four fields of contestation is introduced: (i) political-legislative, (ii) industrial relations, (iii) jurisprudential and (iv) intergovernmental. Political-legislative contestation proceeds through electoral processes and party competition (Dahl 1956), extra-parliamentary mobilisation (Kelly 1998) and protest action (Tarrow 1994). Its main objects are legislation and government policy in general. The field actors, political parties and civil society actors, including trade unions, use political power, electoral or protest, as a resource, including general strikes. Second, industrial relations contestation takes place within the framework of collective labour relations between the parties, employers and workers and their representatives. The parties exert industrial or economic power, including strikes, to favourably influence or escape collective agreements or other regulatory schemes of employment terms and conditions. Third, jurisprudential contestation proceeds through litigation, with parties as litigants using supposedly rational-argumentative power, and has as its object binding or non-binding jurisprudence. In a rule-of-law environment, this jurisprudence may produce constraining effects on law and industrial relations of various kinds depending on the ruling body and the legal system. It can also be multi-layered, as exemplified by the impact of International Labour Organization (ILO) jurisprudence on domestic constitutional review decisions. Fourth, intergovernmental contestation involves inter-state intergovernmental relations or relations between states and international organisations (ILO, EU, IMF). It proceeds primarily by negotiations, although its objects can be diverse. In the Greek case, conditionality in the form of loan agreements and accompanying Memoranda of Understanding (MoU) is the most notable product of intergovernmental contestation.

Turning to institutional change, the theoretical debate concerns the 'abrupt' or 'gradual' modes of transformative change. For the former, transformation typically occurs in 'critical junctures', thus giving the shape of 'punctuated equilibrium' (Capoccia and Kelemen 2007; Gersick 1991; Baumgartner *et al.* 2009). For the latter, transformation can occur by 'gradual change'. This account is, most prominently, defended by Streeck and Thelen (2005), who usefully distinguish between five modes of transformative

gradual change: 'conversion', that is when an institution is redirected to new goals, functions or purposes; 'layering', describing change through additions or revisions to existing institutions; 'displacement', referring to the replacement of the old institution with a new one; 'exhaustion', when processes in which behaviours invoked or allowed under existing rules operate to undermine them; and 'drift', when institutions retain their formal integrity but lose their grip on social reality. This chapter employs Streeck and Thelen's terminology with an important revision. We consider these types as not specific to 'gradual change'. As a result, they may characterise both 'abrupt' and 'gradual' change, a point to be supported by specific findings from the Greek case. As an addition to these types, it is useful to add the so-called 'institutional *bricolage*' theory. The latter illuminates a mode of change in which actors creatively use pre-existing institutional material to effect desirable changes. Hence, the use of Lévi-Strauss's metaphor of a 'bricoleur' (roughly 'handyman'), using whatever there is to hand 'to make transformations within a stock repertoire of furnishings' (Douglas 1986: 66; Cleaver 2012; De Koning 2014).

In utilising these categories, the main research topic concerns how the Greek trajectory of neoliberalisation in legal and industrial relations was structured and, in particular, how patterns of contestation can be associated with these modes of change.

## Extent of bargaining

This section examines the 'extent of bargaining' by looking at two areas: (i) national general collective agreements (Εθνικές Γενικές Συλλογικές Συμβάσεις), which are cross-industry in nature, and (ii) extension mechanisms. It presents two findings. First, it shows that the trajectory combines various modes of institutional change, namely 'displacement', 'layering' and 'exhaustion'; second, it traces patterns of contestation in both periods of legal stasis, the 'protective' and the 'post-deconstruction' periods.

During the first period, 2000–2010, Law 1876/1990 was introduced to promote collective autonomy and to limit the hitherto dominant role of the state. In a rare instance of consensus in Greek political and legislative history, this legislation, which established the regulatory framework for collective bargaining, won the unanimous approval of all political parties and representatives of the social partners, which at that time were the General Confederation of Greek Workers (GSEE, Γενική Συνομοσπονδία Εργατών Ελλάδος) and the three employers' organisations, the Hellenic Federation of Enterprises (SEV, Σύνδεσμος Επιχειρήσεων και Βιομηχανιών), the Hellenic Confederation of Commerce and Entrepreneurship (ESEE, Ελληνική Συνομοσπονδία Εμπορίου & Επιχειρηματικότητας) and the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE, Γενική Συνομοσπονδία Επαγγελματιών Βιοτεχνών Εμπόρων Ελλάδας). In the public sector, Law 2738/1999 for the first time recognised the right to collective bargaining. Until then, the state had had the unilateral right to set out the terms and conditions of employment of public servants.

Under Law 1876/1990, two significant features characterised the bargaining system. The first concerned the central role of the national general collective agreement. Owing

to its *erga omnes* effect, the agreement supported horizontal coordination through its role in setting a national wage floor and other minimum standards for employees. It also shaped the character of vertical coordination between the different levels of collective bargaining by indirectly influencing the substantive content of lower level agreements (Koukiadaki and Grimshaw 2016). The second characteristic was related to the provisions for extending higher-level, industry-level and occupational-level agreements to all employees. This meant that agreements that were already binding on employers employing the majority of the sector's or profession's employees, were extended by order of the Minister of Labour and Social Security to cover all the corresponding groups of workers.

In practice, the system of collective bargaining in the 'protective period', 2000–April 2010, exhibited *continuity* in terms of its structure, coverage and operation. The number of industry-level agreements remained stable, thus providing some evidence that they were at the centre of the collective bargaining structure (Ioannou 2011). As a result of the extension mechanisms of Law 1876/1990, higher-level collective agreements would normally cover all employees in the sectors or occupations in which higher-level agreements were concluded and bargaining coverage thus stood at around 80 per cent. This high coverage was achieved in the context of a low trade union density, estimated at around 24 per cent (Appendix A1). As far as duration is concerned, both intersectoral and lower-level agreements used to last two years.

While it would be fair to characterise the 2000–2010 period as 'legal stasis', it would also be incomplete, failing to acknowledge the growing dissonance between legal stability and neoliberal economic change. Specific cases of contestation between the industrial relations actors (industrial relations contestation) at national and industry level illuminate the institutional fragility of the collective bargaining system. At national level, the negotiating agenda itself was, albeit implicitly, a topic of contestation, especially for SEV (see Scope of agreements). At industry level, another example of contestation was the approach of the employers' associations in the banking sector, the Hellenic Bank Association (EET, Ελληνική Ένωση Τραπεζών) and the Association of Cooperative Banks of Greece (ESTE, Ένωση Συναιτεριστικών Τραπεζών Ελλάδος), which, over a number of years, refused to be recognised as representatives of their members for the purpose of concluding industry-level agreements. The contestation in the industrial relations sphere crossed into the judicial sphere (jurisprudential contestation), leading to a pro-union decision by the Athens Administrative Court of First Instance (Lampousaki 2010).

It was against this context that the crisis period and austerity measures of May 2010–2014 produced abrupt modifications of the bargaining system. Law 4093/2012 displaced the joint regulatory process for fixing wage floors in the national general collective agreement and replaced it with a statutory minimum wage rate legislated by the government. Further changes in 2013 (Law 4172/2013) provided that the minimum monthly and daily wage are to be determined by a decision of the Minister of Labour, Social Security and Welfare, with the consent of the Ministerial Council. While the national general collective agreement continues to regulate non-wage issues, which are directly applicable to all workers, its regulatory function regarding wage levels

has been assumed by the state. This could be said to exemplify a case of what Streeck and Thelen call 'displacement', because the collective autonomy-based institutional arrangements for universal minimum wage-setting are effectively replaced by new state-led institutional arrangements.

These changes directly impacted the industrial relations system. In the 2013 negotiations on the national general collective agreement (the first to be concluded following the overhaul of the wage determination system), SEV, representing large employers, refused to sign. Consistent with its pre-crisis emphasis on labour market flexibility, SEV proposed instead a protocol that addressed issues related to competitiveness. It thus diverged not only from the approach of the trade unions, but even from that of the employers' associations representing Small and medium-sized enterprises (SMEs) (Koukiadaki and Grimshaw 2016). Further, because the wage-related provisions of the national general collective agreement now apply to the employers that are members of the signatory parties, the agreement has only a limited role in ensuring the application of minimum standards across sectors. This also means the absence of fall-back agreements in industries not covered by industry-level collective bargaining, which is now the dominant trend in Greece. What these developments demonstrate is how the crisis legislation, itself the product of capital-friendly inter-governmental contestation (MoU), which reduced the coverage of collective agreements between the signatory parties, interacts with pre-existing employer contestation patterns during the pre-crisis period. The outcome was the amendment of the law towards satisfying their demands, albeit with divergences between large employers and SMEs.

But crisis-related changes were not confined to the function of the national general collective agreement. They also characterised extension mechanisms. Legislation in 2011 imposed a temporary suspension of administrative extension of industry-level and occupational agreements during the application of the Mid-term Fiscal Strategy Framework (Law 4024/2011). In 2012, the then coalition-led government proceeded unilaterally to a second set of wide-ranging changes. Representing an instance of 'layering' in relation to the 2011 measures, the law introduced a maximum duration of three years for all collective agreements and placed a three-month limit on the application of expired collective agreements.<sup>2</sup> The suspension of the extension of higher-level collective agreements and the reductions in the statutory minimum wage rates that also took place led to the rapid 'exhaustion' of industry-level bargaining, as the rules effectively discouraged employers from continuing with it. These operated in conjunction with trade union resistance to wage cuts and led to blockades in the renewal of industry-level and occupational agreements.

While some of these measures, including the suspension of the extension mechanisms, are considered temporary, their effects on the industrial relations system may be permanent. This is primarily because the measures have strategically challenged the associational capacity of employers' organisations. Equally important, the suspension

2. If a new agreement is not reached, after the three-month period remuneration reverts back to the basic wage stipulated in the expired collective agreement, plus specific allowances, until replaced by those in a new collective agreement or in new or amended individual contracts. The allowances are based on seniority, number of children, education and exposure to workplace hazards but no longer based on marriage status.



of the extension mechanisms, together with the limited take-up of company-level bargaining has also meant the collapse of bargaining coverage, which now stands at around 10 per cent (Koukiadaki and Grimshaw 2016). This demonstrates how a mixture of 'layering' and 'exhaustion' could be deployed in a setting of abrupt change.

When the Syriza-ANEL anti-austerity government first assumed power in January 2015, it signalled its intention to reverse course. During the 'post-deconstruction period' of 2015–2016, a legislative proposal by the Syriza Parliamentary Group included the reinstatement of the regulatory function of the national general collective agreement with regard to the national minimum wage, as well as the six-month prolongation of collective agreements upon expiry (Article 72 Law 4331/2015). The conclusion of the third loan agreement in July 2015, however, meant that Greece was again compelled to 'undertake rigorous reviews and modernisation of collective bargaining' (European Council 2015) and led to the reversal of the legislation introduced by Syriza regarding the rules on the duration of collective agreements and the abandonment of a bill providing for the restoration of collective bargaining in respect of public servants. This case illustrates the error of portraying the third period of 'stasis' as a consensual one. The cause of the stasis was that Syriza's demands for restoration, expressing the outcome of a labour-friendly political contestation, as expressed in the January 2015 elections, could not be translated into a labour-friendly political-legislative contestation because of the unfavourable inter-governmental contestation with the lenders.

## Security of bargaining

The level of 'security of bargaining', in terms of both the quantity and the quality of collective agreements, is highly dependent on the underlying balance of power between capital and labour. This section considers the legal and industrial relations evolution of two areas that reflect but also potentially steer this balance: (i) industrial action, one of the principal instruments of labour contestation against capital and functional prerequisite for 'meaningful negotiations' (Hyman 1975: 189–90; Ewing and Hendy 2012: 3); and (ii) the workers' organisations with competence to conclude company-level agreements, a focal issue directly associated with the power dynamics of contestation in the Greek case. This section argues that there are mixed institutional patterns of continuity and discontinuity.

The legal trajectory on industrial action exhibits continuity, which is remarkable compared with other areas of collective labour law. In 2000, the inherited regime was embodied in Law 1264/1982. The latter allowed an extensive spectrum of types of industrial action, including (socio-economic) general, secondary and solidarity strikes, and prohibited lock-outs and the hiring of strike-breakers (Article 22). During the examined period, there were two exceptions to this continuity. First, during the deconstruction period, Law 3899/2010 extended the 10-day suspension of strikes previously reserved for cases of workers' unilateral recourse to arbitration on all cases, even when employers initiated the process (Art. 14). Second, during the post-deconstruction period, the Syriza-ANEL government effectively ended the government practice of issuing so-called 'civil mobilisation orders' to participating strikers (Article 1

Table 13.3 Number of strikes in Greece, selected years

Year	Number of strikes	National general strikes (24 or 48 hours)*
1980	726	–
1985	456	–
1990	200	–
1995	43	–
1999 (first semester)	15	–
2003	12	–
2011	445**	4
2012	439	6
2013	443	5

Notes:

\* Strikes by general cross-industry confederations, the Civil Servants' Confederation (ADEDY, Ανώνυμη Διοίκηση Ενώσεων Δημοσίων Υπαλλήλων) and GSEE exceeding 24 hours.

\*\* Covers both normal strikes and brief cessations of work (στάσεις εργασίας).

Source: Katsoridas and Lampousaki (2012, 2013); Katsoridas *et al.* (2014).

of Law 4325/2015). Previously, governments over-stretched the narrow constitutional mandate, originally envisaged for truly exceptional cases such as war, natural disasters or situations liable to endanger public health (Article 22 para 3) to effectively suppress strikes (Tzouvala 2017: 18–26).

To illustrate how unions exploited lawful industrial action in practice we can highlight three features of the trajectory. First, the available data indicate a clear return of Greek industrial relations to a strike-prone path after the crisis.<sup>3</sup> As Table 13.3 illustrates, strike numbers reached a level reminiscent of the 'adversarial' 1980s and far above the 'consensual' 1990s.

Second, a quantitative analysis of strikes during the crisis shows that they were mainly defensive, reacting to immediate negative distributional consequences of the sharp austerity-induced recession on job security, rights and wages. Their principal grievances in 2011–2013 concerned the non-payment of wages, wage reductions, dismissals/restructuring and securing of labour and economic rights rather than the conclusion of collective agreements (Katsoridas and Lampousaki 2012: 91; Katsoridas and Lambousaki 2013: 24; Katsoridas *et al.* 2014: 11).

The third noticeable trend is the continuation of the use of strikes as a political weapon of contestation against the government (see Kritsantonis 1998: 525–26), in the form of general strikes. It is telling that from 1980 to 2006, 33 out of 72 general strikes in western Europe took place in Greece (Hamann *et al.* 2013: 1032). This may be the cumulative outcome of bargaining militancy, trade union cohesion, organisational

3. Caution should be exercised in relation to the data. After 2000, the Ministry of Labour ceased to formally record strikes and we rely on the informal data of the GSEE Institute of Labour for the period 2011–2013.



unity (Kretsos 2011: 266), the politicisation of industrial relations and the perceived feasibility of state intervention, in conjunction with their weak industrial position. During the deconstruction period, this trend continued, with four to six general strikes a year. These strikes were integrated into a wider mobilisation strategy of resistance to austerity, along with ‘demonstrations, clashes with the police and protests in the majority of Greek cities’ (Sergi and Vogiatzoglou 2013: 224; Psimitis 2011). In this sense, the general strike functioned more as a tool of political-legislative contestation than as an industrial one.

In light of preceding observations, one may reasonably pose the following question: how did strike legislation escape a hostile environment of ‘speedy liberalisation’ (Kornelakis and Voskeritsian 2014: 357), given that it may be expected that a neoliberal agenda would restrict the main area of labour contestation, namely industrial action? We suggest four complementary explanations, although there may be others.

The first cautions against exaggerating the permissiveness of the pre-crisis legal regime. As argued elsewhere, various ‘in-built’ balancing mechanisms containing the actual effect of strikes were in force (Koukiadaki 2014). Not only did Law 1264/1982 stipulate strict provisions for minimum safety personnel during industrial action, but employers successfully used jurisprudential contestation by relying on the ‘abuse of rights’ doctrine. The judicial practice of applying this civil law doctrine rendered otherwise procedurally-compliant strikes unlawful on the nebulous grounds that they exceeded the bounds of good faith, morality or the social or economic purpose of the right (Koukiadaki 2014). Moreover, austerity governments in the period 2010–2014 had taken frequent advantage of their civil mobilisation powers on six occasions: cleaning staff of municipalities, subway employees, seafarers, high schools, electricity company employees and lorry drivers (Tzouvala 2017: 25). Consequently, capital-friendly jurisprudential contestation, along with statutory mechanisms, handed employers important tools for containing the most effective industrial action, thereby obviating the need for a radical change in the legal framework.

The second explanation may lie in a gradualist or ‘step-by-step’ deployment of the neoliberal strategy. Considering the politically sensitive nature of strike legislation in the Greek context, the Troika<sup>4</sup> may have strategically opted for the long-game: focus on the deregulation of collective bargaining now and leave more contentious industrial action reform until later. Here the mobilisation of Greek society and political contestation could also be a factor in delaying the addition of a political contentious layer to the deconstruction of collective bargaining. The gradualist thesis is consistent with the introduction of strike reforms in the negotiation agenda after 2013. In 2014, the coalition government of New Democracy (ND, Νέα Δημοκρατία), PASOK (Panhellenic Socialist Movement, Πανελλήνιο Σοσιαλιστικό Κίνημα) and the Democratic Left (DIMAR, Δημοκρατική Αριστερά) suggested the imposition of majority thresholds among union members for the lawful declaration of strikes (Newsit 2014). Even though

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4. The term ‘Troika’ refers to the IMF, the European Commission and the European Central Bank. From January 2015, the Troika became a quartet with the addition of a representative from the European Stability Mechanism. The Chapter uses the terminology Troika for consistency.

this proposal was shelved, probably due to resistance of the junior partners PASOK and DIMAR (Koukiadaki 2014), the EU–IMF institutions put the issue of strike reforms in the third loan agreement, thus increasing the pressure of the inter-governmental contestation (European Commission and Greek Government 2015: 21).

Third, the overall deregulation of collective bargaining and the respective weakening of the unions, especially sectoral unions, may have been expected to perform a task functionally equivalent to strike restrictions by attacking the institutional and functional underpinnings for an effective strike. Fourth, the spike in strikes during the crisis should rather be regarded as a symptom of the foreclosed points of contestation for labour. Unable to influence either political or industrial contestation as a result of the 'capture' of the political system by the Troika and loan agreements and the deregulation in the industrial sphere respectively, strikes were the only available means of exercising voice for workers. The defensive nature of the strikes during the crisis seems to support this conclusion.

In stark contrast, the second area to be examined under 'security of bargaining' is a case of discontinuity. Following one particular conditionality (Greek government, November 2011), Law 4024/2011 empowered atypical non-union 'associations of persons' to conclude company-level agreements prior to industrial unions in the absence of a company union. Previously, such power was vested only in industrial unions.

This illustrates the type of change that Streeck and Thelen call 'conversion', defined as a redirection of an institution towards new goals, functions or purposes (2005: 26). The law used a pre-existing but marginal institution under Law 1264/1982 with no collective agreement powers and substantially reconfigured it. Previously, associations of persons functioned more as a subsidiary entity of workers' representation to trade unions (formed by a minimum of 10 workers in a company with fewer than 40 workers and providing that there was no union with more than half of employees as members). By contrast, an association of persons under Law 4024/2011 can be formed by three-fifths of workers regardless of the total number of employees.

This 'conversion' operates in the context of the two new MoU-imposed goals: decentralisation to the company level (Jacobs 2014) and internal devaluation (Armingeon and Baccaro 2012). Upon removing the critical safety valve of favourability, the Troika was looking for workers' institutions capable of exploiting the sub-minimum function of company agreements in relation to industry-level agreements. But company unions required at least 20 workers for their formation. This condition was hard to satisfy in an economy dominated by small- and medium-sized undertakings, typically employing fewer than 20 workers.<sup>5</sup> Even company unions were more reluctant to conclude collective agreements with significantly inferior terms and conditions for workers. 'Associations of persons' were resorted to in order to fill this gap. The law essentially converted an institution previously intended to protect workers' voice in exceptional circumstances into a main institutional carrier for effecting wage cuts, referred to euphemistically in MoU discourse as 'internal devaluation' or 'reductions

5. 96.8 per cent of enterprises employed fewer than 10 workers (micro-businesses) and 99.9 per cent fewer than 50 workers in 2016 (micro-businesses and medium-sized enterprises) (European Commission 2017).

in unit labour costs', in a 'negotiated', consensual manner. The 'negotiated' element is more apparent rather than real. These groups do not possess actual negotiating or even representative power as against employers (Achtsioglou and Doherty 2014: 228). This power asymmetry is aggravated by the lack of a 'permanent mandate to represent workers vis-à-vis the employer on collective issues of work' (GSEE argument in ILO 2012: para 826). As Travlos-Tzanetatos rightly puts it, their new status has the 'aim of disguising through pseudo-collective negotiations the essential surrender of terms and conditions to the unilateral power of the employer' (2013: 329–30).

The case of 'associations of persons' could be accounted for only by understanding the intimate relationship between institutional change and contestation. Here law, itself a product of the capital-friendly outcome of legislative-political and intergovernmental contestation, intervenes in capital–labour contestation in a rather unique way. It redistributes power to capital, not by changing the entitlements of each side but by strategically positioning labour, in the persons of the workers' representatives, in an advantageous way for capital. The mode of change also merits attention. Even though it is a case of conversion, it is not gradual. It can also be considered a form of 'bricolage'. The EU/IMF neoliberal designers, as *bricoleurs*, exploited latent and obscure material under the pre-existing regime and used it as means for achieving deregulation under the guise of 'collective negotiations'.

## Level of bargaining

Regarding 'levels of bargaining', the trajectory exhibits discontinuity. Law 1876/1990 was centred on a multi-level system of collective agreements, comprising the national general collective agreement, industry-level and occupational and company agreements, each with differing applicability. The main axis of these different levels of regulatory mechanisms was a strict hierarchy of bargaining levels on the basis of a 'favourability principle'. In contrast to developments in other countries, industrial actors in Greece did not include opening clauses in industry-level collective agreements that allowed, under certain conditions, a divergence from collectively agreed standards for the worse. In terms of vertical coordination, the institutionalised option of *in melius* derogation effectively allowed scope for bargaining on terms and conditions at a higher standard than those bargained at higher, inter-sectoral, industry or occupational levels. Further, the operation of the extension mechanisms was seen as promoting bargaining coordination, albeit with some limitations due to the complex interplay between the industry- and occupational-level agreements, the relative lack of a leading export sector and the large number of SMEs (Koukiadaki and Grimshaw 2016).

Despite the relative stability of the collective bargaining framework, employers' associations were increasingly critical of the bargaining framework during the 'protective' period. Once again, this manifests the highly contested nature of the pre-crisis framework. A key issue was the problem of so-called 'asymmetry' in arbitration (see section below on Degree of control). Another concerned the interplay in the application of industry- and occupational-level agreements. While the 1990 legislation gave priority to industry-level agreements, certain occupational agreements continued

to operate in the pre-crisis period, arguably hindering the scope for bargaining coordination at industry level (Ioannou 2011). The multilevel bargaining system was seen as fostering only upward wage flexibility because more decentralised negotiations were not allowed to worsen already attained outcomes (Daouli *et al.* 2013). These criticisms, along with those directed against the strict form of employment protection legislation, were echoed in the reports and recommendations of a number of international organisations, including the Organisation for Economic Cooperation and Development (2001). The introduction of local employment pacts (TSA, Τοπικά Σύμφωνα Απασχόλησης), which were meant to promote collective agreements at local level (Law 2639/1998), provides evidence of the gradualist elements that may be present within an overall 'punctuated equilibrium' model of institutional change. While 1998 legislation provided, under certain conditions, scope for establishing lower wage levels than those at industry-level,<sup>6</sup> there was very limited evidence of take-up by the actors. Unions interpreted them as an attempt to deregulate the labour market (Palaologou and Papavasileiou 2000), while employers derided the 'statist' character of their set-up (Tsarouhas 2008).

The regulatory framework sustaining this multi-level bargaining system was one of the first to be affected by the legal changes in the 'crisis' period. In an attempt to create 'a more flexible bargaining system' (ILO 2011: 26), a new type of company collective agreement, namely 'special company collective agreements',<sup>7</sup> was introduced allowing opt-outs from wage levels agreed at the industry level, provided notification requirements were met. The agreements were intended to 'exhaust' industry-level bargaining, by allowing company-level bargaining that was expected to deprive the higher-level agreements of their protective effect. There was evidence of limited take-up by the actors:<sup>8</sup> instead, wage cuts and other changes were usually the result of agreements with employees on an individual basis. Following further pressure by the institutions representing Greece's official creditors (European Commission [EC], IMF and European Central Bank [ECB]), legislation was introduced to provide scope for all companies (including those employing fewer than 50 persons)<sup>9</sup> to conclude company-level collective agreements provided that, in the case of companies with no unions, three-fifths of the employees formed an 'association of persons' (see section above on Security of bargaining). Crucially, these changes were coupled to the introduction of a temporary (during the application of the Mid-term Fiscal Strategy Framework) suspension of the application of the favourability principle (Law 4024/2011). This pattern combined an overall abrupt change with gradualist elements, as evidenced by the introduction of 'special company collective agreements' before the overall suspension of the favourability principle. The overall effect of the legal changes on the industrial relations system was radical.

6. Conditions included the approval of the local Labour Centre in cases in which the work was directly related to the TSAs, while in the case of companies that operate in regions where TSAs had been concluded or where levels of unemployment were high, such deviations from higher-level agreements could even take place via individual negotiations between the employer and the employee.
7. Art. 13 Law 3899/2010.
8. The Greek government's response (case document no. 5) to Collective Complaint 65/2011 by the General Federation of Employees/Public Power Corporation-Section of Electric Energy (GENOP/DEI) and ADEDY to the European Committee of Social Rights.
9. In the previous system, there was no right for company-level bargaining in companies with fewer than 50 employees and only industry-level and occupational collective agreements could apply.

First, the change in the regulatory function of the national general collective agreement (see section above on Extent of bargaining) impacted not only on the agreement itself but also on its interplay with lower-level agreements, weakening coordination across sectors, particularly because wage bargaining has largely moved to the company rather than to the industry level. Second, there was significant contraction of industry- and occupational-level agreements in most sectors, limiting the scope for coordination across different bargaining units. Among other things, industry-level bargaining in metal manufacturing collapsed, as it was one of the first sectors to be affected by the crisis due to its international exposure and sensitivity to the fall of demand in the construction industry (Koukiadaki and Kokkinou 2016). Importantly, some of these outcomes were related to the pre-crisis contestation in industrial relations that revolved around wage flexibility. But even in cases in which bargaining in the pre-crisis period was consensual, as in retail, the absence of legal/institutional incentives that would have persuaded the parties to sit at the negotiating table meant the lack of renewal of collective agreements. Third, in terms of institutional change, the suspension of favourability could be regarded as a radical form of ‘conversion’ of collective bargaining, as far as its protective function is concerned. While previously collective bargaining/agreements could only ameliorate workers’ terms and conditions as compared with other concurrent collective agreements, in the new regime they can also worsen them.

Driven by the legislative changes prioritising company bargaining and permitting negotiations with unspecified employee representatives (associations of persons) in smaller companies, there was an upsurge in company agreements at the expense of industry-level ones, further complicating the scope for coordination and instead increasing the scope for ungoverned and fragmented bargaining patterns. In stark contrast to the pre-crisis landscape of bargaining, company-level agreements are now the predominant form of collective bargaining and in 2015 they represented 94 per cent of all collective agreements. This trend constitutes a continuation of the developments in the previous years, especially during the period 2012–2015, during which company-level agreements exceeded 90 per cent of all agreements (2012: 97.11 per cent, 2013: 96.69 per cent, 2014: 93.77 per cent) (INE-GSEE 2016: 20). The highest rate of company-level agreements was reported in 2012 (976 agreements in contrast to 170 in 2011).<sup>10</sup>

In the period 2013–2016, the overall number of company-level agreements declined, but with no change in the percentage vis-à-vis other types of agreements. The reduction in the number of company agreements is linked to the direct intervention of the legislator with regard to the *erga omnes* effect of the national general collective agreement, the reduction of the minimum wage down to €586, €510 for young people under 25 years of age and the expiry of industry-level agreements. These changes reduced the incentive for employers to proceed to the conclusion of company-level agreements, even with ‘associations of persons’ (Koukiadaki and Grimshaw 2016), inducing a drift from the newly promoted company-level bargaining. Despite the increase in the number of company-level agreements, even with ‘associations of persons’, there is no evidence to suggest that, in absolute numbers, there has been a generalised use of single-employer arrangements. The absence of procedural guarantees from the legislation, the lack of

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10. The year 2012 marked the start of the implementation of Law 4024/2011.

provisions articulating negotiations between the industry and company levels and the prevalence of SMEs meant that the most widespread employer responses involved either unilateral employer action, in the case of workers previously paid on the basis of the national general collective agreements, or individual negotiations (Koukiadaki and Grimshaw 2016). This evidence of 'exhaustion' in respect of the incidence of company-level agreements stands in sharp contrast to the institutional change discourse developed by the Troika at the intergovernmental level of contestation and exposes in turn the dissonance between rhetoric, namely company-level decentralisation, and reality, that is, decollectivisation of industrial relations.

## Depth of bargaining

Bargaining depth, as articulated by Clegg (1976), is intrinsically linked to the internal organisation of trade unions. Here the focus is on two areas with different forms of institutional change: (i) union financing (gradualism, layering and displacement), together with (ii) dualism in employment practices (gradualism and exhaustion).

It is clear that a range of resources, including financial ones, is required for the development of internal union capacity. In this respect, the changes in how the unions have been funded provide further confirmation of the gradualist tendencies characterising the 'crisis period' and the adoption of radical 'structural reforms'. In the pre-crisis period, both GSEE and the secondary level labour organisations were funded by means of a compulsory contribution system administered by the Ministry of Labour: this drew on employers' and workers' social security contributions on behalf of the Workers' Welfare Organization (Ergatiki Estia, Εργατική Εστία).<sup>11</sup> It was this mechanism, alongside EU subsidies, which constituted the principal source of trade union funding (Yannakourou and Soumeli 2004), leading to criticism of trade union dependence on employers and the state (Tsakiris 2012). Pressures exerted by successive governments in the period 1991–1993 led to a significant reduction in trade union funding, threatening the unions with financial asphyxiation (Kouzis 2007: 175–89).

The use of political power to suppress trade union resources, however, re-emerged in the crisis period, as the contestation over union funding moved to the intergovernmental level in the context of loan agreements. In November 2012, the contributions to the Ergatiki Estia were reduced by 50 per cent, the organisation was abolished and a new source of funding for trade unions was provided within the budget of the Manpower Agency of Greece (OAED, Οργανισμός Απασχόλησης Εργατικού Δυναμικού). This could be seen as a case of 'layering' and 'displacement' because of the reduction of funding levels and their assumption by another institution. The election of the Syriza-ANEL government did not halt creditors' demands for reforms in this area and pressures have been made to introduce further limits on the extent of union funding. As a result, the financing gives another example of pre-crisis gradualist tendencies accelerating during the crisis, as well as an example of layering.

11. Employers and workers contributed an equal amount (0.25 per cent) to the funding of the organisation.



Second, while the depth of bargaining, as elaborated by Clegg (1976), focuses on the dynamics inside trade unions, the way business is organised may have profound implications for the depth of bargaining itself. Indeed, a central characteristic of employment relations practices in Greece, as in other economies of southern Europe, has been the division between larger private and public sector enterprises and SMEs (Psychogios and Wood 2010). The different scale of business organisation has a number of implications for industrial relations: the use of sophisticated HR techniques and the higher unionisation rates in larger employers have traditionally entailed the formalisation of processes related to collective bargaining at company level, where this takes place. In contrast, SMEs tend to rely on a paternalistic approach to employment relations, leading to highly personal HR policies and lack of formalised procedures of employee voice, including collective bargaining.

The dualism in employment practices between large and smaller employers was consolidated during the crisis. The absence of regular information and consultation procedures, which would have enabled the development of a culture of dialogue, especially in SMEs, limited the scope for using the new rules to promote decentralisation via collective agreements. As analysed above, the general trend has instead been one of reliance on individual negotiations. Where company-level agreements were concluded, there were concerns, including among employers' associations, about the rapid increase in such agreements in a context of limited training and cognitive resources that would enable managers, especially in small companies, to respond to the new landscape. What is more, the changes in the 'associational capacity' of employers' organisations affected not only the scope for the renewal of industry/occupational agreements but also the effective implementation of existing, higher-level agreements at company level. The lack of information regarding the membership levels of the employers' associations hindered compliance with higher-level collective agreements and further consolidated the lack of trade union pressure towards renewing industry-level agreements in the service sector (Koukiadaki and Grimshaw 2016). Here one could observe a case of 'layering' and 'exhaustion', to the extent that the overall context of all the rules serves to deepen this dualism and to interact synergistically with the other regulatory changes eventually to bring about the individualisation of employment relations.

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

One of the distinctive features of the Greek system is the constitutional provision of a system of compulsory arbitration of collective disputes (Art. 22 of the Greek Constitution). Arbitration awards are fully assimilated to collective agreements in terms of their automatic binding normative effect. Arbitration operates as *ultimum remedium* preventing a market determination of disputes in which the employee is the weaker party (Katrougalos 2012: 236). It also seeks to maintain social peace by resolving disputes and safeguarding an elementary subsistence level for workers in small enterprises with weak trade unions (Koukiadis 2009: 157). Law 1876/1990 permitted recourse to arbitration in three cases: (i) if both parties agree; (ii) if either party rejected the recourse to mediation; and (iii) if the employers rejected the mediator's proposals but the employees accepted them - but not vice-versa, the so-called 'asymmetry principle'.

Table 13.4 Collective agreements and arbitration decisions in Greece, 2010–2016

Issue	Regional/local occupational		Industry-level/national occupational		Company	
	Collective agreements	Arbitration decisions	Collective agreements	Arbitration decisions	Collective agreements	Arbitration decisions
2010	14	5	65	30	227	13
2011	7	1	38	17	170	8
2012	6	0	23	8	976	0
2013	0	0	14	0	409	0
2014	5	0	14	3	286	0
2015	7	0	12	11	263	1
2016	6	0	10	10	318	4

Source: Ministry of Labour and Social Security.

In 2003, even during the 'protective period', the employers Federation of Northern Industries (SVVE, Σύνδεσμος Βιομηχανιών Βορείου Ελλάδος) successfully challenged the unilateral recourse to arbitration at the ILO. Siding with the employers, the Committee on Freedom of Association considered unilateral recourse inconsistent with the 'principle of free and voluntary collective bargaining' (ILO 2003). In apparent tension with this transnational jurisprudential contestation, the Greek courts reached the opposite conclusion by finding for the existing scheme permitted by the Constitution (Areios Pagos 25/2004). It was only after 2010 that the intergovernmental contestation of the loan agreements satisfied employers' demands by modifying the legal regime. The transformation occurred in two steps. Initially, the law extended the right of unilateral recourse to both sides (Art. 14 of 3899/2010). Subsequently, the Ministerial Council Act 6/2012, implementing the second loan agreement (March 2012), mandated the consent of both parties for recourse to arbitration and confined the scope of arbitration awards to the basic wage, not, as previously, to the entire dispute. It comes as no surprise that the abolition of unilateral recourse was found compatible with ILO standards (ILO 2012: para 1000), given its previous jurisprudence. The Council of State (STE, Συμβούλιο της Επικρατείας), however, invalidated these arbitration reforms as unconstitutional by holding that the Constitution requires a system of unilateral recourse (STE 2307/2014; Katsaroumpas 2017). This labour victory, in the field of jurisprudential contestation, restored the legislative framework. Parliament, however, responded by creating a burdensome process, evidently seeking to restrain the restorative effect. Law 4304/2014 established a time-consuming process that conflicts with the need for rapid dispute resolution, most urgently important for workers. The law added to the ordinary judicial appeal to domestic courts an arbitration appeal process that, crucially, suspends the first-instance arbitration award.

The arbitration saga is another case of law-driven transformation of a principal feature of Greek industrial relations. As Table 13.4 illustrates, consensual recourse essentially brought the institution to a standstill. It is characteristic that between 2010 and 2014 there were no arbitration awards among 1,671 company agreements.



From an institutional-change perspective, five observations could be made. First, the multiple legislative interventions in arbitration are part of a broader strategy to tilt the balance of power towards employers by putting collective negotiations in the shadow of market forces, which, especially in the crisis context, are overwhelmingly favourable to the employers. These changes were instrumental in altering the field so that contestation becomes harder for workers. Notably, employers quickly adjusted their strategy in the face of the new legislation handed to them by intergovernmental contestation, refusing arbitration in disputes. Second, arbitration reforms could be characterised as a form of ‘strategic selective layering’. This means that a single provision is altered, such as recourse mechanisms, with the planned strategic effect of effectively annulling the entire institution within the specific power context of Greek industrial relations. Third, the mode of the initial MoU-driven deconstruction was gradual, realised in two-steps: (i) elimination of the pro-worker asymmetry in unilateral recourse and then (ii) elimination of unilateral recourse altogether. This again evidences patterns of gradualism within the overall trajectory of radical transformation. Fourth, the case of arbitration exposes the deficiency of a wholly exogenous account of the Greek crisis transformation that ignores the continuity of the capital–labour contestation. The employers’ long-standing contestation, expressed in their dissatisfaction with unilateral recourse, operated synergistically with the transnational contestation of the loan agreements to satisfy the employers’ demands. Finally, arbitration is an example of interlocking and, to an extent, competing fields of contestation. A deregulatory international jurisprudential and transnational contestation conflicts with the domestic jurisprudential contestation that reversed some of the reforms. Here it is also important to stress that ILO rules do not always operate advantageously for workers; for example, they interacted synergistically with the Troika’s demands for austerity in the teeth of domestic worker-protective jurisprudence (Katsaroumpas 2017).

## Scope of agreements

This section examines the ‘scope of agreements’ by examining the subject-matter of collective agreements. It argues that the crisis change could be described as ‘exhaustion’, while tracing patterns of consistent contestation in the period of stability.

The notion of collective autonomy, as articulated in Article 22(2) of the Greek Constitution, encompasses all issues that refer to the employment relationship. Consistent with the Constitution, Law 1876/1990 adopts a wide definition of the terms and conditions of employment that may be subject to collective bargaining, covering in principle all the employment issues of mutual interest to employers and employees, with certain restrictions with regard to retirement issues. In practice, it means that delineating boundaries as regards issues dealt with at different levels and different regions should be an issue for the social partners and not for the legislator (Koukiadis 2013).

As discussed above, the right to collective bargaining was recognised in the period of stability in the case of the public sector. The relevant legislation provided for two types of outcome: collective agreements and so-called ‘collective accords’. Collective agreements could cover a variety of institutional issues, while collective accords could cover wage

and pension issues, as well as the organisational structure of public sector bodies. The former were concluded through voluntary collective bargaining between the state and representative organisations of public sector employees. The latter were agreed by the same parties and included an undertaking that the state would issue an administrative decision or promote legislation with specific content so as to comply with the provisions in the collective accord. Despite this legislative framework, very limited use was made of it in the context of developing collective bargaining in the public sector, including in education.

In the private sector, predominantly because of its regulatory function in the 'stability period', the national general collective agreement was of particular significance in terms of signalling changes in the direction of Greek industrial relations. In the early 2000s, there was evidence that the introduction of Law 1876/1990 had led to a broadening of the bargaining issues to include issues related to work organisation, such as hours of work and health and safety (Mouriki 2002). In turn, this seemed to promote greater coordination between agreements signed at different levels (Zambarloukou 2006). Trade union attempts were focused on reducing working time and the unemployment rate, while employers' associations, particularly SEV, were concerned to promote labour market flexibility (Aranitou 2012).

Although bargaining was consensual, a multi-field contestation involving the political/legislative and industrial relations spheres surfaced at different times during the period of stability (Koukiadaki and Grimshaw 2016). A number of factors were influential, including the pre-crisis fragmentation of institutions, the frequent changes in government and the impact these had on regulatory priorities and strategies, the lack of trust between the government and the industrial relations actors and the reliance of actors instead on informal mechanisms of coordination (Yannakourou 2015; Aranitou 2012). These criticisms were echoed in the report prepared by the Committee of Independent Experts in 2016, in which it was concluded that 'the scope of collective bargaining in Greece, compared to other European countries, is relatively narrow and does not sufficiently include new issues like lifelong learning, integration of young people, working time flexibility, reduction of the gender pay gap, improvements of work-life balance or productive improvements' (Committee of Independent Experts 2016: 34).

Similar trends were observed at lower levels, namely industry/occupational and company bargaining, with the latter concentrating primarily on issues related to wages and allowances. In some cases, industry-level and occupational collective agreements simply reiterated the regulatory terms of the national general collective agreement without any significant innovations (Yannakourou and Soumeli 2004). A slightly different picture was available at company level, where collective bargaining had not traditionally been widespread. Collective agreements, where they existed at that level, in the pre-crisis period dealt with a wider range of issues, including linking remuneration with productivity and providing discretionary benefits to employees, such as private insurance (Yannakourou and Soumeli 2004).

During the crisis period of May 2010–2014, the operation of the new legal/institutional framework significantly inhibited the scope for development of more meaningful social dialogue at the national general level, cementing even further the pre-crisis patterns of agenda setting. By effectively negating the role of the agreement in setting the national minimum wage, the legal changes foreclosed any scope for possible trade-offs, for instance, involving wage moderation in return for employment objectives (for examples of how this played out in other countries, see Glassner *et al.* 2011). Some evidence of change was to be found in the 2014 National General Collective Agreement, which included commitments regarding cooperation on new issues, including vocational training and social welfare, but also competitiveness, entrepreneurship and innovation. Much rests on how industrial relations actors choose to follow up these commitments.

As already analysed, the crisis-related ‘reforms’ led to the freezing of the renewal of higher-level industry/occupational agreements as well. This, in conjunction with the changes in the arbitration rules, resulted, according to some employers’ associations, to a broadening of the bargaining agenda in certain sectors. There were no concrete outcomes in terms of successfully renewing collective agreements at this level, however, with the single exception of the hotel sector (Koukiadaki and Grimshaw 2016). In effect, the suspension of the extension mechanisms had a ‘chilling effect’ on the propensity of the parties to conclude agreements at this level, thus excluding any possibility for concerted action. Further, there was limited evidence of consideration being given by the parties to incorporating issue-based clauses devolving regulation of specific issues, such as working time, to company-level negotiations and/or clauses allowing one-time deviations in situations of hardship (Hayter 2016). Again, the relative upsurge of company-level bargaining, initially in conjunction with individual negotiations and latterly dominated by individual negotiations, as a way of effecting changes in the employment relationship removed the incentives for the parties to agree jointly on the scope and conditions for derogations/deviations from higher-level agreements (Koukiadaki and Grimshaw 2016). All this demonstrates the crucial effect of political-legislative contestation on industrial relations contestation. It also shows that, despite the absence of legal changes dealing directly with the scope of bargaining issues, law can have still a restraining effect by altering complementary institutions. In the institutional-change terminology, it represents an instance of ‘exhaustion’. This is because, even though the law permits a wide range of bargaining, the overall legal and institutional environment has the effect of undermining collective bargaining.

## Conclusions

This chapter has applied a contestation-based account of institutional change to the Greek legal and industrial relations trajectory of collective bargaining. While we accept the characterisation of the trajectory as ‘speedy neo-liberalisation’ (Kornelakis and Voskeritsian 2014: 357), ‘punctuated’ by the crisis period, we nonetheless argue for three important qualifications.

First, evidence was found to suggest that some of the changes, for example regarding the rules on arbitration and the operation of the favourability principle, as well as the

*modus operandi* for their adoption, did not emerge from the crisis; rather their seeds were planted in periods of stability. Hence, Greece illustrates that while institutional change may be concentrated in a dense 'punctuating' period of legal change it may still be characterised by gradualist elements, illuminating points of contestation in the pre-crisis and crisis periods and legitimising the demands of those actors and institutions that dominate the policy agenda at times of crisis. Not only were there gradualist elements in the previous period of stability, 2000–2010, but even the transformation period exhibited gradualist or step-by-step patterns. In terms of institutional change, this indicates that even radical change can be effected in stages. Second, the overall transformation combined a surprisingly diverse set of institutional change and continuity modes. These include continuity: strikes; displacement: union financing, minimum wage, favourability and 'associations of persons'; 'layering': duration of collective agreements, extension mechanisms of industry-level agreements and union financing, recourse to arbitration, dualism between large and smaller employers; 'exhaustion': suspension of extension mechanisms for collective agreements; 'dualism': scope of collective agreements; and 'bricolage': 'associations of persons'. Third, the 'legal stasis' of the third period occurred despite strong contestation caused by the coming to power of a government elected on a strong anti-austerity platform.

This brings us to some further analytical observations. It is crucial to capture the continuity of the contestation between capital and labour in its different areas, enabled by our power-based account. Our account exposes the synergies between employers' demands and the capital-friendly environment generated by the crisis. As Jessop has argued, regulation is not just about formal laws but also tacit understandings (2001). In this respect, key features of Greek industrial relations, even in the 'stability' period, were the persistent disarticulation between regulatory features and actual firm-level practices (Psychogios and Wood 2010) and the recurring instances of contestation between industrial relations actors and institutions, which manifested themselves at multiple levels. Furthermore, the key role of the law as an instrument of design of institutional change should be underlined. Law was decisive in altering the rules of the game, thus making contestation more difficult for workers. This alteration emerged as the combination of the political-legislative and intergovernmental contestation, which is rarely blocked by jurisprudential contestation, with the exception of arbitration. In addition, the analysis shows that Streeck and Thelen's types of change could account for both 'gradual' and 'abrupt' change.

Following these radical interventions, the Greek collective bargaining system has been fundamentally transformed. The absence of extension mechanisms for higher-level agreements, the apparent defection of employers from their associations, the absence of a clear framework guiding company-level bargaining and the low trade union density have prompted the development of 'disorganised' decentralisation and the collective bargaining system that is emerging could best be described as 'poorly governed' (Koukiadaki and Grimshaw 2016). More broadly, the changes are consistent with a conceptualisation of collective agreements no longer as public goods with inclusive regulatory coverage, but as private goods with exclusive regulatory coverage in those companies in which unions or, less beneficially, 'associations of persons' have been established (Marginson 2014). In Ewing's terminology, there has been a move from

‘regulatory’ effects on non-union members to ‘representational’ bargaining, affecting only union members (Ewing 2005: 4). The fall in bargaining coverage confirms this, as coverage is now converging to the level of union membership in Greece.

It is only by closely examining the patterns of the Greek case that we can grasp the complex and varied ways by which neoliberalisation has been advanced. This chapter has shown how a contestation-based account could help to elucidate the particularities of Greek neoliberalisation. To the extent that Greece is depicted as an exemplary case of this (Koukiadaki and Kretsos 2012; Countouris and Freedland 2013; Katsaroumpas 2013; Kennedy 2016), the significance of the Greek case goes beyond its particular features. Looking at how neoliberalisation works can help in the development of further research on its implications for law and industrial relations and inform future strategies for resistance and reconstruction.

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All links were checked on 5 April 2018.

## Abbreviations

ADEDY	Ανώτατη Διοίκηση Ενώσεων Δημοσίων Υπαλλήλων (Civil Servants' Confederation)
ANEL	Ανεξάρτητοι Έλληνες (Independent Greeks)
DIMAR	Δημοκρατική Αριστερά (Democratic Left)
EC	European Commission
EET	Ελληνική Ένωση Τραπεζών (Hellenic Bank Association)
Ergatiki Estia	Εργατική Εστία (Workers' Welfare Organization)
ESEE	Ελληνική Συνομοσπονδία Εμπορίου & Επιχειρηματικότητας (Hellenic Confederation of Commerce and Entrepreneurship)
ESTE	Ένωση Συναιτεριστικών Τραπεζών Ελλάδος (Association of Cooperative Banks of Greece)
EU	European Union
GSEE	Γενική Συνομοσπονδία Εργατών Ελλάδος (General Confederation of Greek Workers)
GSEVEE	Γενική Συνομοσπονδία Επαγγελματιών Βιοτεχνών Εμπόρων Ελλάδας (Hellenic Confederation of Professionals, Craftsmen and Merchants)
ILO	International Labour Organization
OAED	Οργανισμός Απασχόλησης Εργατικού Δυναμικού (Manpower Agency of Greece)
OECD	Organization for Economic Cooperation and Development
OMED	Οργανισμός Μεσολάβησης και Διαιτησίας (Organization for Mediation and Arbitration)
MOU	Memorandum of Understanding
ND	Νέα Δημοκρατία (New Democracy)
NMW	Εθνικός Κατώτατος Μισθός (National Minimum Wage)
PASOK	Πανελλήνιο Σοσιαλιστικό Κίνημα (Panhellenic Socialist Movement)
SEV	Σύνδεσμος Επιχειρήσεων και Βιομηχανιών (Hellenic Federation of Enterprises)
STE	Συμβούλιο της Επικρατείας (Council of State)
SVVE	Σύνδεσμος Βιομηχανιών Βορείου Ελλάδος (Federation of Northern Industries)
Syryza	Συνασπισμός Ριζοσπαστικής Αριστεράς (Coalition of the Radical Left)
TSA	Τοπικά Σύμφωνα Απασχόλησης (Local Employment Pacts)



## Chapter 14

# Neglected by the state: the Hungarian experience of collective bargaining

**Szilvia Borbély and László Neumann**

Hungary is a landlocked country in the Carpathian Basin in central Europe, bounded by Slovakia, Ukraine, Romania, Serbia, Croatia, Slovenia and Austria, with an area of 93,030 sq. km and a population of almost 9.8 million (2017). Following the state-socialist decades, in 1990 a coalition government was formed with a programme intended to transform Hungary into a market economy. During the 1990s the social partners faced privatisation, rising unemployment and austerity measures. Multinational companies (MNCs) in manufacturing have a dominant role in the country's open, export-oriented economy.

Similarly to other post-socialist countries, genuine collective bargaining in Hungary began to evolve in the early 1990s, when the economy suffered from the 'transitional recession' and the emergence of new ideological-political strands aimed at breaking with everything that bore any resemblance to the collectivist ideology of the past. While trade unions lost the majority of their members within a couple of years of economic restructuring, employers' organisations were newly established during the transition period. A pluralistic trade union structure developed, with competing unions at the workplace level, five national confederations and nine peak-level employers' organisations. The industry-level collective bargaining partners, however, have remained weak on both sides. Today Hungary has low collective bargaining coverage and a decentralised, uncoordinated bargaining system with limited impact on working conditions, basically confined to single-employer agreements in the private sector and public companies.

As Table 14.1 shows, Hungary has a dual channel workplace representation system, in which trade unions are the preferred negotiating partners. Besides the decentralised, company or institutional levels and low bargaining coverage, national tripartite institutions and informal lobbying of the government are important for both the equally organisationally weak employers and trade union confederations. Although the 2012 Labour Code was a significant step towards deregulation and flexibilisation, it has not fundamentally changed the patterns of bargaining that evolved over the previous two decades.

Table 14.1 also shows that since 2000 the coverage of collective bargaining and trade union density have declined markedly. These declines have been policy aims; successive governments have restricted the capacities of organised labour by amending the Labour Code. Although Labour Code amendments have been couched in the language of 'flexibility', their impact has been to enhance opportunities for unilateral management

Table 14.1 Principal characteristics of collective bargaining in Hungary

Key features	2000	2017
Actors entitled to collective bargaining	Trade unions plus works councils* and employers or employers' associations	Trade unions plus works councils* and employers or employers' associations
Importance of bargaining levels	Single employer is the dominant level, although national negotiations on the minimum wage are important	
Favourability principle/derogation possibilities**	In favour of employees only	By default in favour of employees only but opt-out is possible
Collective bargaining coverage (%)	Ca. 47	30
Extension mechanism (or functional equivalent)	Legally exist but rare in practice. Two levels of national minimum wage serve as a functional equivalent	
Trade union density (%)	19.7 (2001)	9.0 (2015)
Employers' association rate (%)	n.a.	21 (2013)

Notes:

\* In accordance with the Labour Code they were not bargaining partners between 2002 and 2012.

\*\* Possibilities for derogation from mandatory regulations changed fundamentally in 2012; in this respect the former favourability principle ceased to exist as a default rule.

Source: Appendix A1; Eurofound (2017).

decision-making. In addition, recent governments have been prepared to conclude agreements with public sector groups with a strong labour-market position, while excluding those whose market position is weaker, thereby effectively dividing public sector workers and trade unions.

## Industrial relations context and principal actors

As tripartite consultative institutions shape mainly the framework conditions of genuine collective bargaining, it is important to review their recent history. The National Council for the Reconciliation of Interests (Országos Érdekegyeztető Tanács, OÉT) was created before the change of regime in 1988. The first freely elected, centre-right government in 1990 acknowledged the role of the OÉT. While the subsequent socialist-liberal government maintained tripartism between 1994 and 1998, the government led by the centre-right Alliance of Young Democrats (Fiatal Demokraták Szövetsége, FIDESZ) reorganised and limited its functions. Between 2002 and 2010 socialist-liberal governments again restored the original setting of tripartite institutions. From 2006 onward, however, with the unfolding financial and economic crisis, the OÉT lost considerable influence over policymaking. In 2010 FIDESZ, in alliance with the Christian Democratic People's Party (Kereszténydemokrata Néppárt, KDNP), was elected with a two-thirds majority in Parliament. This government coalition, which is still in power following the 2018 elections, introduced major changes to basic laws and curbed democratic institutions, including national-level consultations with the social partners. In 2012 the government passed the fundamentally new Labour Code (Munka Törvénykönyve), replacing the old one.

In June 2011 the Parliament voted to replace the former tripartite council with the National Economic and Social Council (Nemzeti Gazdasági és Társadalmi Tanács, NGTT). The new body no longer includes representation of the state. Its members are the employers' and employees' organisations, NGOs, economic chambers, churches and other government-friendly associations. The NGTT has no decision-making rights, but does have the right to draft proposals that are then submitted to government. In December 2011, however, under pressure from both trade unions and employers' organisations, the government established a new permanent consultation forum, the Standing Consultative Forum for the Private (literally: 'competitive') Sector and the Government (Versenyszféra és a Kormány Állandó Konzultációs Fóruma, VKF). The VKF was set up to discuss employment issues on the initiative of the social partners. The government invited only three, of the then six, trade union confederations and three, of the then nine, employers' organisations to participate in this new body and its role and rights are more limited than those of its predecessor. In the absence of legal underpinning, the social partners' consultative power depends on the willingness of the government. Furthermore, the meetings are usually not open to the public (Kiss *et al.* 2016).

In the public sector the National Public Service Interest Reconciliation Council (Országos Közzolgálati Érdekegyeztető Tanács, OKÉT), the most important forum encompassing the whole public sector, formally remained intact, but its activity became insignificant. Since 2008 negotiations have not led to increases in the general wage scale of public sector employees. Instead, the government has engaged in selective negotiations with different public sector groups with strong bargaining power and introduced separate wage scales and other incentives for them. A notable example is the case of young doctors. Similar to their Czech and Slovakian counterparts they threatened to resign and the government had to give in (Kahancová and Szabó 2015). In recent years the government has gradually offered a 'career path' for certain professions, including the police, teachers, health care professionals and social workers, which, in practice, promises certain groups staggered wage rises. In this way the weaker groups, such as non-teaching staff in schools, elderly care nurses and public librarians, are systematically left out of wage rises. Through this policy the government has successfully divided public sector employees and their unions.

The lengthy public sector salary freeze reflects the policy of wage restraint pursued by successive governments since the economic crisis. The general public sector salary scales have not been upgraded since 2008, and until 2006 rises in the national minimum wage lagged behind productivity increases and minimum wage hikes in the adjoining countries (Galgóczi 2017). Initially, the slack labour market made it possible to maintain this policy. The foundations of this policy, abundantly available cheap labour, had disappeared by 2016. Given this switch to a tight labour market, 2016-2017 witnessed an unprecedented series of industrial actions at major MNCs, Audi, Tesco and Mercedes-Benz for example, that resulted in company level wage agreements with substantial wage increases.

## Extent of bargaining

There are two statistical sources for measuring the coverage of collective agreements. One is the Labour Force Survey (LFS). In 2015 the latest round of the survey indicated a bargaining coverage of 20.6 per cent of employees, considerably lower than in the past (22 per cent in 2009 and 36 per cent in 2001).<sup>1</sup> A second source is the registration of collective agreements, which, theoretically, has been compulsory since 1997. The Ministry of the National Economy (Nemzetgazdasági Minisztérium, NGM) currently maintains the register. Unfortunately, these data are also biased, because the bargaining parties often fail to report bargaining developments, especially the termination of agreements. In consequence, these figures are biased upward to suggest higher coverage than really exists. According to the registry, the current coverage of collective agreements is 29 per cent. Earlier figures on agreements showed a fall of 14 percentage points between 2001 and 2012: from 47 per cent to 33 per cent.

As regards the extent of bargaining, the organisational strength or weakness of the parties seems to be the main factor. While under the state-socialist system union membership was almost compulsory, overall trade union density has now fallen below 10 per cent. Official data from the abovementioned population survey are available for 2001, 2004, 2009 and 2015. While in 2001 the survey showed a unionisation rate of almost 20 per cent, the latest survey found only 9 per cent density, with substantial differences across industries and workplaces with different company sizes and ownership structures (HCSO 2016). The electricity industry (29 per cent), transport and postal services (22 per cent), education (19 per cent) and health care (18 per cent) are still trade union strongholds, but at the other extreme, hotels and catering (1 per cent), construction (2 per cent) and retail (3 per cent) are barely organised. The strategically important manufacturing sector was also slightly below average, with 8 per cent unionisation. Although linked to sectoral distribution, unions traditionally fare better in larger companies and state/municipality-owned workplaces. Since 2009, however, public sector unions have suffered a marked drop in their membership. Union density among teachers has fallen by 21 percentage points, unionisation in health care and social work has dropped by 12 percentage points and in the water, gas and steam industry by as much as 41 percentage points. The highest loss, however, 52 percentage points, has occurred in public administration and defence. This was attributable to a decree of the Minister of the Interior, who phased out the check-off system, that is, the automatic deduction of union dues by the employer. All other things being equal, the better organised an industry is, the greater the chance of strong industry unions capable of bargaining at the industry level. Good collective agreements at the industry level and/or robust union action, for example, can be found in such strongholds. Representative studies found the following densities: metal: 7.6 per cent (2010); commerce: 5 per cent (2011); banking: 20–22 per cent (2011); and education: 25 per cent (2011) (Eurofound 2010–2017).<sup>2</sup>

1. In 2015 alongside the 20.6 per cent positive answers, a quarter of the respondents said they did not know. The LFS data are somewhat biased because of the methodology, especially the high share of proxy answers.

2. Industrial density is defined as the total number of trade union members in the industry in relation to the number of employees, as demarcated by the Nomenclature statistique des Activités économiques dans la Communauté Européenne (NACE).

Given the decentralised nature of collective bargaining, it is important to discuss union presence at the workplace. According to the 2015 survey, 25 per cent of the respondent employees worked at unionised workplaces, and at larger workplaces (above 300 employees) every second employee answered positively. The variation in the presence of unions correlates fairly well with the union density figures in all dimensions. For instance, union presence was 24 per cent in manufacturing, 9 per cent in commerce, 19 per cent in banking and 52 per cent in education.

As to the employers' organisational strength, all sources mention a 40 per cent density (Appendix A1.G). This figure is suspicious because it has not changed since the 1990s and sometimes it is used to refer to the number of companies, sometimes to the number of employees. There are no data that reliably record the overall organisational density of employers' organisations; the above estimate is all that is available. Eurofound's meticulous representative studies provide much lower figures: metal, 4.3 per cent (2010); commerce, 23 per cent (2011); and education, zero because there is no employers' association (2011).<sup>3</sup> In the best-organised industry, electricity, employer organisation density was 72 per cent in 2014 (Eurofound 2010–2017). Well-functioning employers' organisations, prepared to engage in industry-level collective bargaining are rare. It should be noted that the Economic Chambers of Commerce (Magyar Kereskedelmi és Iparkamara, MKIK), membership of which is compulsory, are not eligible partners for collective bargaining. The weakness of bargaining agents is partly attributable to historical reasons, the high share of small and medium-sized enterprises (SMEs) in the economy and other new economic factors, such as the presence of precarious work. Eventually, the parties to genuine collective bargaining were established, but have remained organisationally weak since the regime-change of 1988–1990.

The Labour Code or other laws regulate most of the mechanisms that influence the coverage of collective bargaining. In this respect the extension procedure has not been the most important instrument in Hungary. Since 1992 the Labour Code has allowed the use of an extension mechanism, but it has been used only in a few industries: construction, hotels and catering, electricity and baking. Over time even these extended agreements have ceased to exist for various reasons. The fundamental hurdle has been the sheer rarity of genuine industrial agreements to which an extension mechanism might be applied. In their heyday extension mechanisms increased bargaining coverage by only 2–3 percentage points.

One channel of institutional support for bargaining has been the mediation and arbitration service. From the mid-1990s a state-run service operated, the Labour Mediation and Arbitration Service (Munkaügyi Közvetítő és Döntőbírói Szolgálat, MKDSZ), although the involvement of the service was very limited, with only a couple of cases annually. In 2017 the service was re-established.

3. The employers' organisation rate at the industry level is defined as the total number of member companies of the association in the industry in relation to the number of companies, as demarcated by NACE. For banking the study shows an extraordinarily high figure, but the umbrella organisations referred to do not function as employer organisations.



From 2004 onward over 30 Sectoral Social Dialogue Committees (Ágazati Párbeszéd Bizottság, ÁPB) were established, initially within the framework of the EU PHARE programme, to facilitate bipartite sectoral dialogue and industry-level bargaining. Their operation was limited to private and state/municipality owned companies and they were not established in sectors dominated by public sector institutions, such as health care, education or public administration, because of the absence of sectoral employers' organisations. Since 2007 ÁPBs have been governed by legislation that determines the right to participate, the so-called representativeness criteria, and to negotiate and to extend collective agreements. In practice, ÁPBs have not met the aim of increasing the number of industrial agreements. Recently, the FIDESZ government significantly reduced the financial support for ÁPBs, which has curtailed their activity somewhat.

In theory, legal mechanisms are also available to promote bargaining. Since 1992 various Labour Code provisions have been aimed at broadening the use of collective agreements and thus narrowing the scope of the mandatory regulation of the employment relationship. To this end, consecutive reforms gradually relaxed the role of the 'favourability principle' adopted during the early 1990s. Hungarian legislators considered possible derogations from the favourability principle to the detriment of employees as a sort of incentive to employers to engage in bargaining. The 2012 Labour Code made the most radical changes in this respect, as, by default, it allows any kind of deviation from the law in terms of individual employment relations, including those that act to the detriment of employees, unless the law explicitly prohibits them by enumerating such exceptional conditions at the end of each section of the law. This law was fairly contradictory, however, because it also substantially undermined company-level trade unions' operating conditions and curbed trade union rights at the workplace, such as legal protection and time-off for representatives and financial support for the unions (Nacsá and Neumann 2013). Moreover, the 2011 amendment of the strike law and other laws re-regulated essential services and made it almost impossible to go on strike effectively. Given the existence of such Janus-faced legislation it is no wonder the coverage rate has not grown (Gyulavári 2018; Appendix A1.A).

As to the duration of agreements, most are signed for an unlimited period: however, the frequent changes to the legal and economic environment force the parties to modify agreements every two to three years. Wage agreements are separated from the main body of collective agreements and are renegotiated annually, typically connected to the business year of the company and/or following the settlement of the national minimum wage for the next year.

Neither the old nor the new (2012) version of the Labour Code stipulates whether collective agreements should remain in force after their formal expiry. Nonetheless, collective agreements may remain valid in two exceptional cases: one is a transfer of undertaking, which the Code regulates basically in line with the relevant EU directive; the second is when the signatory parties themselves agree upon similar effects, such as a compulsory procedure for renegotiation parallel with the extension of the validity period. In all other circumstances, one of the signatories, and one of the signatory trade unions if more than one union jointly concluded the agreement, can terminate collective agreements without any after-effects. By default the notice period is three months. The

parties may deviate in each direction without any limitation and may agree to curb the right of termination so that trade unions can exercise it only jointly. Thus a stipulation on extension of the notice period might be a functional equivalent again, but in practice this very rarely exceeds six months.

Last but not least, concerning the extent of bargaining, the ‘*erga omnes*’ principle should be mentioned. Under Hungarian law a collective agreement affects all employees of the given company, or those of the companies that signed a multi-employer agreement or are affiliated to the signatory employers’ association. Trade unions often complain about ‘free riders’ and would thus welcome a limited contribution paid by non-members who also benefit from the agreements. This initiative has never become more than unionists’ wishful thinking, however, as successive governments have never engaged in serious negotiations about it.

## **Level of bargaining**

Apart from the national-level tripartite consultations, which are not collective bargaining in the sense used in this book, there are three levels of bargaining. The law distinguishes between single-employer and multi-employer agreements; the latter may be concluded jointly by at least two employers or by employers’ organisations with voluntary membership. In practice, in large companies a third level of bargaining exists in the form of establishment-level bargaining. In such cases the establishment/unit-level agreement acts as a formal supplement to the company-level agreement. This is a common approach to circumvent the rigid Hungarian regulation, which allows only one agreement per registered employer or company. By this means nation-wide companies can make use of regional pay differences in the labour market to reduce the overall wage bill.

Single employers, usually a company or a public sector institution, sign the vast majority of collective agreements. According to the registry of collective agreements, in November 2017 there were 972 single-employer and 66 multi-employer valid company agreements in the private sector, some of which covered state- or municipality-owned enterprises, and 1,630 agreements, among them a single multi-employer agreement, covering budgetary sector. These figures clearly indicate that the single-employer level is the dominant one (see Table 14.2). The majority of collective agreements are signed in large or medium-sized companies. Coverage is highest among state- and municipality-owned companies. There are practically no collective agreements in SMEs.

There are even fewer genuine sectoral/industry agreements. Although the registry includes 19 valid industrial agreements in the private sector and one in the public sector, if the data are further scrutinised only five, covering different segments of the electricity industry and road transport, have been concluded or modified since 2011. New initiatives for industrial agreements are quite rare, the most notable exception being the health-care agreement signed in 2017.

Table 14.2 Number and coverage of collective agreements in Hungary, August 2017

	Sector	Number of agreements	Number of companies/institutions	Number of employees	Total number of employees	Coverage (employees) (%)
Single-employer	Competitive sector*	972	972	443,691	2,031,700	21.8
	Budgetary sector	1,629	1,629	259,887	707,500	36.7
Multi-employer	Competitive sector	66	3,621	214,262	2,031,700	10.5
	Budgetary sector**	1	3	320	707,500	0.1
Total***		2,668		812,386	2,739,200	29.6

Notes:

\* The 'competitive sector' includes private sector and state/municipality owned enterprises.

\*\* The new sectoral health-care agreement is not included.

\*\*\* Single and multi-employer agreements' coverage should not be added up due to the overlap between the bargaining levels.

Sources: For collective bargaining: Collective agreement registry, Ministry of the National Economy. For total number of employees (at employers with at least five employees, without public works, July/2017): Hungarian Central Statistical Office (HCSO).

The underlying reason for weak industrial bargaining is the organisational weakness of the organisations at the industry level. On the trade union side, industry federations are often badly funded and staffed, and are unable to mobilise employees in entire sectors. Trade unionists, however, would very much welcome collective bargaining at the industry level, from which employees benefit, especially in SMEs and family-owned businesses where union organisation and local bargaining is hopeless. On the employers' side both the organisational structure and their attitude are problematic.

Industrial negotiation used to be impeded by the absence of employers' organisations prepared to negotiate. Although industry-level business associations exist, in most cases their role is limited to lobbying. The prevailing attitude of employers is characterised by a reluctance to join employers' associations or an unwillingness to authorise them to conclude industry agreements. Fierce competition among companies within the same industry also hinders the development of industrial bargaining. This is particularly the case in retail, in which several large companies are competitors, with the consequence that they are not interested in reaching joint agreements (Borbély 2017: 36). Previously there were attempts to create a draft industrial agreement, but it included only labour conditions and not wages. Due to the growing labour shortage in retail, the big chains have engaged in upward wage competition in attempts to attract an appropriate labour force. In the automotive industry the metalworkers union is unable to conclude an industry-level agreement covering the supplier companies because for the 'original equipment manufacturer' (OEM, 'eredeti berendezés gyártó') assembly firms' cost-cutting business model relies on tendering. In other words they deliberately drive supplier and outsourcing firms into fierce price competition.

The coverage of single-employer agreements is relatively high in the public sector. According to the Labour Force Survey coverage was 39 per cent in education, 34 per cent in health and social care, and 22 per cent in arts and entertainment in 2015. Following the centralisation of public schools, the Teachers' Trade Union (Pedagógusok Szakszervezete, PSZ) concluded an agreement with the central administration of schools, which came into force in 2014. This agreement was neither a single-employer agreement, as public school facilities are scattered across the country; nor an industrial agreement, as church-run and private schools are also present but are excluded from coverage. The recent government initiative to decentralise bargaining means that this agreement will soon be terminated. There is no hope of renewal of the agreement as unionisation at smaller units is less than 10 per cent. Another recent development is the quasi-industrial agreement in health care signed in April 2017, which was formally concluded between the industry union Democratic Union of Social and Health Sector Workers of Hungarian Employees (Magyarországi Munkavállalók Szociális és Egészségügyi Ágazatban Dolgozók Demokratikus Szakszervezete, MSZ EDDSZ) and the public administration unit National Healthcare Services Centre (Állami Egészségügyi Ellátó Központ, ÁEEK), which signed the agreement on behalf of state-run hospitals and health institutions. On the employers' side the Ministry was the real negotiating partner. The agreement substitutes the former tripartite negotiations on wage scales, the traditional method of determining scales in the public sector.

Given the lack of industry bargaining, vertical coordination between levels of negotiation is weak. The role of tripartite bodies cannot be underestimated, however, especially in setting the national minimum wage. Prior to 2010 the minimum wage was set annually after discussions between unions, employers and government. From 1990 to 1998 and from 2002 to 2010, formally, a unanimous decision of the three parties was required at the OÉT. The government later ratified this decision in the form of a decree. The OÉT also issued an annual recommendation for an average wage increase to provide 'orientation', a form of coordination, for lower level collective bargaining.

Participation in minimum wage setting was particularly important for Hungarian unions as it offered partial compensation for trade union weakness in industrial and company-level bargaining. There were several years in which the minimum wage increase was far higher than the level that unions could have bargained at companies, especially in low-wage industries. The national agreement to some extent substituted for the lack of established wage scales or 'tariffs' tied to qualifications and experience in collective agreements, as from 2007 onward two special minimum rates were set for skilled workers. As a result, one public sector union demand is to include a third minimum wage level for graduate employees. At the workplaces where there is no collective wage agreement, the compulsory minimum wage and the special minimum rate for skilled workers has primordial importance from the standpoint of workers' wage security.

## Security of bargaining

Security of bargaining refers to the factors that determine the bargaining role of the unions. In Hungary security of bargaining is a particularly a function of political will and legal regulation, which have had a crucial role in determining terms and conditions of employment. Furthermore, in both the public and the private sectors, legislation defines the rights of worker representatives. Given the crucial importance of legislation, changes in labour regulation used to be on the agenda of the national-level tripartite forum, the OÉT, until 2011: the stakeholders, including the then six national trade union confederations, could influence the content of legislation on labour regulation. In the private sector and in state/municipality owned companies the major changes in the legal environment occurred in 2012 when the new Act I of the Labour Code of 2012 was passed. The official reasoning underlying the new Act I contains the following policy-objective: the ‘implementation of flexible regulations adjusted to the needs of the local labour market’, with the objective of creating new jobs. In order to meet these objectives, the legislation comprised three elements: lowering the minimum floor of employment standards, preferring individual and collective labour contracts to mandatory regulations, and reforming collective labour law in a way that weakened the influence of trade unions at the workplace. As an overall evaluation, as early as 2012–2013 both critical labour law experts and empirical research findings declared that Act I of the Labour Code of 2012 distorted the balance of power in favour of employers, even where unions were well established (Gyulavári–Kártyás 2014; Nacsá and Neumann 2013; Kun 2016).

Regarding trade union bargaining rights, the law introduced new rules about the recognition of bargaining partners: namely, a single-employer collective agreement may be concluded by a trade union that represents at least 10 per cent of the workforce in the affected company or companies. The use of the 10 per cent membership criterion for trade unions became generally applicable in industry agreements and was extended to cover the right to participate in public sector consultation forums, such as the Reconciliation Forum of Social Services Sector (Szociális Ágazati Érdekegyeztető Fórum, SZÁÉF). The 10 per cent membership threshold replaced the earlier measure of employee votes cast for union nominees in the previous works council election.

In the context of a pluralistic union representation system, which exists especially in large companies, regulation of union cooperation is important. Act I of the Labour Code of 2012 therefore stipulates that if more than one union attains the 10 per cent threshold, all of the unions present in the company have to bargain jointly; one employer is entitled to conclude only one collective agreement. According to Act I, however, any trade union that had the right to sign the collective agreement may initiate its termination.

As to the bargaining rights of works councils, Act I of the Labour Code of 2012 reinstated the regulation that was valid under the first Orbán – FIDESZ–FKGP–MDF – coalition government between 1998 and 2002. This stipulated that in the absence of trade union(s) entitled to negotiate a single-employer agreement, the works council at the company may conclude a quasi-collective agreement with the management. Such works agreements cannot deal with wages, however, so the regulation rules out a real trade-off

between the parties. This regulation has always been strongly opposed among union leaders: however, its practical impact remained marginal and very few such works agreements were concluded.

In a major change to the previous Labour Code, Act I of the Labour Code of 2012, by default, allows collective agreements to deviate from the Labour Code not only for the employees' benefit but also to their detriment. In every Section of Act I the *ban on divergence* is indicated individually: that is, whether it is possible to diverge for the benefit of the employees only or there is absolutely no way to deviate. Where such a limitation is not indicated any direction of deviation is allowed. On certain issues, deviation is also possible through the 'agreement of the parties' to the employment relationship: namely, in the individual employment contract. Collective agreements, for example, may deviate to the benefit of the employee regarding on-call work by, for instance, extending the range of circumstances in which the employee is not obliged to be available for work. Concurrently, terms may deviate to the detriment of the employee as regards the length of the notice period, the amount and eligibility criteria for severance pay, the length of age-based additional holidays or wage supplements.

The 2012 Labour Code limited the scope of contractual deviations in state/municipality owned enterprises. Deviations from the law are not allowed regarding severance pay, notice periods, weekly mandatory working time and industrial relations issues. The latter include the number of trade union representatives who are eligible for legal protection, the amount of available time-off for union activities and the ban on the provision of financial support to trade unions by employers.

Collective agreements can provide workplaces with greater flexibility, especially in the organisation of working hours. While the default limit of the reference period for working time is four months, for example, it can be extended up to 12 months by collective agreement, and in certain cases up to 36 months since 1 January 2019. While the annual amount of overtime may not exceed 250 hours, a collective agreement may extend overtime hours to 300 hours. Through collective agreements shift and overtime bonuses also may deviate from the mandatory levels, even to the detriment of employees. As a novel element of working time flexibility the so-called 'settlement period' ('elszámolási időszak') can be applied in the absence of a working time frame. This working time arrangement is used to 'settle' the plus or minus (credit and debit) working hours accrued or not worked in the first week of the settlement period. The employer unilaterally determines both the length, up to 16 weeks, and the starting date of the settlement period. There are many similar issues on which employers are not interested in signing collective agreements. The ample possibilities for unilateral decision-making and deviations for contractual arrangements, however, undermine the declared aim of the legislation of creating incentives for employers to engage in bargaining.

In the Hungarian public sector genuine bipartite collective bargaining rights are limited to public service employees, typically education, health and social care and cultural facilities' staff, while the law prohibits bargaining for public servants and military, law-enforcement and fire-fighter personnel. The law curbs the scope of bargaining even for



public service employees; basic wages and supplements cannot be negotiated except those covered by the market revenue of the given institution. Thus the law allows bargaining only on relatively marginal issues (Berki *et al.* 2017).

In practice, the major public sector problem is the absence of authorised bargaining partners on the employers' side. At industrial level in the social-care service, for example, the 'official' participants in social dialogue on the employers' side are the federations of local governments, which have no right to conclude collective agreements. At service provider level, at which collective agreements in social services used to be struck, the employer, usually the director or manager of the budgetary unit, has the right to conclude an agreement, but is not actually in a position to make decisions on key issues that determine employment, particularly wages. As a consequence, the authority in charge of sustaining the institution, such as the local authority or the centralised office running public schools, takes the real decisions (Bokodi *et al.* 2014; Kártyás 2018).

The right to strike is regulated by Act 7 of 1989, one of the first laws passed in course of the regime change. It defined the freedom to strike, both positively and negatively, where the latter means that the employee has a right not to go on strike and therefore picketing is forbidden. Act 7 of 1989 sets out the procedural rules, peace obligation and other duties of workers/unions that call a strike. In 2010 a significant amendment of Act 7 of 1989 fundamentally changed the regulation of minimum services in public and public utility services, including public transport, communications, electricity and water supply. If the stakeholders cannot agree on minimum services, the court is authorised to make a decision on them. Labour courts are not prepared to undertake this role and therefore very few cases have been taken to court. In addition, the law stipulates a very high minimum level of essential services in postal services and public transport. This regulation has made it much more difficult to launch a strike in the public services.

While strikes have been rare in Hungary, and the abovementioned legislative changes further decreased the number of strikes, 'sectoral strike committees' (ágazati sztrájbizottságok) are set up relatively frequently in the public sector. The reason for establishing a strike committee is not necessarily a willingness to go on strike, but the regulation on conciliation procedures before a strike forces the employer's side to engage in negotiations if a strike committee is in place. In social care, covering nurseries, homes for the elderly and social work, a strike committee was set up on 21 November 2013 by five trade union federations acting together. The strike committee called for the establishment of a regular working social dialogue forum, demanded the application of wage supplements and the salary scale introduced in health care, regardless of the legal status of the employees (under the Labour Code or the Act on Public Service Employees.) The strike committee secured the establishment of the Interest Reconciliation Forum in the Social Services Sector (Szociális Ágazati Érdekegyeztető Fórum, SZÁÉF) in December 2015. Furthermore, the strike committee continued to operate to secure a guaranteed income for workers in the industry (Borbély 2016: 38).

## Depth of bargaining

Depth of bargaining refers to the extent of involvement of local employee representatives and managers in the formulation of claims and the implementation of agreements. Little previous research has been conducted on this issue in Hungary. For the purpose of this study we conducted a group interview with five union representatives in ICT at the Telecommunication Trade Union (Távközlési Szakszervezet, TÁVSZAK). Although in each company trade unions negotiate only single-employer agreements, there are substantial differences depending on firm size and the owner's attitude to bargaining. In small companies direct communication between the leaders/negotiators and rank-and-file membership prevails during all phases of the negotiation; in larger companies the internal hierarchy of the trade unions defines the communication lines. Typically the highest body of the company union defines the negotiators' room for manoeuvre. Management attitudes also vary widely, from encouraging trade unionists through to eliminating the possibility of real bargaining. In the latter circumstances, instead of bargaining management provides one-sided information about company performance and business plan figures on wages to preclude negotiations. At the two largest companies the 35-strong Secretaries' Bodies and the Presidium with 10 members, respectively, are the highest organs of the company unions, make decisions on priorities, necessary changes in negotiation strategy and, finally, ratify the outcome of bargaining. Here local secretaries, who are shop stewards, are in charge of gathering complaints and initiatives from below and of informing the members. Between the negotiation sessions, confidential information is given to the local secretaries, but communication with members is limited. Exceptionally, when the possibility of a strike emerges the secretaries test the members' willingness to join it. Once the agreement is signed, the trade union and the management issue a joint document on the results, following careful cross-checking of the text. In this process a certain censorship by the management may emerge, which may be bridged by oral communication. At small companies, telephone conference calls among the representatives are the common form of communication during bargaining. In sum, the larger the organisation, the more difficult it is to maintain direct ties with the membership, but it is also a problem cited by trade union representatives that the members may not be interested in the details of bargaining. The distance between the negotiators and rank and file is more prominent in industry-level bargaining: in such cases, the trade union leadership, including representatives from the major company unions, make decisions prior to, during and following the bargaining process.

## Degree of control of collective agreements

This refers to the extent to which the actual terms and conditions of employment correspond to the terms and conditions originally agreed by negotiators. In Hungary the most important issue regarding the degree of control is the Labour Code. The 2012 Labour Code fundamentally changed the legal philosophy of contractual deviations from mandatory conditions and lowered mandatory minimum standards, particularly regarding the level of wage supplements. In many cases the provisions of collective agreements remained almost unchanged despite the lowered mandatory minima, due to inertia and unions successfully defending the established regulations.



There are three other issues concerning the degree of control of collective agreements: the union wage premium, the impact of collective agreements and mechanisms to enforce compliance with agreements. Given the decentralised bargaining system, the union wage premium is an appropriate means of estimating the influence of trade union presence on wages. Using multivariate regression models earlier studies found a 6–8 per cent wage premium in the business sector in the late 1990s (Neumann 2002). Following the substantial increase in the minimum wage in 2000–2001, the wage gap narrowed (Rigó 2013). A second measure is the Labour Force Survey, which includes questions on both the existence of a collective agreement at the respondent's workplace and the impact of agreements on wages and working conditions. Of course, the latter questions are asked only when there indeed is a collective agreement. Only 56 per cent of respondents replied that the agreement has an impact on wages and working conditions. In other words, almost half of the employees covered by collective agreements said that there is no controlling function of the agreement, which is a fairly severe indictment of trade union bargaining practices.

Regarding compliance with collective agreements, the effectiveness of trade unions in the workplace has long been constrained by the absence of established grievance procedures. Furthermore, the 2012 Labour Code eliminated the rights of trade unions to monitor working conditions: theoretically, works councils were put in charge of 'controlling' the lawful operations of employers. With this legislation, together with other legislation curbing the scope of action of 'labour inspectorates' ('munkaügyi felügyelőségek'), unions are almost helpless in enforcing labour law and collective agreement provisions. Moreover, in 2015 the government reorganised the Labour Inspectorate, reduced its supervisory capacity and introduced waivers on fines, especially in the case of SMEs. By these measures the government claimed to be trying to enhance competitiveness and eliminate administrative red tape for business.

According to our interviews in telecoms, enforcement of agreements also needs local representatives' careful monitoring of management actions on the shop floor. Grievances about the distribution of pay rises may happen, for example: in such cases the union leadership may request pay rolls before and after the rise. Most such conflicts are solved internally by consultations between management and union, although law suits are rarely brought. Works councils have a limited role in enforcing agreements in large companies where they, formally or informally, participate in the trade union negotiating team.

## Scope of agreements

The range of topics covered by collective bargaining is central to the scope of agreements. The bargaining approach of Hungarian trade unions is largely inherited from the state-socialist era. Trade unions' primary responsibility is to develop a broad framework of working conditions. In the private sector it is very rare that a collective agreement includes wage scales, the so-called 'tariffs', that are supposed to be applied in determining individual basic wages. Within this basic framework of collectively agreed wages and working conditions there are broad possibilities for management to

make unilateral decisions based on the performance of individual employees, as well as to bargain informally with individuals and groups outside trade union control (Tóth 2006).

It is a general problem that a large proportion of collective agreements simply copy and paste regulations from the Labour Code. Only a small proportion of collective agreements contain meaningful stipulations on relations between the signatories, such as working time schedules, wage supplements and terms and conditions of employment. These agreements have proved to be fairly resilient. In these cases trade unions effectively bargained to mitigate the effect of the 2008–2010 financial and economic crisis and later to ‘fend off’ the negative impact of legislative change.

In Hungary, the procedural terms of collective agreements customarily include detailed regulation of the bargaining process, such as timing, negotiation rules, ratification procedures, date of entry into force, termination and renegotiation. Other elements include coverage and time horizon and, in general, cooperation between the contracting parties. More generally, agreements may include topics related to industrial relations within the company or the industry, such as the rights and duties of employee representatives, the method of confirming the number of trade union members, the rights of trade union representatives, including their legal protection, arrangements for time-off for union work, access to an office and other infrastructure issues.

The detailed regulation of disputes during bargaining is less common, but sometimes procedures for conciliation and mediation are mentioned, including the establishment of committees in which representatives of employees and employers participate on a parity basis (*paritásos bizottságok*). In large enterprises the collective agreement may include the establishment of a permanent ‘interest reconciliation body’ with the participation of unions and works councils. Some agreements also include regulations on strikes and conciliation procedure in the ‘cooling-off’ period before an actual strike.

All collective agreements include substantive regulations setting the terms of employment, such as rules for hiring and firing, including the probation period, cases of immediate termination, duration of notice period and severance pay. Another important chapter of all collective agreements regulates conditions of employment: for instance, work schedules, working time, breaks during work, rest time, overtime, reference period for working time banks and the allocation of annual paid leave. In many industries it is important that the collective agreement contain rules of liability, and also fines, for inventory losses and damages arising from staff negligence, as well as employer’s liability in cases of breaches of duty.

Collective agreements, irrespective of their duration, contain relatively few regulations on wages. Agreements tend to include details only on the method of paying wages, the amounts of guaranteed and variable pay, such as bonuses related to working conditions, shift bonus and overtime pay. Such wage supplements are the most traditional parts of agreements and usually reflect the specific workplace. The level of wage increases, and sometimes the basic wage in a wage scale, is regulated by a separate wage agreement that in most cases is signed annually. The annual agreement includes the in-kind part of

**Table 14.3 Single-employer collective agreements dealing with various issues in Hungary (all sectors), 2017**

Issue	Number of collective agreements	Number of employees covered	Proportion of collective agreements* (%)	Proportion of employees covered** (%)
Bonus for additional workload due to substitution	2,454	1,116,747	84	84
Liability scheme	2,319	1,033,308	79	78
Cooperation between the contracting parties	2,310	573,042	79	43
Wage system	2,163	1,086,450	74	82
Overtime (annual hours)	1,926	903,519	66	68
Modification of collective agreement	1,908	312,621	65	23
Exemption from work at termination of employment	1,725	786,078	59	59
Notice period	1,668	594,888	57	45
Conditions of operation of trade union	1,638	645,087	56	48
Termination of collective agreement	1,629	184,593	56	14
Working time schedule	1,389	541,434	47	41
Severance pay	1,338	610,809	46	46
Trade union rights	1,290	573,042	44	43
Social policy, company welfare	1,233	403,869	42	30
Training	1,227	607,254	42	46
Longer probation period than laid down in the Labour Code	954	294,468	33	22
Collective dispute	834	893,919	29	67
Shorter probation period than laid down in the Labour Code	771	353,886	26	27
Collective redundancies	567	425,514	19	32
Strike issues	558	278,073	19	21
Legal disputes	264	792,612	9	59

Notes:

\* Total number of collective agreements: 2,925 (all sectors, competitive and budgetary sectors all together).

\*\* Total number of employees covered by collective agreements: 1,332,681.

Source: Labour Relations Information System.

compensation, too, including ‘cafeteria’ benefits, a form of flexible benefit system within which the employee can choose from a menu of possible benefits.<sup>4</sup>

There has been a dramatic decline in the number and coverage of annual wage agreements in company-level bargaining since 2001, the year the minimum wage was

4. The most frequent elements of ‘cafeteria’ benefits are to be the meal vouchers, vacation vouchers, voluntary health and pension fund contributions and local travel passes.

doubled. Wage bargaining is thus becoming more important from the point of view of distributing the wage fund and shaping wage differentiation. The other important factor that influences wage bargaining today is the growing labour shortage, which strengthens the position of employees and trade unions. It particularly affects manufacturing, retail, social services, health care and education. Labour shortages are caused not only by the emigration of the most mobile, young, skilled and educated workforce, but also inter-industrial mobility toward the better paying industries.

All in all, the contents of collective agreements are relatively narrow. Agreements tend to follow company traditions and deal primarily with issues expressly mentioned in the former or current Labour Code, usually in the form of deviations from the mandatory level. This became more apparent with the 2012 Labour Code, which allows deviations of greater scope both to the benefit and the detriment of employees (Kun 2016). Research has shown that Hungarian bargaining parties are reluctant to broaden the scope of bargaining. In many cases even the management was moderate and took into consideration good relations with the union, human resource management objectives and the company's reputation, refraining from making full use of the possibilities provided by the new legislation (Nacsa and Neumann 2013).

The compulsory registration of collective agreements provides data on the frequency and coverage of the issues that regularly appear in agreements. The logic of the registration questionnaire is tied to the explicit authorisation of the Labour Code: namely, it enumerates the issues on which the law has specified the direction and magnitude of contractual deviation. Most agreements also follow this logic, so it is worth citing the statistics on the most common issues.

## Conclusions

Following the change of regime, Hungary developed a three-tier collective bargaining system. In the course of the annual bargaining rounds, following the agreement and recommendations of the national tripartite forum, employers and/or their organisations could sign collective agreements with the respective trade unions at the industrial and company levels. The company level remains dominant in the bargaining system because of the low interest of employers in industrial bargaining and the weak bargaining power of trade unions to negotiate and conclude collective agreements at the industry level. Currently, the overall coverage of collective bargaining is 29 per cent. Despite the efforts of previous governments to strengthen industry-level collective bargaining, the number of industry agreements has not increased. Both vertical and horizontal coordination remain weak in the context of decentralised bargaining. The 2012 Labour Code curbed the rights and operating conditions of trade unions at the workplace and increased the scope of unilateral management decisions and authorised works councils, with the exception of wage issues, to conclude quasi-collective agreements in the absence of local trade unions.

Recent changes to collective bargaining in Hungary include a contraction in coverage and a weakening of coordination between the different levels of bargaining. Most

collective agreements do not include terms covering the remuneration of employees, which increasingly is subject to influence from minimum wage legislation. Legislative change has also weakened the security of bargaining.

Recent changes in the collective bargaining system occurred were mainly political in nature. The financial and economic crisis only slightly affected collective bargaining. The right-wing governments in power since 2010 have considerably degraded both the legal environment of bargaining and the institutions designed to promote bargaining. What may have a positive impact on collective bargaining is the tight labour market, which resulted in a substantial hike in the minimum wage and the average wage in 2017. Time will tell if trade unions will be able to translate the labour market shortages into wage increases and, more centrally, into a better and more sustainable system of collective bargaining, which requires organisationally strengthened trade unions at all levels of bargaining.

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All links were checked on 16 July 2018.

## Abbreviations

<b>ÁEEK</b>	Állami Egészségügyi Ellátó Központ (National Healthcare Services)
<b>ÁPB</b>	Ágazati Párbeszéd Bizottság (Sectoral Social Dialogue Committee)
<b>FIDESZ</b>	Fiatal Demokraták Szövetsége (Alliance of Young Democrats)
<b>FKGP</b>	Független Kisgazda-, Földmunkás- és Polgári Párt (Independent Smallholders, Agrarian Workers and Civic Party)
<b>KDNP</b>	Kereszténydemokrata Néppárt (Christian Democratic People's Party)
<b>KSH</b>	Központi Statisztikai Hivatal (Central Statistical Office)
<b>MDF</b>	Magyar Demokrata Fórum (Hungarian Democratic Forum)
<b>MKDSZ</b>	Munkaügyi Közvetítő és Döntőbírói Szolgálat (Labour Mediation and Arbitration Service)
<b>MKIK</b>	Magyar Kereskedelmi és Iparkamara (Economic Chambers of Commerce)
<b>MSZ EDDSZ</b>	Magyarországi Munkavállalók Szociális és Egészségügyi Ágazatban Dolgozók Demokratikus Szakszervezete (Democratic Union of Social and Health Sector Workers of Hungarian Employees)
<b>NGM</b>	Nemzetgazdasági Minisztérium (Ministry of the National Economy)
<b>NGTT</b>	Nemzeti Gazdasági és Társadalmi Tanács (National Economic and Social Council)
<b>OÉT</b>	Országos Érdekegyeztető Tanács (National Council for the Reconciliation of Interests)
<b>OKÉT</b>	Országos Közfoglálati Érdekegyeztető Tanács (National Public Service Interest Reconciliation Council)
<b>PSZ</b>	Pedagógusok Szakszervezete (Teachers' Trade Union)
<b>SZÁÉF</b>	Szociális Ágazati Érdekegyeztető Fórum (Reconciliation Forum of Social Services Sector)
<b>TÁVSZAK</b>	Távközlési Szakszervezet (Telecommunications Trade Union)
<b>VKF</b>	Versenyszféra és a Kormány Állandó Konzultációs Fóruma (Standing Consultative Forum for the Private Sector and the Government).

## Chapter 15

### Ireland: life after social partnership

Vincenzo Maccarrone, Roland Erne and Aidan Regan<sup>1</sup>

Traditionally, scholars have characterised the Irish system of industrial relations as a ‘voluntarist’ regime, as employment conditions tend to be set by ‘free’ collective bargaining between employers and workers’ representatives rather than by laws (Von Prondzynski 1998). The role of the state is to provide an adequate framework in which this can happen (Doherty 2014), for instance, by sponsoring various institutions for conflict resolution, such as the Labour Court and the Workplace Relations Commission (WRC). With some exceptions that will be discussed below, the terms set by collective bargaining do not extend beyond the signatory parties.

This voluntarist reading has been called into question as a result of two developments: first, decreasing union density and the weak legislative framework supporting collective bargaining; and second, the increase in individual workers’ rights (Doherty 2016). Indeed, although the Irish labour market is characterised by light regulation and Ireland is classified among the OECD countries that offer the lowest employment protection to workers, throughout the 1990s and the 2000s several pieces of legislation that increased individual workers’ rights were introduced, partly in response to various European Union (EU) directives.<sup>2</sup> This has led to a shift ‘from a bargaining-based employment relations system to a rights-based system’ (Doherty 2016: 3).

Irish labour relations have been influenced by the increasing presence of multinational companies (MNCs) that are barely unionised and are predominantly, but not exclusively, of US origin. Irish economic policy places a strong emphasis on foreign direct investment (FDI) flows and attracting multinationals in high-tech services, such as information and communication technology (ICT) and financial services (Brazys and Regan 2017). The presence of foreign multinationals and the role played by lobby groups, such as the American Chamber of Commerce, have significantly influenced the government’s unwillingness to legislate for a legal right to collective bargaining. The combination of growing employer preferences for non-unionised firms and structural changes in the economy have thus led to a drop in the rate of union density in the export sectors (Roche 2008). This decline in the rate of union density has not been limited to FDI firms but has been extended more generally to the whole private sector (Walsh 2015, 2016; see Table 15.1).

1. We wish to thank Tom Gormley, Bill Roche and the participants in the peer-review meetings organised by the editors for their useful comments on previous versions of this chapter. Needless to say, all errors are ours.
2. It should be noted that Irish governments, in cooperation with the United Kingdom, have often tried to stop the introduction of these directives at the EU level (Doherty 2016). After Irish unions threatened to reject the Lisbon Treaty, however, the Irish government did not use the United Kingdom’s opt-out from the EU Charter of Fundamental Rights (Béthoux *et al.* 2018, Erne and Blaser 2018).



Table 15.1 Principal characteristics of collective bargaining in Ireland

Key features	2000	2016/2017
Actors entitled to collective bargaining	Trade unions, excepted bodies, employers	
Importance of bargaining levels	Main bargaining level: tripartite national agreements (Social Partnership)	Main bargaining level: industry-level bargaining for the public sector, firm-level bargaining for the private sector
Favourability principle/derogation possibilities	No opt-out clauses from REAs and EROs	Opt-out clauses for employers in financial difficulty provided in SEOs and EROs
Collective bargaining coverage (%)	44	40 (2009)
Extension mechanism (or functional equivalent)	No extension, except for REAs and EROs	No extension, except for SEOs and EROs
Trade union density (%)	34 (2005)	24
Employers' association rate (%)	60	60 (2011)

Sources: Central Statistics Office and Appendix A1.

## Industrial relations context and principal actors

Despite the FDI-oriented growth model, from 1987 to 2009 Irish industrial relations were dominated by ‘social partnership’, a series of tripartite national wage agreements negotiated by the Irish government and the peak organisations of unions and employers. This is in clear contrast with the liberal model of industrial relations, in which collective bargaining takes place at the firm level, if it takes place at all. Social partnership did not survive the economic recession. At the end of 2009 the system of national tripartite wage agreements collapsed when the Irish government bypassed the unions and unilaterally introduced severe cuts to public services and public sector wages (McDonough and Dundon 2010; Culppepper and Regan 2014; Geary 2016). That said, the remarkable Irish recovery after the crisis cannot be explained by austerity policies, but rather by the important role played by foreign-owned MNCs that were somehow sheltered from the economic crisis (Kinsella 2016; Brazys and Regan 2017). Since then, national collective bargaining has taken place only in the public sector, whereas in the semi-state<sup>3</sup> and private sectors, bargaining has been decentralised to the company level, albeit with some qualifications that are discussed below.

As union density constantly decreased throughout the social partnership era (see Table 15.1) and the framework for union recognition remained weak, some scholars have considered social partnership to be a ‘Faustian bargain’ (D’Art and Turner 2011). The wage share as a percentage of GDP diminished consistently in comparison with the 1980s (see Appendix A1.B). Whereas Irish wages grew considerably in nominal terms, they did not follow the enormous GDP growth figures caused by genuine FDI, as well as multinationals’ transfer pricing mechanisms. Moreover, after the end of social partnership, the Irish unions also had to face the additional constraints

3. The Irish ‘semi-state’ sector covers limited companies, such as Iarnród Éireann (Irish Rail) or Dublin Bus, which are (partially) owned by the state but operate formally as private companies.

imposed by the Irish government and the Troika (Geary 2016). Despite the application of what the International Monetary Fund (IMF) defined as one of the most severe austerity programmes in modern times (Whelan 2014), the rate of strikes and public demonstrations in Ireland was comparatively low compared with other countries, such as Greece and Portugal. This can be explained by a number of factors, such as the decrease in union density, ideological tradition and unfavourable legislation.

The end of the social partnership era also brought changes to the structures of workers' and employers' organisations. The Irish Business and Employers' Confederation (IBEC) redirected its activities towards lobbying and is now in direct competition with the American Chamber of Commerce for membership (Regan 2017). During the crisis, fragmentation emerged across unions, weakening the Irish Congress of Trade Unions (ICTU). In response, the unions attempted to pursue institutional renewal (Geary 2016; Hickland and Dundon 2016) and proposed to rationalise the number of ICTU affiliates, on the example set by Dutch unions (Hickland and Dundon 2016), reducing the number from 48 to six larger sectoral organisations. This has yet to materialise, but three unions in the public sector, the Irish Municipal, Public and Civil Trade Union (IMPACT), the Public Service Executive Union (PSEU) and the Civil and Public Services Union (CPSU), have recently merged, giving birth to a larger union Fórsa ('strength/force of the people') of 85,000 members (Sheehan 2017a). It is also worth noting that in the private sector, despite the high number of unions, four organisations, Mandate; Services, Industrial, Professional and Technical Union (SIPTU); the Technical Engineering and Electrical Union (TEEU); and Unite, organise half of all union members (Roche and Gormley 2017b).

In addition, the ICTU and its affiliates created the Nevin Economic Research Institute (NERI) to provide an alternative to mainstream economic policies (Geary 2016; Hickland and Dundon 2016). In an attempt to halt the decline in union density, some unions have tried to follow the example of workplace activism from the United States and set up organising departments (Geary 2016; Hickland and Dundon 2016). In addition to workplace organisation, the largest Irish union, SIPTU, has tried with some success to develop social movement campaigns to raise awareness of poor working conditions in low-paid industries, such as hospitality and cleaning (Murphy and Turner 2016; Geary and Gamwell 2017). Similar campaigns have been conducted in retail by Mandate.

## Extent of bargaining

The extent of bargaining refers to the proportion of employees covered by collective bargaining. In the case of Ireland data on coverage of collective bargaining from Appendix A1.A are too sparse to give a precise trend. Collective bargaining coverage was estimated at 44 per cent in 2000, then decreased to approximately 42 per cent in 2005 and 40 per cent in 2009. Eurofound (2015) reports that in 2013, 46 per cent of employees were covered by collective bargaining, according to data provided by the European Company Survey. Eurofound also reports that the terms of collective agreements remain valid after their expiry until a new agreement is signed. This is because collectively agreed terms and conditions are part of each individual employment contract and, legally, individual contracts can be terminated but not changed unilaterally.

Given the characteristics mentioned above, particularly the role played by the voluntarist tradition of wage setting, the extent of collective bargaining in Ireland is very much shaped by the extent and level of trade union density, which has increasingly become concentrated in the public and non-traded sectors of the economy. Hence, density matters more in Ireland compared with some other western European countries. This structure of collective bargaining impacts upon the strategies of the various actors as they determine the power resources available to trade unions (Regan 2012).

Union density in Ireland diminished consistently throughout the 1990s and 2000s. This is a trend observed more generally across Europe (see Chapter 1), but in Ireland the decline appears to be even greater. In 1990 approximately 50 per cent of employees were union members. This had dropped to 31 per cent at the beginning of the crisis (Appendix A1.H). Using the data provided by the Central Statistics Office (CSO 2017a), the decline in union density appears to have continued even during the crisis, reaching the historically low point of 24 per cent at the beginning of the second semester of 2016.<sup>4</sup> Although these data are very significant, the aggregate numbers hide a growing 'dualisation' between sectors. The first substantial difference is between the public and private sectors: union density is significantly higher in the former, in which it stood at 62.9 per cent in 2014, while in the private sector it declined to 16.4 per cent in the same year (Walsh 2015). As a result, public sector workers<sup>5</sup> in 2014 represented 55 per cent of the total unionised workforce, up from 40 per cent in 2004.

We can make further industrial distinctions, although with some limitations due to data availability. The data elaborated by Walsh and Strobl (2009) show that in 2006 union density was relatively high in construction and manufacturing, with the exception of non-unionised ICT, compared with the service industries, such as hospitality and retail, except for unionised retail banking. The data from the CSO show that 10 years later, in 2016, the aggregate industry rate had dropped more quickly, declining from 30 per cent to 17 per cent between 2006 and 2016. Unions seem to have performed slightly better in services, where density was 34 per cent in 2006 and fell to 27 per cent in 2016, and this is likely to be related to the performance in the public sector. This significant drop in manufacturing is at least partly linked to the increase in employers' union avoidance practices, especially on the part of multinationals, which have increased the use of so-called 'double breasting', that is, adding new non-unionised plants to an older unionised establishment (Gunnigle *et al.* 2009).

A country can have a low rate of union density and high collective bargaining coverage if legislation provides for adequate extension mechanisms. In the Irish case, coverage is high in the public and semi-state sectors. In the public sector, wage agreements are negotiated between the government and the public service executive of ICTU and apply to the entire national public sector workforce. Until 2009 in most of the Irish

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4. The reason for this discrepancy arises from using two different sources of data. For a detailed discussion of the issues related to measuring union density in Ireland see Roche (2008) and Walsh (2015).

5. Walsh's (2015) definition of the public sector includes the following industries: public administration, defence, mandatory social security, health and education. The latter two categories also include the workers of private firms in those industries, but according to the author the trends in density are confirmed even excluding these 'mixed' categories.

private sector there were no extension mechanisms, with two exceptions: registered employment agreements (REAs) and employment regulation orders (EROs). EROs set the wages and working conditions for low paid services, such as catering or cleaning services, while REAs covered mostly the construction and electrical contracting. A report estimated that in 2009 approximately 15 per cent of the employees in the private sector were covered by EROs, while 8 per cent were covered by REAs (Duffy and Walsh 2011).

Although these institutions have been in place since 1946, throughout the 2000s a diverse group of employers demonstrated a clear preference for liberalisation. In 2007, the Irish Hotel Association initiated a legal challenge against the ERO in their industry. The rationale was that the joint labour committee (JLC), the tripartite body in charge of making a recommendation to set an ERO at the Labour Court, was considered to be unlawfully substituting the parliament (the Oireachtas) in the law-making process. Despite this legal challenge, employers and SIPTU reached agreement before going to court and the case was withdrawn (O'Sullivan and Royle 2014). In 2009, a group of fast food businesses, including foreign MNCs such as McDonald's, Subway and Burger King, launched a legal challenge against the EROs using the same rationale as the employers of the hotel federation (O'Brien 2009). In 2011 the High Court upheld the legal challenge, with the effect that the EROs were declared unconstitutional. Following the example of the fast food employers, a group of electrical industry contractors proceeded to challenge the REAs. After the High Court refused to consider the case, the employers appealed to the Supreme Court, which in 2013, applying the same reasoning as the High Court in the case of EROs, ruled REAs unconstitutional. It is worth noting that this ruling occurred at the same time that the Troika were also questioning these wage setting institutions (Maccarrone 2017).

Subsequently, the Fine Gael–Labour government introduced two legislative changes: the Industrial Relations Acts 2012 and 2015. The Industrial Relations Act 2012 reintroduced the EROs, although reducing the number of industries covered and the scope of the conditions set by these institutions, as well as introducing opt-out clauses for employers in financial difficulty. In addition, when setting the EROs, joint labour committees were now asked to consider competitiveness factors such as wage standards in similar industries within the country and the EU more broadly, as well as the possible impact of labour costs on the employment level (Kerr 2014).

The Industrial Relations Act 2015 introduced new Sectoral Employment Orders (SEOs) to substitute the now unconstitutional industrial REAs. The scope of SEOs was restricted compared with that of the REAs, and as in the case of EROs the Act provided opt-out clauses to employers in financial difficulties. Unlike previously, before making the recommendation to institute an SEO, the Labour Court now must take into account several factors, such as the SEO's potential impact on levels of employment in the identified industry, as well as wage competitiveness in the industry, but, in contrast to the 2012 Act, not with regard to other EU countries. The Labour Court must also take into account remuneration in other industries in which workers of the same industrial occupation are employed. Hence, 'considering an SEO in electrical contracting, the Court would have to look at remuneration of electricians in other sectors' (Higgins

2015). At the time of writing, only two new EROs are in place, in the security and contract cleaning industries, but they are not yet found in other large industries where they previously existed, such as retail, hotels and restaurants,<sup>6</sup> while a SEO for the construction industry was finally signed in 2017. Given the reduction in the total number of industries covered by binding wage setting mechanisms and the contemporaneous decrease in union density, we might conclude therefore that coverage has diminished since the crisis.

The reform of industrial wage setting mechanisms was part of the Troika's, comprising the European Commission, the European Central Bank and the IMF, list of suggested supply-side structural reforms during the bailout period. In the first Memorandum of Understanding (MoU) the establishment of a commission for the review of functioning mechanisms was agreed. Through the following MoUs, and the quarterly reviews of the Irish programme, the international institutions closely monitored the reform process (Maccarrone 2017). After two court judgments in 2011 and 2013, the Troika suggested specific indications to be followed throughout the reform process (*ibid.*). For instance, the Troika seemed particularly interested in the provision of opt-out clauses for employers in financial difficulties (Hickland and Dundon 2016), similar to what was asked of other countries under financial conditionalities, such as Portugal and Spain (Marginson and Welz 2015).

The national minimum wage was another policy that the Troika wanted to reform. Statutory minimum wages were introduced in Irish legislation in 2000 within the framework of social partnership in response to a campaign against low-pay work conducted by unions and NGOs (Erne 2006). When discussing the national minimum wage, it was noted that its introduction would have been beneficial for low-paid workers for whom the ERO–REA system did not offer enough protection (Nolan 1993). Initially set at €5.59 per hour, corresponding to 55 per cent of the median industrial wage, the national minimum wage has subsequently been increased several times, usually following negotiations between the social partners as part of the social partnership agreements, or after unilateral government intervention following a recommendation of the Labour Court (Erne 2006).

In the first MoU in 2010, the Troika imposed a reduction of the national minimum wage, claiming that this would boost employment growth.<sup>7</sup> This was later reversed by the new coalition government in 2011 following negotiations with the Troika. The government subsequently raised the national minimum wage, and in January 2018 it was set at €9.55 per hour. In 2015, with the National Minimum Wage Act, the government also created the Low Pay Commission, with representatives of individual employers

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6. Moreover, a group of over 30 employers belonging to security sector recently announced their decision to launch a legal challenge against the new ERO in their industry (see Higgins 2017b).
  7. It should be noted that the literature on the potential negative effect of minimum wages on employment is, at best, inconclusive. For a review of the debate on the topic see Duffy and Walsh (2011). In the case of Ireland, previous studies have found no negative employment effect related to the introduction of a minimum wage (Erne 2006).

and trade unions,<sup>8</sup> aimed at generating recommendations on the level of the national minimum wage to the Minister for Jobs.

A new question added to the Quarterly National Household Survey (QNHS) in 2016 made it possible to estimate that ‘over the three quarters between Q2 and Q4 2016, an average of 10.1 per cent of employees for whom earnings data was reported, earned the National Minimum Wage (NMW) or less’ (CSO 2017). A recently published ETUC policy brief suggests that Ireland is among the 10 EU Member States in which the minimum wage is lower than 50 per cent of the national median wage (ETUC 2017).

To conclude, union density is far more important in Ireland than in many other countries to sustain the coverage of collective bargaining (Regan 2012). Given that union presence is increasingly concentrated in certain sectors of the economy, particularly in the public and the semi-state sector, construction and retail banking, while declining in other industries of the economy, this is likely to constitute a political challenge to the unions’ capacity to extend the benefits of collective agreements to the largest possible share of the workforce.

## Security of bargaining

Security of bargaining refers to the factors that determine the unions’ bargaining role. As should be clear at this point, Irish legislation is unfavourable to the development of collective bargaining. Although the Irish Constitution recognises the right to form an association, including a trade union, Irish legislation is an exception among European countries in that it does not contain a legal right to collective bargaining (Doherty 2016). Although consistent with the voluntarist approach (Doherty 2009), this distinguishes Ireland from other neoliberal economies, such as the United States, which does have such a right in the legislation (Cullinane and Dobbins 2014). This reinforces the conclusion of the previous section about the importance of trade union density in securing the development of collective bargaining. Where unions are strong, collective bargaining is protected, while where they are weak, there is little security of bargaining, given the absence of legal extensions and legal recognition. This section charts the various attempts to address these issues, which were also impacted by a notorious decision of the Supreme Court in 2007 in a case involving the low-cost airline company Ryanair.

At the beginning of the 2000s, the Irish government and the social partners negotiated the Industrial Relations Acts 2001 and 2004, as part of the social partnership agreements, and created a ‘right to bargain’. The idea behind the ‘right to bargain’ was to provide unions with the opportunity to obtain a legally binding determination from the Labour Court regarding pay, conditions of employment and procedures for conflict resolution in firms in which collective bargaining did not take place (Cullinane and Dobbins 2014; Doherty 2016). For unions, the fact that the determinations issued by the Labour Court

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8. The body is technically not purely tripartite, however, as it also includes representatives from academia and civil society and because the rationale used for selecting representatives has been their expertise and not whom they represented (Regan 2017).



would have been legally binding, in contrast to what had been prescribed by previous legislation concerning union recognition,<sup>9</sup> should have constituted an incentive for employers to allow collective bargaining to take place, although this seldom materialised (Cullinane and Dobbins 2014). The legislation of 2001 was informed by the work of a tripartite working group, the ‘High-level Group on Trade Union Recognition’, which also involved representatives of the Industrial Development Authority (IDA), the Irish government agency responsible for attracting FDI. It is well documented that the key obstacle to introducing a legal right to bargaining is the perception among senior policymakers that it would negatively affect the FDI growth model (D’Art and Turner 2005). Throughout this period, all governing centre-right parties agreed with the IDA and actively resisted trade union pressure.

Assessments of the effectiveness of the Industrial Relations Acts of 2001 and 2004 are inconclusive. D’Art and Turner (2003, 2005, 2011) have argued that the laws did little to increase union presence in the workplace and, if anything, legitimised the status of non-union firms. Cullinane and Dobbins (2014) have a more benign assessment, arguing that the legislation provided for an increase in pay and working conditions for workers in non-unionised firms, although the numbers remained modest. Indeed, up to 2007 the Labour Court heard 103 cases, involving 89 different employers (Doherty 2009). Three-quarters of the firms involved were indigenous Irish firms and most of the cases involved workers from low-paid industries, such as retail and security (*ibid.*).

There were some exceptions, however, and the Ryanair case was one of them. After a failed attempt by Ryanair pilots to negotiate collectively with the company, well known for its anti-union stance (see O’Sullivan and Gunnigle 2009), the pilots’ branch of the trade union IMPACT brought a case to the Labour Court, which issued a determination against the company. Ryanair responded that the Labour Court had no jurisdiction to evaluate the case under the existing Industrial Relations Act because company-level collective bargaining was taking place through employee representative committees (O’Sullivan and Gunnigle 2009). IMPACT’s counter-argument, which was accepted by the Labour Court and the High Court, was that such committees do not constitute collective bargaining, because ‘nominees are chosen by management, there are no elections, a person can be a member for only two consecutive years thereby ensuring no stability, and committees do not set their own rules’ (*ibid.*: 260). After the High Court’s ruling, Ryanair appealed to the Supreme Court, which upheld its case. The ruling of the Supreme Court meant that a firm could avoid the procedures set by the Industrial Relations Acts of 2001 and 2004, if it had established an ‘independent’ body composed of employees for bargaining purposes, even without the involvement of trade unions.

The impact of the Supreme Court ruling in favour of Ryanair meant that only four cases were heard under the Industrial Relations Acts of 2001 and 2004 between 2008 and 2012 (Cullinane and Dobbins 2014), making the law practically ineffective. It took a decade before a new law was introduced dealing directly with collective bargaining. It

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9. Throughout the 1980s and the 1990s, the Labour Court often found in favour of union recognition under the previous Industrial Relations Act but given that the orders were not legally binding employers were inclined not to respect them (Cullinane and Dobbins 2014).

was eventually instituted in 2015 under the influence of the minority Labour Party in government, which had committed itself to such legislation in its election manifesto. This was inserted after an intense lobbying activity on the part of the trade unions, which also filed a case at the International Labour Organization.

The new legislation, inserted in the Industrial Relations Act 2015, has consequences for both unions' and employers' strategies. First, when comparing pay and working conditions with other firms in the same industry, the Labour Court must consider non-unionised firms and similar firms outside Ireland. This will make it harder for trade unions to sustain their claims (Sheehan 2015). Second, the new legislation states that the number of workers must not be insignificant with regard to the total number of workers employed (Doherty 2016). On the other hand, and crucially after the Ryanair decision, the law makes it harder for employers to argue that they are already engaging in collective bargaining with a non-union body, by providing stricter criteria for assessing the independence of such 'excepted' bodies.

In the first case under the new law, involving the food company Freshways, the Labour Court backed SIPTU's claim for a pay rise. Interestingly, there was no need for the Court to issue a binding recommendation, as the union and the firm reached a voluntary collective agreement. Hence the union obtained both improved conditions and formal recognition (Sheehan 2017b). More recently, a group of left-wing opposition parties has backed a further amendment to the Industrial Relations Act 2015 to allow a 'right of access' to workplaces for trade unionists. According to Prendergast 'the Bill sought to amend the 2015 Industrial Relations Act to provide a statutory basis (2017) allowing trade unions access to their members in the workplace for purposes related to the employment of their members, for purposes related to the union's business or both'. Both the ruling party centre-right Fine Gael and the main opposition centre-right party, Fianna Fáil, however, refused to support the Bill, making its future unclear (*ibid.*).

To conclude, when compared with other countries, security of bargaining in Ireland is low. The voluntarist nature of Irish industrial relations, combined with the liberal character of its economy and the relevance of FDI, have resulted in a framework in which there is no statutory recognition of trade unions. It should also be added that, in contrast to countries adopting the so-called Ghent system, there is no relationship between the social protection regime and collective bargaining. The legislation introduced to tackle the issue of union recognition at the beginning of the 2000s led to some, albeit limited, results which were abruptly interrupted by the Supreme Court judgment in 2007. The new legislation introduced in 2015 could lead to some improvement in this respect, but the number of cases under the new legislation is still too low to give a definite answer. The difficulties of the Bill in trying to provide trade unions with a 'right of access' in the workplace show that the issues are far from being resolved.

## **Level of bargaining**

From 1987 to 2009, the landscape of Irish industrial relations was dominated by social partnership, a series of centralised wage bargaining agreements between the



government and peak labour and employers' organisations (see Table 15.2).<sup>10</sup> From the first agreement in 1987, the Programme for National Recovery, the social partners negotiated seven pacts through the Prime Minister's Office (Regan 2016). This process collapsed in 2009 during the economic crisis, which shifted the locus of policymaking power to the Department of Finance. These agreements were not only meant to regulate wage growth, but embraced a variety of public policy areas, which gradually increased over time (Regan 2016). Such was the degree of centralisation of pay bargaining when compared with other social pacts, that some industrial relations scholars have defined the social partnership era as one of 'organised centralisation' (Roche 2007: 402). As a first response to the crisis, the social partners renegotiated 'Towards 2016', agreeing on pay pauses in both the public and the private sectors (Regan 2012). At the end of 2009, however, when the government unilaterally imposed a second pay cut in the amount of almost €1.3 billion, the social partnership process collapsed (McDonough and Dundon 2010; Culpepper and Regan 2014). Since then, one can distinguish two forms of collective bargaining involving the public and the private sector.

Table 15.2 The seven social partnership agreements

Name of the agreement	Period covered
Programme for National Recovery (PNR)	1987–1990
Programme for Economic and Social Progress (PESP)	1991–1994
Programme for Competitiveness and Work (PCW)	1994–1996
Partnership 2000 (P2000)	1997–2000
Programme for Prosperity and Fairness (PPF)	2000–2003
Sustaining Progress	2003–2005
Towards 2016	2006–2016*

Note: \* terminated in 2009. Source: Authors' own compilation.

In the public sector, after having imposed the two unilateral wage cuts in 2008 and 2009, collective bargaining re-emerged, as reflected in the Croke Park (2010) and Haddington Road (2013) agreements. These concessionary agreements were negotiated through the Department of Public Expenditure and Reform with the public service committee of ICTU. This arrangement constituted a core part of the government's austerity adjustment. At the core these agreements were a combination of pay cuts and pay freezes, productivity increases, staff number cuts and retention of industrial peace in return for no compulsory redundancies for permanent staff. With the beginning of the recovery, the Lansdowne Road agreement (2015) and the Public Service Stability agreement (2018) provided for an initial phased restoration of pay.

The institutional heritage of social partnership played a role in facilitating the emergence of these centralised agreements (Regan 2017). Having said that, some qualifications are

10. Parties to these agreements included some farmers' associations as well as, from the second agreement onward, the Construction Federation Industry (which is outside IBEC). From the fourth agreement ('Partnership 2000') NGOs and civil society organisations were also involved as a 'social pillar' to respond to criticisms of the lack of social policies in social partnership agreements (see O'Connor 2011).

needed concerning the terms under which the negotiations happened. Although the Croke Park agreement had excluded further wage cuts over the period 2010–2014, in 2013 the government proposed to renegotiate the agreement, seeking additional cuts of €1 billion (Erne 2013). Even though the leadership of the two largest unions in the public sector, SIPTU and IMPACT, campaigned for a ‘yes’ vote, most rank-and-file members of SIPTU rejected the agreement (Erne 2013). The vote of SIPTU members, combined with that of members of other unions, led to a rejection of the agreement.

The government then proposed a new agreement, ‘Haddington Road’, while at the same time introducing a new Financial Emergency Measures in the Public Interest Act (FEMPI), which provided that ‘members of unions that refuse to sign up to the Haddington Road Agreement will simply have their pay cut, and terms and conditions of employment altered, by legislation’ (Doherty 2014: 17). At the same time, the government started a series of separate bilateral negotiations on the new agreement with each union (Sheehan 2013). Using bilateral bargaining and the threat of unilateral legislation, the government was eventually able to secure an agreement, which was voted on and approved by the majority of union members, including those from most of the unions that originally voted ‘no’ to ‘Croke Park II’ (Szabó 2016).<sup>11</sup>

In the private sector, those industries covered by industrial wage setting mechanisms underwent some changes after the two court judgments that struck down EROs and REAs. In security and cleaning employers and unions signed new sectoral agreements. Employers were keen to maintain industrial wage setting mechanisms and thus avoid social dumping, given that these industries are heavily based on competitive public tenders (Higgins 2017). To reinforce our previous point about the importance of trade union density for collective bargaining in Ireland, these are also industries in which union density is stronger vis-à-vis other industries covered by EROs.<sup>12</sup> Indeed, the signing of a new agreement for cleaning was reached after a successful union campaign (Whitston 2014; Geary and Gamwell 2017). Also in construction, in which large firms favour industry-wide agreements, a new SEO was agreed in 2017 to replace the old REA. In important industries such as hotels and restaurants industrial agreements have not been replaced, however, because of the employers’ hostility.

In the rest of semi-state and private sector, bargaining has been decentralised to the firm level after the fall of social partnership. Recent empirical work shows that this was not a case of ‘disorganised decentralisation’ (Roche and Gormley 2017a, 2017b). Immediately after the demise of social partnership, ICTU and IBEC signed a protocol for the private sector ‘that prioritised job retention, competitiveness and orderly dispute resolution’ (Roche and Gormley 2017b: 6). Analysing almost 600 pay deals signed between 2011 and 2016 in manufacturing, retail and financial services Roche and Gormley (2017a, 2017b) demonstrated that a form of coordinated pattern bargaining emerged after the first years of ‘concession bargaining’ at the beginning of the crisis. The authors show that from 2011 SIPTU’s manufacturing division started to target employers in

11. Among the exceptions is the Association of Secondary School Teachers in Ireland (ASTI), which also rejected the recent extension of the Lansdowne Road agreement.

12. Authors’ conversation with a SIPTU officer, June 2017.

manufacturing that were relatively sheltered from the effect of the crisis, pursuing a strategy of wage increases of approximately 2 per cent a year. The rationale behind this norm was that 2 per cent was an affordable rate; it respected the European Central Bank's (ECB) inflation target and was consistent with the trends in similar industries in other EU countries, particularly the German chemical industry (Hickland and Dundon 2016; Roche and Gormley 2017a).

SIPTU's norm of 2 per cent has since been followed by other unions, such as Mandate, TEEU, the Financial Service Union (FSU) and Unite, extending over more firms and industries, outside manufacturing. The 2 per cent norm also became a benchmark in non-union firms and has since been 'institutionalised' in various Labour Court recommendations. In 2016, after a series of industrial disputes in transport that challenged the norm, ICTU announced a new 4 per cent target for 2017 (Roche and Gormley 2017a). Roche and Gormley's analysis also points to some positive effects for unions outside the social partnership framework, in terms of increased involvement of shop stewards and local union members. This leads us to the next section on the depth of bargaining.

## Depth of bargaining

Depth of bargaining refers to the extent of involvement of local employee representatives in the formulation of claims and the implementation of agreements. The social partnership era was a clear case of centralised wage bargaining, with limited involvement of local workplace unions and managers. The negotiations took place among the leadership of peak-level organisations of employers and labour, together with government officials. Although one might expect that corporatist agreements would also be able to facilitate the emergence of workplace organisations, such as works councils, the Irish social pacts were more of an attempt to compensate for their absence. Attempts to develop workplace partnership agreements occurred in the mid-1990s, when the fourth social partnership agreement, Partnership 2000, provided a framework to incentivise employers and unions to engage in such workplace arrangement (Roche and Teague 2014). The framework was remarkably loose for the private sector, leaving firms 'complete autonomy to pursue corporate strategies of their choosing at the company level' (Teague and Donaghey 2009: 67). The number of firms that adopted workplace partnership agreements, however, remained low (Roche and Teague 2014). In the public sector, the use of local partnership agreements was more widespread, although its outcomes for employees have been contested. A study of workplace partnership in a major local council developed by Doherty and Erne (2010) showed that local partnership was used more to introduce market-based 'modernising' reforms rather than to reach shared decisions. With the end of social partnership both private and public local partnership lost importance. Furthermore, despite the 2002 EU Employee Information and Consultation Directive, the impact of the growing statutory rights for employee voice remained very limited in Ireland, notably due to regulatory loopholes that enabled employers to devise their own 'counterbalancing forms of (pseudo) consultation' (Dundon *et al.* 2006: 492).

On the other hand, as described in the previous section, the effect of the end of national wage bargaining and the decentralisation of bargaining at the firm level is increased involvement of local employee representatives in the private sector in the formulation of claims and the implementation of agreements. In light of this, many union leaders, and activists, welcome the end of social partnership, as it potentially ushers in a new era of workplace activism. The implication, however, is that ICTU, as a confederation, has a reduced role to play in national industrial relations. Moreover, it should be noted that this renewed involvement of local members has not (yet) been translated into an increase in union density in the private sector. Rather it is a case of unions embedding their local strategies into the firms and industries where they continue to be strong.

Employers also welcomed the end of social partnership and the decentralisation of collective bargaining in the private sector because, in their view, this allows for wages to grow in line with productivity (Roche and Gormley 2017a). After the end of social partnership, IBEC downsized its industrial relations unit, although it continues to assist individual employers in collective bargaining disputes. In unionised industries the emergence of pattern bargaining was supported by the employers, as it ‘afforded them considerable flexibility to seek productivity concessions and to conclude deals of varying duration’ (Roche and Gormley 2017a: 19). In non-unionised firms, at which collective bargaining does not take place, conditions are mostly set by local HR in a market-driven process. In industries affected by the reform of extension mechanisms, employers’ preferences have varied considerably: while in hotels and catering they have opposed the return of industrial wage-setting to cut labour costs, in industries strongly characterised by tendering for contracts, such as construction and cleaning, employers favour them as they avoid a race to the bottom.

As emerged from the discussion on the Croke Park II agreement (see above), Irish public sector unions are organised in such a way that rank-and-file members may be able to change decisions agreed by leaders at national level through votes on public sector agreements. Similarly, local members have a certain autonomy vis-à-vis the central level as regards strike action. Although union executives have the right to not support an industrial action balloted by local members,<sup>13</sup> usually this does not happen. A notable example is the strike involving the tram drivers of Transdev, a subsidiary of the French multinational Veolia, which manages the ‘Luas’ tram service in Dublin. Although tensions emerged between local shop stewards and SIPTU’s officials (Sheehan 2016), the Luas strike was nonetheless supported by the union’s Executive Council.

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

The degree of control of collective bargaining refers to the extent to which the actual terms and conditions of employment correspond to the terms and conditions originally agreed by collective bargaining.

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13. See, for instance, the Rules of SIPTU, p. 41: ‘The National Executive Council shall have full discretion in relation to organising, participating in, sanctioning or supporting a strike or other industrial action notwithstanding that the majority of those voting in the ballot (...) favour such strike or other industrial action.’

One of the features of centralised wage bargaining in Ireland during the 1970s was the increased level of upward pay drift at firm level (Roche 2007). Conversely, during the social partnership era, the degree of control exercised by national agreements was high, with limited scope for workplace pay bargaining and limited pay drift (*ibid.*). If anything, the degree of control increased throughout the various social partnership agreements, after the first attempts at decentralisation at the firm level in the 1990s for the public and private sector led to deviations from the trends prescribed at national level (*ibid.*). As described in the previous section, with the end of social partnership, collective bargaining has remained centralised at the national level for the public sector and has been decentralised to the firm level for the private sector, with few exceptions. The analysis of Roche and Gormley (2017a) suggests that in the latter a pattern of bargaining around a 2 per cent norm has emerged since 2011, and that the norm was respected until 2017, although wage drift might now emerge as a result of the accelerated recovery.

Because collective agreements in Ireland are not legally binding, except for the REAs, EROs and SEOs discussed above, possible breaches of the terms set by collective bargaining are usually solved by the parties through negotiation, which can also involve industrial action. The state provides a system of conflict resolution for collective disputes through the Labour Court and the Workplace Relations Commission (WRC). The WRC was established in 2015 and subsumed the functions of a number of conflict resolution bodies in an attempt to simplify the state's industrial relations machinery (Regan 2017).

It is worth mentioning how the labour inspectorate, the National Employment Rights Authority (NERA), now embedded in the WRC, came to be established. After the introduction of the minimum wage in 2000, the unions reported several cases of employers breaching the legislation (Golden 2016). In 2005, after two particularly serious cases involving the companies GAMA and Irish Ferries, the Irish government reacted by creating the NERA and agreed with the social partners to increase the number of labour inspectors.<sup>14</sup> Among its competences, NERA oversaw the compliance of employers also with the terms set by the industrial wage setting mechanisms, EROs and REAs. This improved enforcement of the regulation because compliance with the terms set by joint labour committees was arguably a major trigger for the constitutional challenge to EROs (O'Sullivan and Royle 2014). Indeed, in 2009 79 per cent of employers inspected in catering were found to be non-compliant with joint labour committee terms (*ibid.*). Such issues are yet to be solved, as 37 per cent of employers inspected were found to be in breach of employment legislation to some extent in 2016 (WRC 2016: 25). Moreover, in 2015 a labour inspector logged claims under the Protected Disclosures Act alleging 'systematic favouritism to employers in the WRC'. These allegations, however, were not substantiated by the former IBEC director, who was chosen by the Department of Business, Enterprise and Innovation to review them (Smith 2019).

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14. The Turkish company GAMA, which had been awarded several public tenders, was found to be paying its Turkish employee a wage well below the national minimum wage. In the case of Irish Ferries, the company announced its intention to substitute its Irish workers with eastern European workers, who would have been paid a wage of 3.60€ per hour. The plan was dismissed only after a huge demonstration and the unions' refusal to take part in negotiations on the new social partnership agreement until the issue was solved.

## Scope of agreements

One of the defining characteristics of social partnership was the number of topics included in these agreements, which extended well beyond wage setting to cover broad areas of economic and social policy. The policies evolved over time, and generally reflected the electoral and political interests of the government of the day. Whereas the first pacts were concerned with the management of the economic crisis during the 1980s, and with meeting the criteria to join the Economic and Monetary Union, the following pacts were a response to new problems associated with the strong economic growth of the late 1990s, ranging from improving the skills of the workforce to rising housing prices. Crucially, all the agreements, apart from Sustaining Progress (2003–2005), involved a *quid pro quo*, including income tax breaks, increases in social spending and, in particular, increased capital expenditure (Regan 2012; Roche 2007). While these tax reductions were not specified in the pay component of the social pacts in the 2000s, they ‘lubricated’ the deal and enabled union leaders to sell the agreements to their members.

With the end of social partnership, the government only negotiates as an employer with public sector unions, concerning pay, pension and workplace reforms (Regan 2016). Even the more recent agreements focused only on restoring pay levels. As for the private sector, Hickland and Dundon (2016) find a reduction in the scope of collective bargaining agreements within manufacturing, which are often limited to concessionary bargaining. The analysis of Roche and Gormley (2017a) of the wider private sector contrasts with this view. While acknowledging the essential concessionary role of collective bargaining between 2008 and 2010, the authors find that since 2011 almost one-third of agreements signed have involved non-pay benefits of various kinds, such as reduced hours/extra leave or pension-related payments. Finally, the process of reforming the only industrial wage-setting mechanisms in Irish legislation, EROs and REAs, has also led a reduction of their scope. After the Industrial Relations Act 2012, Joint Labour Committees can no longer set working conditions already provided by general legislation, such as rest breaks and redundancy payments (Whitston 2014). The new SEOs apply only to remuneration, sick pay schemes or pension schemes (Kerr 2015: 311), while the REAs could include various provisions, such as health insurance, production procedures, disciplinary procedures and working hours.

## Conclusions

What conclusions can be drawn from the trajectory of collective bargaining in Ireland over the past 20 years or so? The most important institutional change brought by the recession is undoubtedly the end of social partnership, which had dominated the Irish industrial relations scene since 1987. The picture is now one in which national bipartite agreements take place, but only in the public sector and with significantly less scope than in the past (Regan 2017). In addition, the government has shown a willingness to impose unilateral legislation when bipartite agreements have been rejected by a majority of union members (Doherty 2016). In the unionised private sector, bargaining has been decentralised to the firm level, but until 2017 collective agreements could



perhaps be described as a variant of ‘pattern bargaining’, due to the coordinated pay strategy of some of the larger Irish unions (Roche and Gormley 2017a). Despite relatively strong economic growth, a return to centralised tripartite bargaining in the form of the social partnership seems unlikely, as the ruling centre-right Fine Gael government has consistently ruled it out, and IBEC have reduced the industrial relations function of their organisation. Given the ‘Faustian’ character of social partnership agreements (D’Art and Turner 2011) and the potential for increased members’ involvement outside centralised bargaining, even for the unions a return to social partnership may not be the most favourable option.

Despite the voluntarist tradition of Irish industrial relations, the role played by state regulation throughout the past fifteen years has been significant. First, several pieces of legislation aimed at increasing individual workers’ rights have been introduced, mostly in response to EU directives. Second, a statutory minimum wage has been enacted and some industrial wage-setting mechanisms have been reintroduced. Third, the Industrial Relations Act 2015 attempted to address the problem of union recognition, after the Supreme Court’s judgment in 2007 made the previous legislation dealing with the issue ineffective. Finally, the Workplace Relations Act 2015 attempted to simplify the dispute resolution system. These developments suggest a continuation of the shift towards a rights-based system, in which the roles of collective bargaining and collective labour law are reduced in favour of legally binding and individual dispute resolution mechanisms (Doherty 2016).

The most worrying aspect for Irish trade unions is the sharp decline in union density, which started during the 1990s (Roche 2008) and continued into the 2000s. Union density remains significantly higher in the public than in the private sector, and is declining in key industries dominated by multinationals, which are adopting union avoidance practices, although some important manufacturers, such as Apple, are unionised. Other explanations for the fall in unionisation include changing attitudes and public opinion toward unions (Culpepper and Regan 2014); the lack of an enforceable legal framework for union recognition; the increase in individual employment rights ‘displacing’ the role of unions; and the passive attitude of some trade unions towards recruitment during the years of social partnership. To this should be added structural factors, such as the relatively higher growth of employment in industries and occupations that are generally associated with lower unionisation rates (Ebbinghaus 2002; Roche 2008).

Since the crisis, and subsequent adjustment, unions have aimed at institutional renewal, setting up organising departments and increasing workplace action, both in the service and manufacturing industries. Examples of this include a successful campaign in cleaning to re-establish the industrial wage agreement (Geary and Gamwell 2017), as well as the coordinated bargaining strategy that started in manufacturing, and was then extended to service industries, such as retail and banking (Roche and Gormley 2017a). An important recent development involved Ryanair, where pilots organised through the Irish Airline Pilots’ Association forced the company to pledge to recognise the union thanks to a transnationally coordinated campaign. As this chapter has argued throughout, especially after the end of social partnership, union density matters in the Irish context, as state support for collective bargaining institutions is low. Whether these

initiatives will be able to reverse the trend of union density and collective bargaining coverage as it has developed over the past 20 years is the key challenge for Irish trade unions.

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## Abbreviations

CSO	Central Statistics Office
CPSU	Civil and Public Services Union
ERO	Employment Regulation Order
FSU	Financial Service Union
FDI	Foreign direct investment
IDA	Industrial Development Authority
IBEC	Irish Business and Employers' Confederation
ICT	Information and Communication Technology
ICTU	Irish Congress of Trade Unions
IMPACT	Irish Municipal, Public and Civil Trade Union
JLC	Joint labour committee
MoU	Memorandum of understanding
MNC	Multinational company
NERA	National Employment Rights Authority
NERI	Nevin Economic Research Institute
PSEU	Public Service Executive Union
QNHS	Quarterly National Household Survey
REA	Registered Employment Agreement
SEO	Sectoral Employment Order
SIPTU	Services, Industrial, Professional and Technical Union
TEEU	Technical Engineering and Electrical Union
WRC	Workplace Relations Commission



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## Chapter 16

# Italy: institutionalisation and resilience in a changing economic and political environment

**Roberto Pedersini**

Industrial relations and collective bargaining have traditionally been regarded as a key part of the employment regulation system in Italy (see Table 16.1). The labour representation system was strengthened by the mobilisation of the late 1960s, which took place first and foremost in metalworking. In the early 1970s, the Italian labour relations landscape included strong confederations, well-established industry federations responsible for the pivotal industrial agreements and renewed workplace representation structures, with a broad legitimisation basis and an important role in organising workers, administering industry-wide collective agreements and negotiating plant-level deals. The divisions between the three major trade union confederations, the Italian General Confederation of Labour (Confederazione Generale Italiana del Lavoro, CGIL), the Italian Confederation of Workers' Trade Unions (Confederazione Italiana Sindacati Lavoratori, CISL) and the Italian Union of Labour (Unione Italiana del Lavoro, UIL) in terms of ideology and political orientation did not hamper cooperation at the bargaining table and at workplace level. A long period of 'joint action' was inaugurated and the idea of establishing unitary organisations gained momentum in the 1970s, with the notable examples of the Federation of Metalworkers (Federazione Lavoratori Metalmeccanici, FLM) and the Unitary Federation of Chemical Workers (Federazione Unitaria Lavoratori Chimici, FULC).

In this period, employer representation was similarly well rooted (Cella and Treu 1998; Lanzalaco 1998). In the private sector, the leading role played by the General Confederation of Italian Industry (Confederazione Generale dell'Industria Italiana, Confindustria) in cross-industry employment relations after the Second World War was supplemented by the consolidation of industrial associations. Public employers in manufacturing, such as metalworking, telecommunications and electronics, as well as in the petroleum industry were also important. They had their own associations, the Employer Associations of State-owned Enterprises (Associazione Sindacale Intersind, Intersind) and the Employer Association of Petroleum Enterprises (Associazione Sindacale Aziende Petroliere, ASAP), respectively, and often played a leading role in industrial relations, for instance in the introduction of decentralised bargaining in the 1960s and information and participation rights in the 1970s and the 1980s.

During the early 1970s, tripartite relations were not institutionalised, but the mobilisation capacity of trade unions and their links with the main parties in the governing coalitions and in the opposition alike made them important actors in the political arena, while governments were often keen to act as mediators when bipartite relations became tense or reach a stalemate. Efforts to establish a tripartite framework for political exchange

intensified during the late 1970s and early 1980s, but relations with the government and among the social partners remained unstable (Carrieri and Donolo 1987).

The economic crisis, industrial restructuring and political tensions in the 1970s and 1980s put the system under strain, but, despite the re-emergence of divisions between the major confederations, notably on the reform of the sliding-scale mechanisms in the mid-1980s, social partners and industrial relations preserved their key position in regulating employment relations at all levels, with some distinctions between the central level, where divisions remained important, and the decentralised company level, where cooperation and pragmatism prevailed, leading to a form of 'hidden micro-concertation' of industrial reorganisation (Regini 1995: 111–26; Contarino 1998).

The 1990s were marked by a number of important tripartite social pacts aimed at restoring macroeconomic stability (Baccaro *et al.* 2003; Cella 1995; Giugni 2003; Regini 1997) and particularly at reducing inflation (1992 and 1993), ensuring the viability of the pension system (1995, with an accord between the government and unions only), reforming the labour market (1996) and institutionalising tripartite concertation (1998).

Compared with the previous decade, industrial relations in the 2000s were more problematic, for two reasons. First, the inclusion of collective bargaining in the incomes policy framework steered by the 'planned inflation rate' ensured a system of wage restraint that was particularly stringent because the government used the threshold of collective pay rises to drive the price index down. Incomes policy was successful, as inflation decreased and converged with the Maastricht criteria, but it led to the erosion of real wage levels because bipartite negotiations could not fill the systematic gap between actual and planned inflation. Trade unions grew progressively dissatisfied with such a regulatory framework and pressure for higher pay rises strengthened, especially in industries such as metalworking, where demands for distributing average industrial productivity gains emerged.

Second, the centre-right governments led by Silvio Berlusconi (2001–2006 and 2008–2011) introduced a new stance on social concertation, which reasserted the government's prerogative in labour and social policies. On this view, tripartite agreements on reforms should not be considered necessary and thus no social partner can hold a veto. Agreements with only some social partner organisations are possible and effective, while the government may decide autonomously on matters covered by 'social dialogue'. This new approach led to the 2002 'Pact for Italy', which was not signed by CGIL. The pact envisaged a number of labour market measures, which were only partly implemented. The highly controversial partial and temporary suspension of the rules on reinstatement in cases of unfair individual dismissal, for example, was never introduced.

These two sources of tensions became particularly apparent in metalworking, which had long been regarded as the key and pace-setting industry for employment relations in Italy. Divisions between the three major industry-wide trade union organisations emerged in the negotiations over the industrial agreement renewals. FIOM-CGIL did

Table 16.1 Principal characteristics of collective bargaining in Italy

Key features	2000	2016/2018
Actors entitled to collective bargaining	All trade unions and employer associations. They are ordinary private law associations with no specific establishment or registration requirements.	Same as before. Cross-industry agreements introduced rules on representativeness for unions and envisaged the possibility of extending them to employer associations. The implementation of representativeness rules for trade unions is still under way in early 2019. No legal requirements have been introduced.
Importance of bargaining levels	Industrial agreements provide the main regulatory framework for basic wage rates, which must be defined in accordance with the incomes policy parameter of the 'planned inflation rate' and normative conditions (until 2008). Decentralised deals, especially at company level, cover the implementation of industrial rules and their adaptation to local conditions. They also cover performance-related pay, which should distribute productivity gains generated at workplace level.	Industrial bargaining retains its key importance for both basic wage rates and normative conditions. Wage developments are now linked to actual inflation, with a view to preserving their purchasing power. New possibilities for 'opening clauses' were introduced by cross-industry agreements (since 2009), with a coordination role for industrial agreements and their signatory parties. A legislative measure passed in the summer of 2011, during the sovereign debt crisis, now allows derogation from industrial agreements and partly from legislation by local deals, with no specific coordination requirement.
Favourability principle/derogation possibilities	No legal favourability principle, but coordination rules introduced by collective agreements with weak enforcement capacity, as jurisprudence favours bargaining autonomy at the various levels. No derogations are possible for basic wage rates, which are protected by the prevailing jurisprudential interpretation of Art. 36 of the Italian Constitution on fair remuneration.	The lack of a legal favourability principle is now sanctioned by Art. 8 of decree law 138/2011. The protection of basic wage rates remains unaltered.
Collective bargaining coverage (%)	Industrial agreements: around 90% Decentralised agreements: around 30%.	Same as before
Extension mechanism (or functional equivalent)	No formal extension mechanism. For basic wage rates only, the prevailing jurisprudential interpretation of Art. 36 of the Italian Constitution on fair remuneration identifies collectively-agreed minimum wage rates as the pay floor.	Same as before
Trade union density (%)	35	37
Employers' association rate (%)	62	56

Source: Appendix A1.

not sign the industry-wide deals in 2003 and 2009. Moreover, FIOM took the lead on many occasions in publicly criticising the government's initiatives and reinforced its antagonistic approach within the trade union movement.



Among the most controversial issues that marked industrial relations developments in the 2000s was collective bargaining decentralisation, with the potential erosion of the binding role of the industrial agreement and further reforms of the labour market. The first trend was accompanied by a number of developments in both collective bargaining and legal regulation. Cross-industry agreements on the reform of the bargaining structure (January 2009) and on competitiveness (November 2012) provided more scope for flexibility and derogations at decentralised level. Neither agreement was signed by CGIL because of this shift towards decentralisation. Between 2011 and 2014, however, CGIL, CISL and UIL signed, with Confindustria, a number of cross-industry agreements on representativeness, which comprised rules on the validity of derogatory decentralised deals, within a framework of vertical coordination.

Particularly significant for the collective bargaining structure was the dispute over industrial reorganisation at Fiat in 2010 and 2011, which led to the establishment of a separate group-level collective bargaining system outside metalworking in 2012 (Corazza 2016). Finally, the controversial legislation on derogations through local agreements (Art. 8 of decree-law 138/2011) introduced the legal possibility of derogating industrial collective agreements and, within certain limits, legislation. This provision legally established the autonomy of the different bargaining levels, a principle already supported by Italian jurisprudence. Without a favourability principle, coordination is left to bipartite rules and the social partners' organisational capacity.

In summary, since 2000, the environment of industrial relations in Italy has changed significantly, although the basic institutional features are relatively stable (see Table 16.1). First, the political climate moved from pro-union to neutral, with some growing criticism of the role supposedly played by trade unions in labour market segmentation and in the disparities in protection levels. In policymaking, social concertation has been replaced mainly by governments' unilateralism (Colombo and Regalia 2016). Second, the economic difficulties experienced by firms and prices verging on deflation put great pressure on collective bargaining, with a number of difficult agreement renewals. The 'systemic opt-out' pursued by Fiat, which left the established industrial representation and bargaining system, although it has not become a model, certainly shows the importance that growing international competition can play for collective employment relations, especially for larger companies, which have the resources and capabilities to pursue independent strategies.

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

In the early 2000s, Italian industrial relations remained anchored to the traditional system of social partner self-regulation. State intervention was limited and focused mainly on promotional measures of 'admission', with some 'corrective' interventions to achieve collective goals (Bordogna and Cella 1999), as in the case of the constraints imposed on wage bargaining by the incomes policy framework. Voluntarism still held sway, although under-institutionalisation had been remedied by specialisation and coordination rules introduced by the July 1993 tripartite agreement.

The same agreement had confirmed a long-lasting feature of the Italian representation system: the combination of bargaining and information and consultation entitlements in a single workplace structure. Following the model of the 'single channel' of representation, the July 1993 tripartite agreement extended and further detailed the representation system formerly envisaged by a 1991 framework deal signed by CGIL, CISL and UIL, which had introduced the Unitary Trade Union Workplace Representation Structure (*Rappresentanza Sindacale Unitaria*, RSU) as the general workplace representation body. The RSU is elected by all workers at an establishment on trade union lists presented by the organisations' signatories to the industrial agreement applied in the workplace and by other unions with at least 5 per cent support in the relevant establishment. The July 1993 tripartite agreement provided that one-third of the seats be reserved for the signatories of the industrial agreement applied in the establishment, as a means of enhancing coordination between industry and workplace levels. CGIL, CISL and UIL had committed to distributing such seats among themselves equally in order to strengthen inter-union solidarity. This reserved quota was abolished by the January 2014 joint text on representation signed by Confindustria, CGIL, CISL and UIL. Despite this change, the RSU remains an important organisational element in the overall coordination of the bargaining system.

Representative pluralism is a distinctive feature of the Italian system, which comprises among the highest number of peak associations in Europe, on both sides of industry (Pedersini and Welz 2014). The division between the three major trade union confederations follows political and cultural lines, with CGIL associated with the socialist and communist tradition, CISL with the social-Christian tradition and UIL with social democracy. Besides the three major confederations, independent unionism is widespread and related mainly to occupational unions and the public sector, often both at the same time. Independent unions are present in the private sector and in manufacturing. In manufacturing, probably the major example is the Independent Trade Union of Metalworkers and Related Industries (*Sindacato Autonomo Metalmeccanici e Industrie Collegate*, FISMIC), originally established as a company-level union in the Fiat car company in the 1950s and nowadays a signatory of the Fiat Group (FCA-CNH-Ferrari) first-level agreement, an adherent signatory of the metalworking industry agreement, as well as present in other industries.

There are a number of peak independent union confederations, including the General Union of Labour (*Unione Generale del Lavoro*, UGL) which can be associated with the conservative corporatist tradition, the Italian Confederation of Independent Workers' Trade Unions (*Confederazione Italiana Sindacati Autonomi Lavoratori*, CISAL) and the General Confederation of Independent Workers' Trade Unions (*Confederazione Generale dei Sindacati Autonomi dei Lavoratori*, CONFSAL), two confederations of traditional independent unions, and the Rank-and-file Workers' Union (*Unione Sindacale di Base*, USB), a radical left-wing confederation of grassroots unionism.

In the public sector, where the assessment of representativeness is formally required by legislation, with a 5 per cent threshold of the mean between the membership and the electoral results, as many as nine confederations were deemed representative for the 2016–2018 period. The latest elections for RSUs in public administration were

Table 16.2 List of employers' associations in Italy

Name	Full name	Organisational domain
Confindustria	Confederazione Generale dell'Industria Italiana (General Confederation of Italian Industry)	General representation of enterprises
Confcommercio	Confederazione Generale Italiana delle Imprese, delle Attività Professionali e del Lavoro Autonomo (Italian General Confederation of Enterprises, Professions and Self-Employment)	Particularly present in commerce, tourism and hospitality
Confesercenti	Confederazione Italiana Imprese Commerciali, Turistiche e dei Servizi (Italian Confederation of Trade, Tourism and Service Enterprises)	Particularly present in commerce, tourism and hospitality
Confartigianato	Formerly, Confederazione Generale Italiana dell'Artigianato (Italian General Confederation of Artisanal Enterprises), now Confartigianato-Imprese (Confartigianato-Enterprises)	Artisanal enterprises
CAN	Confederazione Nazionale dell'Artigianato e della Piccola e Media Impresa (National Confederation of Artisanal and Small and Medium-sized Enterprises)	Artisanal enterprises
Casartigiani	Confederazione Autonoma Sindacati Artigiani (Independent Confederation of Artisanal Trades)	Artisanal enterprises
Legacoop	Lega Nazionale delle Cooperative e Mutue (National League of Cooperatives and Mutual Organisations)	Cooperatives
Confcooperative	Confederazione Cooperative Italiane (Confederation of Italian Cooperatives)	Cooperatives
AGCI	Associazione Generale delle Cooperative Italiane (General Association of Italian Cooperatives)	Cooperatives
CONFAPI	Confederazione Italiana della Piccola e Media Industria private (Italian Confederation of Small and Medium-sized Private Enterprises)	Small- and medium-sized companies
CONFIMI INDUSTRIA	Confederazione dell'Industria Manifatturiera Italiana e dell'Impresa Privata (Confederation of Italian Manufacturing and Private Enterprises)	Private enterprises in various sectors

Source: Author's compilation.

held in April 2018. According to the first unofficial data published by the public sector trade union federations the unions affiliated to the three major confederations received some 70 per cent of the votes cast (ARAN 2019). In the private sector, although present, independent unions are far less important, especially in terms of seats in RSUs.

As far as the employers are concerned, the specialisation of representation, as well as traditional divisions along ideological lines, have contributed to shaping a pluralistic landscape. While Confindustria associates firms of all sizes and industries, other associations organise specific types of enterprises, as outlined in Table 16.2.

In recent years, two opposite trends have developed. First, traditional divisions based on ideological orientations faded away, as the political system was marked by the transformation or even dissolution of former major parties, such as the Christian Democrats (Democrazia Cristiana, DC), the Italian Communist Party (Partito Comunista Italiano, PCI) and the Italian Socialist Party (Partito Socialista Italiano, PSI), following the ‘clean hands’ (‘Mani pulite’) scandals and investigations of the 1990s. In this direction, the fall of the Berlin Wall and the start of the transition to democracy and market economy of the former Soviet bloc played an important role too. The coming closer of the various organisations later led to the establishment of cartel alliances within the remit of SME representation, with the creation of R.ETE. Imprese Italia, which combines Confcommercio, Confesercenti, Confartigianato, CNA and Casartigiani, and among cooperative organisations with the establishment of the Alleanza per le Cooperative. Second, more recently, new organisations have emerged with no established representativeness, but nevertheless they are signatories of industrial agreements. This latter development led in late February 2018 to a call for the introduction of representativeness criteria for employers, besides those already introduced for unions, in order to hinder the multiplication of industry-wide agreements signed by organisations with uncertain representativeness and lower protection levels, so-called ‘pirate agreements’ (see below).

The traditional links between unions and political parties have been eroded since the 1960s and are nowadays rather weak. First, the mobilisation and strengthening of the trade union movement of the late 1960s helped labour organisations to assert their independence from their ‘reference’ parties, the PCI and the PSI for CGIL and the DC for CISL (Table 16.3). Second, as already mentioned, the overhaul of the political system that took place during the 1990s led to the disappearance of the reference parties. Today, although a certain closeness remains between the major trade unions and the centre-left of the political spectrum, there are no systematic or tight links and the unions, especially CGIL, have harshly criticised some of the reforms introduced by recent centre-left governments, especially the 2015 Renzi government’s Jobs Act.

Table 16.3 Major trade union confederations in Italy (membership and density 2017)

	Active workers	Retired	Total
CGIL	2,654,730	2,545,000	5,199,730
CISL	2,329,085	1,711,738	4,040,823
UIL	1,682,983	573,091	2,256,074
Total	6,666,798	4,829,829	11,496,627
Density	37.7%	–	–

Source: Websites of CGIL, CISL e UIL, accessed on 19 June 2018.

Table 16.4 Major employer confederations in Italy (enterprises and association rate,\* 2009)

	Firms <50 employees		Firms >50 employees		Total	
	Number	Rate	Number	Rate	Number	Rate
Confindustria	127,791	29.4	21,497	71.9	149,288	32.1
Artisanal firms**	549,368	37.5	–	–	549,368	37.5
Commerce***	321,354	21.6	–	–	321,354	21.6

Notes: \* % members out of total firms in the respective industries; \*\* Confartigianato, CNA, Casartigiani; \*\*\* Concommercio, Confesercenti.

Source: Feltrin and Zan (2014), Table 1.9, p. 83.

Employment relations in public administration have been affected by radical transformations since the early 1990s (Bordogna 2016). Nevertheless, they maintain some distinctive characteristics, which are clearly linked to the public nature of the employer. The first important change took place in 1993, when Legislative Decree 29/1993 introduced the principle that private law provisions will cover public employment, which will also be regulated by individual and collective contracts, thereby substantially reducing the role that legislation had formerly played in this field. Such changes did not eliminate the many specificities that characterised public employment, for instance, in terms of job security, trade union representation and restructuring processes. A number of further reforms followed to clarify and extend the scope of such ‘contractualisation’ of public employment. Altogether, these reforms tried to improve the effectiveness and efficiency of public administration by bringing employment relations in line with those of the private sector. The employer role was entrusted to an independent agency, the Agency for the Representation of Public Administrations in Collective Bargaining (Agenzia per la Rappresentanza Negoziabile delle Pubbliche Amministrazioni, ARAN), in order to better distinguish managerial and political responsibilities. Collective bargaining became the standard way to regulate employment, under strict budget constraints, to keep personnel expenditure under control. The public administration adopted the two-level bargaining structure sanctioned by the July 1993 tripartite agreement for the private sector, including with a view to supporting performance improvements at workplace level. The results of the reform did not fully meet expectations, in terms of either improved performance or better financial control. The persistence of financial pressures, as well as the stronger emphasis on managerial prerogatives in the public administration supported by the centre-right governments, led to a reform that reduced the scope of trade union representation and collective bargaining in 2009. The blockade of collective bargaining, the freeze of individual wages and the cap on turnover introduced in 2010 brought the system almost to a complete halt. The formal relaunch of collective bargaining in 2016 led to the signing of new agreements only at the end of 2017 and beginning of 2018.

## Extent of bargaining

Despite the significant variations in the institutional and relational context of industrial relations and collective bargaining depicted above, the basic collective bargaining indi-

cators remained essentially stable. As far as the extent of bargaining is concerned, in a two-tier system such as Italy's we need to look at the coverage of both industrial collective agreements and second level agreements, which are usually signed at company level.

The first institutional element that we must consider is that no legal extension mechanism is in place for multi-employer agreements. Although Article 39.4 of the Italian Constitution envisages such a possibility, it has never been enacted because it would require the establishment of a formal procedure for registering trade unions and they have always been against legislative intervention in this field.

A well-established jurisprudential argument, however, has consistently adopted minimum wage levels set in industrial agreements as the yardstick to assess the appropriateness of actual wages in case of dispute. Article 36 of the Italian Constitution establishes that 'workers have the right to remuneration commensurate with the quantity and quality of their work and, in all cases, to an adequate remuneration ensuring them and their families a free and dignified existence' (Article 36.1). It is broadly accepted that such jurisprudence has served to promote the voluntary application of collectively-agreed minimum wage rates by employers who are not affiliated to signatory organisations. It should be stressed that this refers to the application of minimum wage rates only, whereas none of the other normative provisions on employment terms and working conditions included in multi-employer deals are covered.

Moreover, the presence of a plurality of employer associations and trade union federations in any specific industry, including a number of independent organisations on both sides, produces a multiplicity of agreements. This provides scope for variations of wages and employment relations in the same industry. For instance, a recent survey carried out by the National Institute of Statistics (Istituto Nazionale di Statistica, ISTAT) identifies 200 'main' industrial collective agreements applied in private sector firms with at least 10 employees (CNEL and ISTAT 2016). The official register of industrial collective agreements maintained by the National Council of the Economy and Labour (Consiglio Nazionale dell'Economia e del Lavoro, CNEL) recorded as many as 884 valid industry agreements in September 2018 (CNEL 2018), with an increase of over 100 per cent since the almost 400 agreements of 2008 (Olini 2016). Such a multiplication of collective agreements has lately brought into the debate the issue of the assessment of employers' representativeness, whereas the administrative difficulties involved in implementing the cross-industry agreements on trade union representativeness are fuelling support for legislation in this area. Indeed, the cross-industry agreement on collective bargaining signed by CGIL, CISL, UIL and Confindustria on 9 March 2018 underlines the need to extend the certification of representativeness to employer associations and aims to stop the proliferation of industrial agreements signed by organisations lacking representativeness.

The absence of official time-series data on the coverage of industrial collective agreements makes it particularly difficult to identify levels and trends in the extent of bargaining. The importance of industrial relations at national level and the abovementioned institutional support provided by the rules on 'appropriate' wage levels have always suggested high coverage rates. Estimates on bargaining coverage in recent decades

have been consistently stable at around 80 per cent of all employees. The stability of employer associational membership at about 60 per cent and of trade union density at around 35 per cent (see Appendix A1); the resilience of industry-wide agreements as the pivotal element of the bargaining structure; and the persistent reference to collective agreements for assessing the appropriateness of wages all indicate continuity in high coverage levels. Recent survey data collected by ISTAT confirm such a view, as they put coverage levels at very high levels. In particular, data collected in 2012–2013 indicate that coverage in private companies (excluding agriculture) with at least 10 employees is above 90 per cent (CNEL and ISTAT 2016).

If the coverage of the economic terms of collective agreements can be regarded as very high – at least above the relatively low threshold of 10 employees in private enterprises – second-level bargaining has far lower coverage and is certainly linked to size. Overall, some 21 per cent of enterprises with at least 10 employees are covered by decentralised agreements. The share of covered enterprises increases from 18 per cent for smaller-sized firms (10–49 employees) to above almost 70 per cent in the larger ones, with at least 500 employees (Table 16.5). If we consider coverage in terms of employees, it has been estimated that decentralised agreements affect some 34 per cent of the overall private sector workforce, including micro-firms below 10 employees and excluding agriculture and household workers (Birindelli 2016).

Because these data are based on a one-off exercise, no longitudinal data are available and no specific comparison is possible. The only reference is a similar study on pay, work flexibility and company-level bargaining carried out by ISTAT on the same reference population in 1995–1996 (ISTAT 2000). At that time, the overall diffusion of company agreements involved 10 per cent of private-sector firms with at least 10 employees, and almost 40 per cent of their respective employees. The current study covers territorial agreements, too, which are particularly important in construction, tourism and the artisanal industry, where SMEs prevail. Because the study puts the coverage of territorial agreements at 8 per cent of enterprises, company agreements involve a slightly larger share of firms compared with 1995–1996, namely 13 per cent compared with 10 per cent. Although the two datasets are not strictly comparable, the results seem to indicate overall stability, with no particular signs of erosion or diffusion of decentralised bargaining.

Table 16.5 Extent of decentralised collective bargaining by size and industry, Italy, 2012–2013 (% of enterprises)

	10–49	50–199	200–499	500 and over	Total
Manufacturing	19.7	46.4	75.6	86.0	25.1
Construction	25.9	41.0	63.8	72.6	27.1
Market services	14.0	32.7	49.5	59.4	17.1
Social and personal services	15.2	27.1	41.8	59.0	18.3
Total	17.5	38.5	60.5	69.1	21.2

Source: CNEL and ISTAT (2016).



In the public sector the coverage of both industrial and decentralised levels can be considered to be 100 per cent.

Although the role of trade union density is certainly important in supporting the resilience of the extent of industrial collective bargaining in Italy, the importance of membership in employers' associations seems crucial in explaining the high coverage in SMEs. The long tradition and well-established institutions of employer representation in the artisanal industry, in retail, commerce and tourism, and in construction provide a solid footing for industry-based employment relations, as well as for territorial second-level bargaining, although it does not cover all regions or provinces in the relevant industries. The presence of decentralised collective agreements at company level is almost directly linked to the presence of union members and of a local workplace union structure (Table 16.4).

## Security of bargaining

The Italian Constitution recognises the role of trade unions and collective bargaining, although the specific provisions on the general, *erga omnes*, effectiveness of industrial agreements have never been implemented. The freedom of trade union association (Art. 39) and the right to strike (Art. 40) provide the basic legal framework in which trade union representation and action can develop. The right to strike is considered an individual right, which must be exercised collectively, so that it has to be organised by a group of workers. In practice, this means that the role of trade unions in industrial conflict is clearly recognised. The exercise of the right to strike is regulated in essential public services run by either public or private operators. Essential public services are those that concern rights protected by the Italian Constitution, so that a balance must be found if a clash emerges between equally guaranteed rights. This happens, for instance, in health care, where the right to receive assistance and care must be accommodated with the right to strike of doctors and nurses. Essential public services include transport, health care, education and the courts, among others. In these cases, special rules must be observed when calling a strike in terms of notice period, duration and guarantee of minimum standards, covering, for instance, emergency services in hospitals or local commuter transport in peak hours.

As in voluntarist systems, the regulation of industrial relations is essentially left to the autonomy of the social partners, with a fundamental role played by the bargaining power of the two parties, depending on the various phases of economic and political cycles. The Workers' Statute (Statuto dei Lavoratori, Law No. 300 of 20 May 1970), however, introduced important provisions to reinforce individual workers', as well as trade union rights. In the section on workers' freedoms and dignity, for example, the Workers' Statute provides that a trade union representative may assist employees in individual disputes. As for trade union freedoms, it asserts the right to establish and join a trade union and carry out trade union activities at the workplace. It defines as discriminatory any sanctions or differential treatment based on participation in trade union activities. It specifies protection against unlawful individual dismissals, which originally provided for the reinstatement of workers and now mainly envisages economic redress; and



it provides specific procedures and sanctions in case of anti-union behaviour by employers hampering union freedoms and the right to strike. Moreover, it established a set of trade union prerogatives in workplaces with more than 15 employees (or five in agriculture). These include the possibility that unions signatory to collective agreements applied in the workplace can set up a trade union representation structure and that union representatives can organise workers' assemblies and referenda and have paid and unpaid time off to perform union tasks, including in territorial and national union bodies. Such a fundamental piece of legislation, which was passed at a crucial juncture for Italian labour relations, certainly contributed to strengthening trade union and bargaining security and to consolidating the industrial relations system.

Since the early 2000s, legislation has mainly confirmed the role of collective bargaining, in two ways. First, a number of provisions on work flexibility, including the utilisation of non-standard work or the definition of working time arrangements, envisage that collective bargaining shall define implementation rules, so that specific work flexibility instruments can be activated only through collective agreements. Similarly, legislation sometimes allows collective agreements to introduce more flexible rules in specific areas. Collective agreements, for instance, may establish higher thresholds for the utilisation of fixed-term work or indicate which tasks and positions may be covered through 'collaboration contracts', a sort of semi-subordinate freelance contract that remains under the coordination of the employer. Second, a number of economic incentives have been introduced to support the diffusion of decentralised company bargaining on performance-related pay and welfare benefits via the reduction of taxation and/or social contributions on such collectively agreed economic elements.

A highly controversial regulation, Art. 8 of decree law 138 of 2011, may also be seen as contributing to foster the role of decentralised bargaining, although in the very specific manner of derogating general rules, with the potential for the 'extreme' flexibilisation of work arrangements, without any form of higher-level coordination (Imberti 2013). This legal provision was introduced after a joint letter by the then Presidents of the European Central Bank and the Bank of Italy, Jean-Claude Trichet and Mario Draghi, was sent to the Italian government in early August 2011 to demand, among other things, stronger decentralisation of the bargaining structure. The new piece of legislation entrusts local actors with signing agreements in the form of 'proximity agreements' that may be concluded at both company and territorial levels, and to derogate industrial deals and, to a certain extent, even legislation. It is possible to introduce derogations if a deal is aimed at supporting or preserving employment, enhancing the quality of employment contracts, promoting employee participation, combating undeclared work, improving competitiveness and wages, managing industrial reorganisation and restructuring, supporting investment and launching new economic initiatives. The social partners, particularly the trade unions, have harshly criticised the norm, because it could erode and even disrupt the existing industrial relations system by jeopardising the bargaining coordination mechanisms. Similar criticism has been directed at later pieces of legislation, including the so-called Jobs Act of 2015, which entrusts all bargaining levels with the same prerogatives to complement or specify legislative provisions. This new approach has abandoned the traditional precedence assigned to industrial bargaining, which maintained the main regulatory power, while

decentralised agreements had only an implementation role, within the framework set by industry agreements.

In the area of union representation, one important novelty in the early 1990s was the introduction of the RSU, with the aim of replacing the workplace representation bodies introduced by the Workers' Statute (Workplace Trade Union Representation Structure, *Rappresentanza sindacale aziendale*, RSA). While the latter represent individual unions, the RSU brings all the workplace unions into a single structure and is therefore supposed to facilitate negotiations. In particular, the July 1993 agreement regulated this new joint representation structure in order to ensure a better connection between the local representation structures and the industrial unions that are signatories to the industry-wide agreement applied in the workplace.

More recently, since 2011, joint regulation by social partners has introduced a set of rules on representation and representativeness, with a view to clarifying the framework for collective bargaining and strengthening the effectiveness of agreements. Such rules have been defined at cross-industry level and therefore follow the articulation of employer representation, so that we can find different arrangements depending on the signatory parties. The reference framework has been defined between Confindustria and the confederal unions CGIL, CISL and UIL through a set of agreements signed between 2011 and 2014. These agreements, which include the single text on representation of January 2014, provide the rules for participation in negotiations on national industrial agreements, as well as on the validity of decentralised agreements and include procedural norms on renewals and peace clauses.

In Italy, trade unions are not involved in the administration or provision of unemployment benefits, as in the Ghent system. The role of social partners and industrial relations in the welfare and vocational systems, however, has increased in the past two decades or so. Besides holding some institutional representation in the

Table 16.6 Trade union representation structures and employers' association rate by size and industry, Italy (% of enterprises)

	10–49	50–199	200–499	500 and over	Total
RSU	7.5	34.7	58.8	61.5	12.1
RSA	8.4	28.3	41.8	57.6	11.8
EWC	0.1	0.9	3.9	10.3	0.4
Eos	43.9	69.9	81.4	85.2	48.0
	Manufacturing	Construction	Market services	Social and personal services	Total
RSU	21.4	7.2	6.5	7.3	12.1
RSA	13.3	8.9	10.6	16.2	11.8
EWC	0.5	0.3	0.3	0.3	0.4
Eos	58.8	50.6	38.8	47.6	48.0

Source: CNEL and ISTAT (2016).

governing bodies of certain social security and welfare institutions, the social partners have become progressively more important in the definition of welfare benefits, starting with the introduction of supplementary pensions at the industry level in the 1990s. In recent years, industrial contractual health funds have become increasingly common. Moreover, the social partners jointly manage cross-industry training funds introduced in 2000, which administer the proceeds of a special wage-bill contribution to provide the employees of affiliated companies with continuing vocational training.

Indeed, a special system of providing and administering welfare benefits through joint 'bilateral' bodies has been traditionally present in certain industries dominated by SMEs, such as the artisanal industry. During the recent economic crisis, this system was reinforced and extended to new industries and showed a tendency to become a general model, also because of increasing recognition and support from the public authorities.

The presence of workplace trade union representation structures is a supportive institutional feature of company bargaining. According to available data, trade union representation structures are established in some 20 per cent of enterprises with at least 10 employees. RSAs are as common as RSUs, although the two types of structure are distributed differently across industries, with RSUs more common in manufacturing and RSAs in services. EWCs are active in some 10 per cent of larger companies and in 4 per cent of medium-sized enterprises (Table 16.6).

Similarly, membership in employer associations is an essential element in supporting the coverage and diffusion of multi-employer collective bargaining. Data show that almost half of all enterprises with at least 10 employees are affiliated to employer associations, peaking at 85 per cent for the larger ones. Manufacturing firms are more often members of employer organisations, while those in market services are less likely to be affiliated (Table 16.6).

## **Level of bargaining**

In Italy, there are various bargaining levels, related to the content of negotiations and the industry. The pivotal role in regulating the employment relationship is traditionally played by industry agreements, which can be supplemented by secondary-level agreements, notably at company level. Secondary-level bargaining has both an integrative character, represented mainly by negotiations on performance-related pay and, lately, by deals on company welfare, and a normative one, for implementing industrial provisions and adapting them to local circumstance (notably regarding the various dimensions of work flexibility, such as working hours and schedules, tasks and job classifications, as well as the use of non-standard work).

Within this general system, other important bargaining levels are cross-industry bargaining, especially for setting general rules on industrial relations and collective bargaining, or some special topics, such as apprenticeships and training. No wage negotiations take place at this level. Employer representational domains structure these

negotiations and thus there are separate bargaining units that involve, among others, Confindustria and various employer associations covering SMEs and cooperatives in manufacturing and artisanal industry, as well as in trade and services. On the workers' side, the trade union confederations CGIL, CISL and UIL are the main bargaining parties. In addition, the traditional secondary level of negotiations in certain industries, such as construction, is local territorial bargaining (instead of the company level). In particular, second-level negotiations take place at provincial level in agriculture and tourism and at regional level for artisanal firms.

As already mentioned, tripartite social pacts played an important role in collective bargaining in the 1990s, but since then they have become less frequent and relevant. In the 1990s, social pacts covered key topics such as wages, labour costs and the bargaining structure (1990, 1991, 1992, 1993), employment and development policies (1994 and 1998), the pension system (1995) and labour market reform (1996). After 1998, governments sought the agreement of social partners on fewer occasions and negotiations became more difficult. Centre-right governments reaffirmed their autonomy and refused to adopt tripartite relations as the standard approach in devising employment and social policies. Additionally, divisions emerged among the trade unions about the opportunity to engage in talks with the centre-right governments, notably on policies such as labour market deregulation. In some cases, CGIL did not sign the agreements: for example, in 2002 on labour market reform, and in 2009 on the revision of the bargaining system. In 2007, an agreement was signed on the welfare system with the centre-left government in office at that time (Carrieri 2008). After 2009, governments, irrespective of their political composition, rarely involved the social partners in talks about new policies and initiatives. Indeed, the quite broad pension and labour market reforms of 2011 and 2015, respectively, were not discussed with the social partners. Tripartism, in sum, characterised a relatively brief phase of Italian industrial relations and there are no particular signs of its revitalisation.

In contrast to the reduced importance of tripartism at national level, it is worth mentioning that the involvement of social partners in policymaking and implementation at local level can be substantial, although it is variable and depends on local traditions and circumstances. Such involvement takes place at regional level, as it depends on the regulatory competences of regional administrations. It often covers labour market policies, with a special emphasis on requalification and placement, but it can more broadly concern vocational training and education, social policies, and industrial and innovation policies.

As a two-tier bargaining system, the issue of vertical coordination between the industrial and the decentralised levels is key. The lack of a legally enforceable favourability principle (Treu 2017) has made joint regulation by the social partners particularly important. Cross-industry agreements, as well as industry agreements have introduced a number of principles and explicit rules to ensure that decentralisation takes place in an orderly and organised manner. Conversely, legal regulation has lately jeopardised the traditional hierarchy between industrial and decentralised deals by establishing equal regulatory power of all bargaining levels, thereby confirming the lack of any favourability principle, but reversing formerly well-established practices.

As a consequence, vertical coordination remains anchored to the rules laid down in cross-industry and industry agreements. The joint text on representation of January 2014, signed by Confindustria, CGIL, CISL and UIL, provides that company bargaining take place on the matters and according to the procedures laid down in industry agreements or in law. Decentralised agreements are valid if signed by the majority of RSU delegates or by the RSA representing the majority of union members. Company agreements can derogate from industrial agreements, including in an experimental and temporary manner, to support growth and employment creation. Derogatory agreements must be concluded in accordance with the procedure laid down in the relevant industry agreement. Negotiations typically involve the workplace representation bodies, as well as the territorial structures of the organisations signatory to the industrial agreement applied in the workplace. Derogations can concern job tasks, working time and work organisation (see Security of bargaining) and they cannot affect basic wages and, typically, other fixed elements of pay, such as seniority.

The main instrument of horizontal coordination is the preservation of the purchasing power of wages, as assigned by the cross-industry agreement of January 2009 to industry agreements. This means that basic wage rates are expected to move in line with inflation in all industries. Because the rules and practices of establishing pay rises across industries are not homogeneous, such coordination still allows room for differences across industries. Pattern bargaining, which has traditionally seen the metalworking agreement acting as reference, is currently weak and differences in regulatory patterns across industries are increasing.

## **Depth of bargaining**

The depth of bargaining concerns the internal organisation of trade unions and employer associations. Employer associations tend to assign to representative bodies responsibility for decisions about collective negotiations and agreements, without establishing special procedures for consulting individual members. On the trade union side, it is possible to distinguish a set of processes that accompany and aid in the preparation of the different bargaining rounds. These involve various union structures, from national secretariats to territorial and workplace representation bodies. In particular, drawing up the platform of demands for the renewal of industrial agreements usually involves extensive consultations within the organisational structure on a draft prepared by the national bargaining committee. This committee includes delegations from the various unions that jointly participate in the bargaining round, such as the industrial federations of the confederations CGIL, CISL and UIL. The final platform of demands at the outset of negotiations, as well as the text of the preliminary agreement at the end of the negotiations are then submitted to the workers, in assemblies or referenda, for their approval.

Formally, the industry federations' statutes can establish different procedures for the consultation of workers and restrict them to members or extend them to all workers. The general rule, often included in confederation statutes, is that members shall be involved and consulted in all phases of the negotiation process, from preparation

to assessment of the final results, but variations may exist. The CGIL-affiliated metalworkers' union FIOM, for instance, envisages that all workers covered by any platform of demands or collective agreements shall be consulted through referenda (Statute, Art. 7.e), whereas the CISL-affiliated metalworkers union FIM indicates that union members shall be consulted (Regulation, Art. 2). In practice, consultation over platforms and preliminary agreements is usually carried out in assemblies of all workers. If a vote takes place, it can be reserved to union members, but this can vary depending on the circumstances and the traditions of individual workplaces. In any case, various and extensive procedures are in place to ensure the involvement of members and workers in the different phases of negotiations, both for industrial agreements and even more so for company deals.

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

The degree of control is relatively high and articulated around the role played by local and workplace delegates. The combination of the broad scope of bargaining (see next section) and coordination between industrial and decentralised levels ensures detailed regulation of the employment relationship by collective bargaining. Individual and collective disputes about the application of collective agreements are dealt with directly by the company management and the workplace representation structures, without any formal procedures. If no agreement is reached at workplace level, the controversies are reported to the territorial structures of the signatories and, if no solution is found locally, to national organisations.

Clegg's (1976) broad definition of collective bargaining is particularly apt to describe practice in Italy. The substantial lack of formal arbitration or conciliation procedures related to the implementation of collective agreements makes day-to-day monitoring and negotiations crucial for the correct and full application of agreements. Moreover, individual grievance procedures envisage voluntary assistance by trade union representatives, which may be mandatory in case of the application of collectively agreed provisions. This also contributes to strengthen the degree of control.

Having said that, it must be underlined that such a system is fully in place only where trade union representatives and decentralised collective bargaining are present. Because their diffusion in the private sector is relatively limited (see Table 16.5), this weakens the overall depth and degree of control. At the same time, the enforcement system includes the labour inspectorate and the judiciary. Labour inspectors and judges, as part of their respective responsibilities, have to verify the proper implementation of the relevant collective agreements, besides ensuring the enforcement of legislation. These administrative and judicial enforcement mechanisms, however, suffer from important limitations, due to the necessarily partial coverage of inspections and the dependence on individual law suits.

The crucial importance of workplace trade union representation in ensuring the effective administration of collective agreements points to a marked difference between the private and the public sector. The virtually complete coverage of representation and

decentralised bargaining in public administration means that the degree of control of collective agreements is highest there.

## Scope of agreements

The scope of industrial collective agreements is fairly broad and covers all dimensions of the employment relationship, from recruitment to termination, as well as industrial relations and trade union prerogatives. Typically, an industry agreement includes a first section on the industrial relations system in the industry, which, for instance, defines information and consultation rights and establishes a number of joint committees on topics such as training, equal opportunities, health and safety. A second section usually covers trade union rights and prerogatives, building on the provisions of the Workers' Statute. It covers the premises and facilities that must be granted to workplace trade union structures, time off, the rights to organise assemblies and provide information to workers, and job protection for union representatives. On substantive matters, the agreement specifies the activities it covers, its duration and renewal timing and procedure. It can include a special clause on the after-effects of the agreement and what happens if no renewal is signed.

A substantial part of each industrial agreement is devoted to regulating the individual employment relationship. It generally includes provisions on recruitment, probation, employment contracts, job classification, working time, wages and other pay elements, performance-related pay, welfare benefits, disciplinary procedures and sanctions, resignation and dismissal. The regulation afforded by collective agreements is quite broad and detailed. This means that, in unionised workplaces with a trade union workplace structure, the administration of the collective agreement requires continuous activities and exchanges between the trade union representatives and the company management.

Table 16.7 Topics included in company agreements, Italy, 2012–2013 (% of enterprises)

Topic	Percentage
Fixed pay elements	61.1
Performance-related pay	58.9
Working time and work organisation	50.7
Vocational training	44.6
Welfare benefits	38.5
Restructuring and reorganisation	31.9
Employment contracts	25.3
Industrial relations and union prerogatives	24.7
Job classification	22.8
Equal opportunities	15.7

Source: CNEL and ISTAT (2016).



Although they also cover a broad range of issues, secondary-level agreements focus on more specific topics (OCSEL 2018; Pavolini *et al.* 2013). According to the available data company agreements mainly cover economic issues and performance related pay. Other bargaining issues appearing in many company agreements include working time and work organisation, vocational training and, lately, welfare benefits (Table 16.7).

## Conclusions

Since the early 2000s, industrial relations in Italy have been marked by the partial erosion of the importance of the social partners in national policymaking; a change in the balance between industrial and company agreements, with more scope for decentralisation and potentially for derogations from higher-level deals; and a transformation of the content of collective agreements, with significant wage moderation, a growing focus on work flexibility and performance-related pay, and the increasing prominence of contractual welfare benefits.

The basic indicators of industrial relations remained essentially stable. Trade union density, after the steady decrease from the peak of around 50 per cent in the late 1970s, stabilised at some 34 per cent in the early 2000s and thereafter it has even marginally increased. The extension of industrial bargaining remains quite high and covers almost all firms with 10 employees and more, according to recent official data. At the same time, the shift to decentralised bargaining is yet to happen, as secondary-level coverage has been stable during the past two decades. The change in the content of bargaining and especially the combination of wage moderation at industry level, more performance-related pay at decentralised level and more contractual welfare benefits, seem to accommodate the transformation of the economic environment, with increased competition and retrenchment of public welfare. In the context of more intense and international competition, the employers' association rate has remained relatively stable, although in this case longitudinal data are hard to find. Conversely, the defections of Fiat and other companies, as well as the signs of fragmentation of the employer representation system signal the emergence of potential fractures in the overall industrial relations system, which should be taken into consideration (Bellardi 2016).

The double-dip recession that hit the country between 2008 and 2014 and the sluggish recovery thereafter have resulted in increased poverty rates and growing inequality (see Appendix A1). Employment has risen, but unemployment remains high at around 11 per cent. Low productivity remains a structural problem, which hampers the prospects of economic growth and wage developments. The government established with a post-electoral deal between the Five Star Movement (Movimento 5 Stelle, M5S) and the League (Lega) in early June 2018, after a long negotiation phase, has introduced a number of initiatives in the field of labour market regulation. These concern the implementation of more constraints on non-standard employment, the possibility to anticipate retirement over a three-year period and income support measures, with the introduction of a citizen's income. Moreover, the introduction of a legal minimum wage may also come onto the government's agenda in the near future. This programme must



take into consideration the rules of the EU Stability and Growth Pact and the European Semester, however. From the point of view of industrial relations, it is not clear whether the government will try to re-establish some sort of social concertation or will continue with the substantially unilateral stance that has characterised recent governments. Due to the content of the announced measures, which are certainly controversial among the social partners, and to the political attitude of the governing parties, which seem to prefer engaging directly with their constituencies rather than with intermediate representative actors, no substantial resumption of tripartism at national level seems in sight.

In any case, bipartite industrial relations will probably continue along the lines of reshaping the relationship between industrial and decentralised agreements within a system of organised decentralisation. In this, the major social partners may support the introduction of legislative rules on the representativeness of both unions and employers, with a view to reinforcing the effectiveness of collective agreements and increasing the transparency and reliability of collective representation and joint regulation. A number of underlying issues remain to be addressed, notably the diffusion of secondary-level agreements, which is a fundamental question in the rebalancing of the two-tier bargaining system; the potential role of wage developments in supporting growth and reducing inequality; and the promotion of participatory practices at workplace level, which have long been discussed as a possible means of increasing productivity in the public debate, but in practice have never become a key issue in Italian industrial relations.

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## Abbreviations

<b>AGCI</b>	Associazione Generale delle Cooperative Italiane (General Association of Italian Cooperatives)
<b>ARAN</b>	Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni (Agency for the Representation of Public Administrations in Collective Bargaining)
<b>ASAP</b>	Associazione Sindacale Aziende Petroliere (Employer Association of Petroleum Enterprises)
<b>Casartigiani</b>	Confederazione Autonoma Sindacati Artigiani (Independent Confederation of Artisanal Trades)
<b>CGIL</b>	Confederazione Generale Italiana del Lavoro (Italian General Confederation of Labour)
<b>CISAL</b>	Confederazione Italiana Sindacati Autonomi Lavoratori (Italian Confederation of Independent Workers' Trade Unions)
<b>CISL</b>	Confederazione Italiana Sindacati Lavoratori (Italian Confederation of Workers' Trade Unions)
<b>CNA</b>	Confederazione Nazionale dell'Artigianato e della Piccola e Media Impresa (National Confederation of Artisanal and Small and Medium-sized Enterprises)
<b>CNEL</b>	Consiglio Nazionale dell'Economia e del Lavoro (National Council of the Economy and Labour)
<b>CONFAPI</b>	Confederazione Italiana della Piccola e Media Industria privata (Italian Confederation of Small and Medium-sized Private Enterprises)
<b>Confartigianato</b>	Formerly, Confederazione Generale Italiana dell'Artigianato (Italian General Confederation of Artisanal Enterprises), now Confartigianato-Imprese (Confartigianato-Enterprises)
<b>Confcommercio</b>	Confederazione Generale Italiana delle Imprese, delle Attività Professionali e del Lavoro Autonomo (Italian General Confederation of Enterprises, Professions and Self-Employment, also known as Confcommercio-Imprese per l'Italia)
<b>Confcooperative</b>	Confederazione Cooperative Italiane (Confederation of Italian Cooperatives)
<b>Confesercenti</b>	Confederazione Italiana Imprese Commerciali, Turistiche e dei Servizi (Italian Confederation of Trade, Tourism and Service Enterprises)
<b>Confindustria</b>	Confederazione Generale dell'Industria Italiana (General Confederation of Italian Industry)
<b>CONFSAL</b>	Confederazione Generale dei Sindacati Autonomi dei Lavoratori (General Confederation of Independent Workers' Trade Unions)
<b>DC</b>	Democrazia Cristiana (Christian Democrats)

<b>FIM</b>	Federazione Italiana Metalmeccanici (Italian Federation of Metalworkers)
<b>FIOM</b>	Federazione Impiegati Operai Metalmeccanici (Federation of Blue- and White-collar Metalworkers)
<b>FISMIC</b>	Sindacato Autonomo Metalmeccanici e Industrie Collegate (Independent Trade Union of Metalworkers and Related Industries)
<b>FLM</b>	Federazione Lavoratori Metalmeccanici (Federation of Metalworkers)
<b>FULC</b>	Federazione Unitaria Lavoratori Chimici (Unitary Federation of Chemical Workers)
<b>Intersind</b>	Associazione Sindacale Intersind (Employer Associations of State-owned Enterprises)
<b>ISTAT</b>	Istituto Nazionale di Statistica (National Institute of Statistics)
<b>Legacoop</b>	Lega Nazionale delle Cooperative e Mutue (National League of Cooperatives and Mutual Organisations)
<b>PCI</b>	Partito Comunista Italiano (Italian Communist Party)
<b>PSI</b>	Partito Socialista Italiano (Italian Socialist Party)
<b>RSA</b>	Rappresentanza sindacale aziendale (Workplace Trade Union Representation Structure)
<b>RSU</b>	Rappresentanza Sindacale Unitaria (Unitary Trade Union Workplace Representation Structure)
<b>UGL</b>	Unione Generale del Lavoro (General Union of Labour)
<b>UIL</b>	Unione Italiana del Lavoro (Italian Union of Labour)
<b>USB</b>	Unione Sindacale di Base (Rank-and-file Workers' Union)



## Chapter 17

# Latvia: post-Soviet legacy and the impact of neoliberal ideology on collective bargaining

Aija Lulle and Elza Ungure

The dominant characteristics of the current collective bargaining system in Latvia were established during the years following the restoration of state independence in 1991. This chapter begins by providing a brief macroeconomic analysis of the period 1990–2017 in order to place the bargaining system in a broader context. After the collapse of the USSR (Union of Soviet Socialist Republics), Latvia, together with the two other Baltic states, Estonia and Lithuania, implemented neoliberal economic policies, with extensive privatisation, which has increased socio-economic inequality. There have been twenty government coalitions in Latvia since 1990. Short-lived coalition governments, in most cases dominated by the centre-right, are typical of the Latvian political landscape. A neoliberal economic course has been maintained by all coalitions, emphasising ‘individualisation’ and the private market.

Latvia entered the European Union (EU) in 2004 and joined the euro zone in 2014. At the macro level, development in Latvia has been uneven. The period since accession to the EU in 2004 can usefully be divided into three economic phases, each lasting three to four years. High economic growth with annual rates of more than 10 per cent and low unemployment were characteristic of the first phase, from 2005 to 2007. Consumption, retail and real estate borrowing generated high rates of GDP growth rather than investment in industry. The short period of high growth ended in 2008 when growth plummeted and high unemployment and a deep economic and financial crisis prevailed from late 2008 onwards (Bukovska *et al.* 2016: 4–6). In June 2009 an agreement, colloquially known as ‘the 11 June agreement’, was concluded between the coalition parties and the social partners ostensibly to cut the budget deficit by 500 million LVL (771.4 million euros). The social partners included the Free Trade Union Confederation of Latvia (Latvijas Brīvo arodbiedrību savienība, LBAS), the Employers’ Confederation of Latvia (Latvijas Darba devēju konfederācija, LDDK), the Latvian Association of Local and Regional Governments (Latvijas Pašvaldību savienība, LALRG), the Latvian Chamber of Commerce and Industry (Latvijas Tirdzniecības un rūpniecības kamera, LTRK) and the Latvia Pensioners’ Federation (Latvijas Pensionāru federācija). The negotiations on the severe budget cuts took the form of social dialogue rather than collective bargaining. As is discussed below in the section on the ‘Depth of bargaining’, the content of the agreement was not fully incorporated in the 2009 Budget Bill and its amendments. A steep decline in GDP followed and total unemployment peaked at 17–20 per cent in 2010. The economic and financial crisis that started in late 2008 had a profound influence on Latvia’s economy and on the character of collective bargaining and social dialogue. Latvia was forced to seek international financial help from the International Monetary Fund (IMF) and the European Commission. Financial

Table 17.1 Principal characteristics of collective bargaining in Latvia

Key features	2000	2016
Actors entitled to collective bargaining	Employees and employers	
Importance of bargaining levels	Company level	
Favourability principle/derogation possibilities	Yes	
Collective bargaining coverage (%)	34.2 (in 2006)	24.0 (in 2014)
Extension mechanism (or functional equivalent)	n.a.	A company-level collective agreement is binding on the parties, unless provided for otherwise in the collective agreement. There are no other voluntary extension mechanisms as regards collective agreements
Trade union density (%)	20.2 (in 2003)	13.0
Employers' association rate (%)	n.a.	44, 66–68 industries

Sources: Authors' compilation of data from LBAS, LDDK and Appendix A1.

support from these institutions came in a package that imposed the implementation of austerity measures: wages were cut in the public sector by 20–30 per cent, payments to pension funds were reduced or halted and other welfare provisions were cut, including maternity and child support benefit (King and McNabb 2011). A third phase from 2011 was characterised by a recovery when GDP grew by 5.5 per cent. From 2012 Latvia exhibited a more stable recovery with GDP growth and employment rate increases among the highest in the EU.

A combination of large-scale emigration and a below-replacement birth rate, however, has led to overall population decline from 2.67 million in 1990 to 1.95 million in 2017 (CSB 2017). These trends and the neoliberal political ideology pursued by right-wing and conservative ruling parties provide the context for industrial relations in Latvia. Furthermore, after the switch from a command to a market economy, social democratic as well as communist ideology was linked to the Soviet past. This has had a negative impact on the public perception of trade unions and within a state apparatus that wants to break free from the Soviet past. Compared with trade union movements in western European countries, trade unions in Latvia are less influential due to the lack of political support, given the neoliberal inclinations of successive governments, and a lack of knowledge among many trade unionists on how to engage in collective bargaining (Line 2016: 96; Stacenko 2014: 75–76, 103–107).

The first characteristic of collective bargaining in Latvia is the low trade union coverage and the gradual decline of trade union membership (see Table 17.1). Latvian trade unions, however, are unified within LBAS, even though some are less active. A second characteristic of collective bargaining is related to the Soviet past, coupled with the neoliberal ideology that promotes individualisation. In combination, these features result in a lack of understanding in society regarding workers' rights and the need for collective bargaining. Hence social dialogue in Latvia was weak during the 1990s and early 2000s, and especially during the crisis years (2008–2011) when trade union

demands were not taken into account by the government (Bukovska *et al.* 2016: 6–7, 33, 50–51; Romele 2017: 128–130).

Latvia is an open economy. Its industrial structure is divided between public and private sectors. In a strict sense, however, only state institutions and municipalities are fully public. Many services are public–private and natural resources (land, forests) are also publicly or privately owned. The public sector has large shares in land and forests, energy, transport, culture, education and health services. Imports exceed exports. Most Latvian services and goods are exported to the EU: according to Bank of Latvia, this stood at 73 per cent in 2016, while 77 per cent of imports are from the EU. Within manufacturing, mechanical engineering and metal work used to generate the most important share of exports and manufacturing output. Due to the collapse of Liepajas metalurgs in early 2010s, however, this output has plummeted. The second largest component of output and of exports is wood processing, which has remained relatively stable throughout the first two decades of the twenty-first century. In third place in terms of output is food processing, but this is oriented more towards the domestic market: exports of processed food are half the output consumed at home.

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

Bargaining is regulated by Part B of the Labour Law (Darba likums, Likumi.lv 2002a: Articles 17–27). The law describes the content and form of collective agreements, the parties to them, their effects over time, their effects on workers, procedures for entering into agreements, their approval, amendments to provisions in agreements, familiarisation with agreements and settlement of disputes. Collective bargaining is voluntary, usually initiated by trade unions.

The law allows an indefinite number of trade unions and authorised employee representatives in one enterprise. Authorisation means that trade unions and employers have to sign agreements stating who represents employees for joint negotiations with an employer in proportion to the number of people they represent, but not less than one representative each (Karnite 2016b). Article 10 of the Labour Law (Likumi.lv 2002a) also states that ‘if representatives of one or several trade unions and authorised employee representatives have been appointed for negotiations with an employer, they shall express a united view’.

The Labour Law (*ibid.*) sets out employees’ bargaining rights. Article 10 of the Labour Law stipulates that the social, economic and occupational rights of employees can be exercised directly, by themselves; or indirectly, by their representatives. A representative can be a trade union and/or an authorised employee representative. According to Article 7 of the Trade Unions Act (Arodbiedrību likums, Likumi.lv 2014), company-level trade unions can be established by no fewer than 15 employees or no fewer than one-quarter of the employees of the company as long as this proportion comprises five or more employees. If a company has fewer than five employees then a union cannot be established, but the employees can join an existing union or create a branch of an existing union. Fifty or more members can establish a trade union beyond the company



level. LBAS explains that such requirements are in place in order to avoid the formation of countless small and fragmented inter-industry unions (LBAS 2014). Authorised employee representatives may be elected if a company employs at least five people. Representatives may be elected by a majority vote and at least half of the employees must participate in the election.

The legal framework of trade unionism in Latvia dates back to the 1922 Constitution (Satversme), which initially guaranteed the free organisation of workers. After the collapse of the Soviet Union, the collective bargaining system was elaborated in the Associations and Foundations Act (Biedrību un nodibinājumu likums, Likumi.lv 2004), adopted in 1991. The main basis for collective bargaining was established through the adoption of the Labour Law (Darba likums) in 2002. International Labour Organization (ILO) legislation was adopted by Latvia before 2004. Joining the EU did not have much impact on collective bargaining. A separate Trade Unions Act (Arodbiedrību likums) was adopted in 2014 (Likumi.lv 2014).

The initial constituent congress of LBAS was held on 25–26 May 1990. A new organisation was established, but it was not immediately reformed and many structures from Latvia's Soviet-style trade unions were initially maintained (LBAS n.d. a). LBAS, however, is currently the only confederation in Latvia. LBAS coordinates 21 affiliated trade unions at the industry level, represents and protects the interests of its members in national and international institutions and implements a joint working programme. LBAS advises trade unionists at all levels of their organisations on how to conclude collective agreements, and participates in labour disputes and social and economic conflicts (LBASb n.d. b). These are unions at the industry level. In August 2014, a total of 216 trade unions were registered in Latvia, although only 197 were listed as being active (Fulton 2015). LBAS thus represents only a minority of Latvian trade unions, but, importantly, it is the most influential trade union voice. Most unions that are not affiliates of LBAS are small and firm-based.

Recovery from the economic crisis has resulted in new trends that are shaping the identity of trade unions in Latvia. More young people have been educated abroad and are thus more aware of trade unionism. In addition, substantial support, both material and intellectual, from EU organisations and trade unions across Europe, as well as Norwegian grants, have enabled Latvian trade unions to raise a voice and an awareness of trade unions and collective bargaining as a public good (EEA Grants 2016a, 2016b). Trade unions have begun to emerge as an important intellectual partner and within the courts qualified support for labour rights is emerging (Romele 2017: 130–136).

It is rare for employers' organisations to be involved in collective bargaining. Relevant data on the membership of employers' organisations are partial, as employers' organisations do not monitor their association rate (Karnite 2016b). It is known, however, that the largest employers' association in Latvia is LDDK. Members of LDDK employ 44 per cent of all employees in Latvia. The share of workers employed by LDDK member organisations is much higher than the proportion of workers involved in trade unions. LDDK represents both private employers and also mixed private and public enterprises. The annual turnover of member companies in 2017 was 40 billion euros, according to

LDDK. In 2017 LDDK had 64 branch and regional associations and federations, as well as 112 enterprises that employ over 50 people. LTRK is also a vocal player supporting employers' interests, but represents industries instead of employers. LTRK operates at national level and participates in social dialogue, but is not an employers' organisation under the law (Karnite 2016b).

The government, LDDK and LBAS are represented on the National Tripartite Cooperation Council (Nacionālā Trīspusējās sadarbības padome, NTSP) (Likumi.lv 1999: Article 1). The NTSP is a two-stage tripartite institution: at the first stage discussions are carried out in committees and at the second stage decisions are taken in the main body of the NTSP. The NTSP is directly responsible to the Prime Minister, to which it owes its legal status. The secretary of the NTSP is subordinate to the State Chancellery (Valsts Kanceleja) in institutional matters and to the Prime Minister in functional matters. Meetings of the NTSP are organised on request, but not less than once every two months. The NTSP examines policy-planning documents and drafts of proposed legislation and sets out proposals for their improvement in the following areas: social security; guidelines on the state budget; economic and regional development strategy; health care; development of general and vocational education; employment and classification of occupations; and implementation of international commitments (ibid.).

This chapter argues that Latvia exhibits typical features of post-socialist states, with the emphasis on social dialogue, albeit only rhetorically, rather than strong structures of collective bargaining. The remainder of the chapter analyses the six dimensions identified by Clegg (1976). A conclusion highlights the contemporary realities of collective bargaining in Latvia.

## Extent of bargaining

A wage survey undertaken by the Latvian Central Statistical Bureau (Centrālā Statistikas pārvalde, CSP) indicates that collective bargaining coverage is higher than union density. In 2006, for instance, 34.2 per cent of all employees were covered by collective agreements (CSB 2012), falling to 24.0 per cent by 2014, according to LBAS. Both bargaining coverage and trade union density, however, are among the lowest in Europe (Fulton 2015). Industrial differences are substantial: in 2006, 69.4 per cent of those engaged in health and social work and 68.6 per cent of those in education were covered by collective agreements, while in banks and finance the figure was only 16.9 per cent, in retail and wholesale 13.9 per cent and in hotels and catering 11.2 per cent (Fulton 2011). Collective bargaining is more widespread in the public sector and at large state-owned companies than in the private sector. Small and medium-sized companies in the private sector typically do not have trade unions. Traditionally, education and health care are more active in wage negotiations (Fulton 2015). Bargaining coverage is higher than trade union density due to Latvian legislation, which requires employees working in industries that have trade union representation to be covered by collective agreements through extension.

There are no data on the duration, renewal and long-term validity of agreements. Article 19 of the Labour Law (Likumi.lv 2002a), however, states that ‘if a collective agreement does not specify a period of effect, the collective agreement shall be deemed to have been entered into for one year’. After a collective agreement expires, its provisions continue to apply to its signatories and those whom they represent until a new agreement comes into effect, unless agreed otherwise by the stakeholders.

The state allows, but does not promote unionisation through legislation. Union density is relatively low, at about 13 per cent, and is much higher in the public than in the private sector, according to the list of LBAS members, although there are union members in former state-owned companies that have now been privatised and in some companies owned by multinationals. There were just over 100,000 employed trade union members in Latvia in 2013. There are cases, however, that suggest that employees are beginning to recognise their rights and seek to exercise them. The Union of Latvian Interior Employees (Latvijas Iekšlietu darbinieku arodbiedrība, LIDA), for example, affiliated to LBAS on 27 September 2017, becoming the latter’s twenty-first affiliated union. LIDA brought LBAS 2,600 new members among police officers, firefighters, border guards and prison officers (Karnitis 2017).

According to Article 18 of the Labour Law (Likumi.lv 2002a) an industry or regional level agreement signed by an employers’ organisation or an association of employers’ organisations is binding on members. Moreover, with regard to extension mechanisms, Article 18 of the Labour Law (*ibid.*) stipulates that

if members of an organisation of employers or an association of organisations of employers employ more than 50 per cent of the employees in an industry or the turnover of their goods or the amount of services is more than 50 per cent of the turnover of goods or amount of services in an industry, a general agreement entered into between the organisation of employers or association of organisations of employers and a trade union or an association of trade unions shall be binding on all employers of the relevant industry and shall apply to all employees employed by such employers.

This is a general entitlement and serves as a public good for workers, but in a country in which a minority of workers are trade union members, trade unionists see that it may preclude some employees from joining a trade union. The reason is that trade union members pay membership fees, while others do not contribute financially to sustain the everyday needs of trade unions.

At enterprise or establishment level, collective agreements are often regarded as stronger instruments to protect employees’ rights than industry or regional agreements (interview with Latvian Trade Union of Education and Science Employees’ representative, LIZDA, 2017). Such a view is common in Latvia because of the historical context in which top-down initiatives have been perceived as disregarding the realities of actual life. In contrast, agreements made at enterprise or establishment level are concluded between stakeholders who know each other personally and know the context in which an agreement will be applied. An enterprise or establishment level collective

agreement is binding on the parties, unless explicit provisions stating the contrary are included in the collective agreement. There are no voluntary extension mechanisms regarding such collective agreements (Karnite 2017b).

The level of awareness of employment rights and entitlements remains low among employees. Many still do not know their rights and or do not demand them despite being entitled to them. This kind of knowledge could be gained from trade unions. Because union density is low and trade unions have very limited resources, their capacity to undertake this task is restricted. Furthermore, although the bargaining coverage is low, employees who are not trade union members nevertheless benefit from trade union efforts. Some trade unions, for example LIZDA, one of the more active unions, object to the extension of collective agreements to all workers and argue that they should only apply to union members, as was recently introduced in Lithuania (see Chapter 18). Trade union representatives argue that in the current circumstances union members are questioning why they should have to join a union, pay membership fees and devote time and knowledge to the union if most people can benefit without making any contribution (interview with LIZDA representative, 2017). Presumably, trade unions hope that if agreements applied only to union members, more employees would be encouraged to join, thus increasing trade unions' resources.

## **Security of bargaining**

Security of bargaining refers to the factors that determine trade unions' bargaining role, including legislation and the ability to take strike action. The Trade Union Act (Arodbiedrību likums, Likumi.lv 2014) provides the general outline of union establishment and recognition procedures. The Trade Union Act defines a trade union as a voluntary union of persons, meaning that people have the right not to join a union. A trade union is established in order to represent and defend employees' labour, economic, social and professional rights and interests (ibid.: Article 3). Before the amendments to the law were made in 2014, only people who were employed or studying had the right to establish trade unions: now, however, any inhabitant of Latvia has this right (ibid.: Articles 4 and 7). There are some restrictions regarding unionisation in special legal acts: the State Security Institutions Act (Valsts drošības iestāžu likums, Likumi.lv 1994), the Military Service Act (Militārā dienesta likums, Likumi.lv 2002b) and the Border Guard Act (Robežsardzes likums, Likumi.lv 1998a). As a consequence, workers in state security institutions, border guards and members of the armed forces cannot join trade unions.

Article 6 of the Trade Union Act (Likumi.lv 2014) states that trade unions shall be independent of national and municipal institutions and employers' organisations. The same article also establishes that any action aimed directly or indirectly at preventing unionisation, subordinating unions to national and municipal institutions and employers' organisations or hampering the performance of tasks laid down for unions and union associations by law shall be prohibited. Trade unions have the status of legal persons from the moment they are entered in the Register of Associations and Foundations (ibid.: Article 10). Unions can have territorial or other

types of branches and are allowed to establish independent units with legal person status (*ibid.*).

The Latvian state has acted to ensure that collective agreements are legally binding, thereby enhancing the security of collective bargaining. Article 20 of the Labour Law (Likumi.lv 2002a) establishes the ‘favourability principle’ by stating that ‘an employee and an employer may derogate from the provisions of a collective agreement only if the relevant provisions of the employment contract are more favourable to the employee’. The legal way of derogating from an existing collective agreement is by amending the provisions of a collective agreement. Article 23 of the same law specifies the mechanism for amending provisions of a collective agreement. Article 19 of the law states: ‘upon termination of a collective agreement its provisions (...) shall apply up to the time of coming into effect of a new collective agreement, unless agreed otherwise by the parties’. Collective agreements and the right to collective bargaining also apply to posted workers at the EU level (*ibid.*: Article 14).

The terms of collective agreements constitute actual terms of employment only to a limited extent. This is the case, for example, because terms of employment, working time and wages in the public sector are laid down in the budget. The terms of agreements also have a limited effect on the management of pension contributions. In April 2012, for example, the Post and Telecommunications Workers’ Trade Union (Latvijas Sakaru darbinieku arodbiedrība, LSAB) elected a representative to the board of the private pension fund, as agreed in paragraph 109 of the collective agreement between LSAB and Lattelecom. During the meeting of the JSC company’s (JSC Sadales tīkls, electrical manufacturing and electricity distribution) ‘First Closed Pension Fund’ stakeholders on 24 May 2012, however, Lattelecom nominated two employer representatives. The LSAB representative was thus excluded from further board participation (ITUC-DCI-IGB 2013:64). In this case employers’ representatives were favoured and trade unionists excluded despite a general trend in the legislation that collective agreements must be taken into account regarding the management of pension funds.

The Trade Unions Act (Likumi.lv 2014) and the Labour Law (Likumi.lv 2002a) also provide for the protection of union representatives. Union representatives, for example, have the right to fulfil their union obligations at work during working hours, as long as they fulfil their direct job responsibilities for at least half of working hours, without it affecting their wages in any way. In practice, LBAS reports, there are cases in which union representatives do not fulfil their job obligations while serving as representatives. In such cases they have a right to keep their job or to be offered an equivalent position after they cease to act as representatives. The Trade Unions Act and the Labour Law also protect union representatives by regulating the procedure of labour contract termination and disciplinary penalties, which requires consultation with the representative union.

Legal types of industrial action are set out in the Labour Dispute Act (Darba strīdu likums, Likumi.lv 2002c) of 2002, including labour disputes, dispute resolution mechanisms and lockouts. The Meetings, Processions and Pickets Act (Par sapulcēm, gājieniem un piketiēm, Likumi.lv 1997) of 2002 allows trade unions to call protest actions, such as meetings, pickets and demonstrations. The most widespread protests

in Latvia, with approximately 10,000 participants, occurred in January 2009 after the introduction of austerity measures (deputatiuzdelnas.lv 2012). Trade unions called for these protests alongside politicians and individual activists. Demonstrations and similar protest actions are more common than strikes in Latvia, in part due to the ease of notifying the authorities of a demonstration compared with organising a strike.

The Labour Dispute Act (Likumi.lv 2002c) sets the terms of the collective dispute resolution procedure. According to Article 16, ‘during the period when a collective dispute regarding interests is settled by mediation, the parties to the dispute must refrain from exercising the right to collective action, including a strike or a lockout’. In a similar manner the same law states that ‘during the period when a collective dispute regarding interests is settled in the arbitration court the parties to the dispute must refrain from exercising the right to a collective action, including a strike or a lockout’ (ibid.: Article 20). Furthermore,

If for the settlement of a collective dispute regarding interests the representatives of employees or the employees (...) use a strike as a final means for the settlement of the dispute, (...) [employers] have the right to respond in protection of their economic interests [in the form of a] lockout. (...) A lockout is prohibited in state administration and local government, as well as in undertakings that shall be regarded as services necessary to the public in accordance with the Strike Law. (ibid.: Article 21)

Consequently, in most industries in which trade union coverage is considerable strike action is prohibited.

Latvia does not operate a variant of the Ghent system. The main responsibility for the management of the welfare system lies with government agencies. The state has introduced elements of a welfare system as a result of social dialogue where unions have been stakeholders. In 2016, for example, the government introduced compensation for workers injured while on active service in the internal security services. The government also introduced a minimum social insurance payment, calculated at 75 per cent of the statutory minimum wage in 2017 (Karnite 2016a). A statutory minimum wage was established in Latvia in 1998, but remained at a low level until recently; in 2018 it reached all-time high at 430 euros per month. Trade unions have always been vocal advocates of a higher minimum wage.

## **Level of bargaining**

In Latvia, as in the other Baltic states, single employer bargaining at the company level is predominant (Fulton 2015). Bargaining is much more prominent in the public sector, including state-owned companies. Data are sporadic, but it is possible to discern trends. Wage bargaining is not formally monitored at national level, although LBAS carries out an annual survey as a means of estimating collective bargaining coverage. It should be noted that these data are not representative because participation in the survey is voluntary. With this caveat the trend is clear. At the beginning of 2008 there were 1,921



company level agreements: this number fell to 1,460 by 2011 and thereafter to 1,339 in 2013, 1,284 in 2014, 1,268 in 2015 and 1,152 in 2016 (Karnite 2016b). Industry-level agreements often only provide a broad framework for company level negotiation (Fulton 2015). In 2008 there were 23 industry-level agreements in force (Fulton 2011). This number rose to 29 by 2011 before falling to eight in 2016. There is currently no official means whereby the number of employees covered by these company and industrial agreements can be calculated.

According to the Labour Law (2002a: paragraph 4 of article 18) industrial agreements can be general, related only to employers' associations or to individual employers who have agreed to sign such an agreement. In 2018, general industrial agreements were valid in the railway industry and in health care and a general industrial agreement was signed between the Ministry of Welfare and the Trade Union of Health and Social Care Employees of Latvia (Latvijas Veselības un sociālās aprūpes darbinieku arodbiedrība, LVSADA) (LVSADA 2017). In 2018, LBAS was working on a project funded by the European Social Fund aimed at establishing industrial agreements in five priority industries: construction; wood and forestry; chemical production; telecommunications; and ground transport. Other efforts by the social partners to develop industrial and regional collective bargaining have not met with any success (Karnite 2017b).

The 'architecture' of bargaining differs between industries. In education, for example, teachers usually initiate collective agreements and single employer bargaining. Education collective agreements are signed with school directors. The mayors of municipalities are supposed to deal with such agreements, as municipalities fund schools in Latvia. This can complicate the bargaining process because municipalities may not be interested in supporting employees' rights and demands due to municipal budget planning. The situation is further complicated in vocational schools because these are usually funded by the Ministry of Education and Science or the Ministry of Culture and a clear mechanism for concluding a collective agreement does not exist. Directors of vocational schools do not want to take sole responsibility for concluding collective agreements, as they are dependent on funds from these ministries. In institutions of higher education agreements are usually signed between a trade union and the rector. When there is more than one trade union in an institution of higher education, the trade unions tend to agree a common approach and only then present it to the management (interview with LIZDA representative, 2017). The situation in education highlights the challenges in terms of bargaining articulation and coordination. Each party has its own agenda and when several employee representatives must decide on a common view on how employee rights and interests should best be enforced, it is not straightforward. This becomes even more complex when common ground must be reached with employer representatives.

## **Depth of bargaining**

Depth of bargaining is concerned with the extent of involvement of local employee representatives and local managers in the formulation of claims and the administration of agreements. Because collective bargaining practice, including industry-level bargaining,

was relatively uncommon in the Baltic countries between 2000 and 2017, employees' ability to have a meaningful influence on decision-making regarding industrial relations, such as depth of bargaining, has not increased. Industrial bargaining in Latvia typically takes place between the government and trade union leaders, who formulate claims. At this level, bargaining can be constrained: trade unions, for example, were unable to influence the terms of the austerity budget (2008–2011). Although tripartite agreements were signed in October 2008 and June 2009, they were no more than declaratory. Although there are a small number of industry-level agreements, it is common for industries in which they are signed either to have a network of company-level unions that are members of an industry-level union federation, such as in education and health, or to have one or a very small number of companies in the industry, as in air traffic control and electricity generation. There are no data that would allow us to assess whether employers apply the terms of industrial agreements. It should be noted, however, that signed agreements have legal status, thus increasing the likelihood of unions and employees implementing them. Union members and activists are involved in the formulation and approval of agreements to various extents; active trade unionists and their leaders, especially in health and education, are actively involved. Generally, public sector workers are more active than their private sector counterparts.

Because company-level agreements dominate Latvian collective bargaining, it is safe to assume that a broad range of issues regarding employment relationships are settled at company level. Furthermore, the 'shallow' character of collective bargaining in Latvia encourages low union density. Company-level agreements come into force after trade union(s) and employees, represented by the union(s), agree with company managers upon common terms and sign an agreement.

Trade union activities have focused on public awareness raising and integration into international trade union structures rather than internal processes of deeper bargaining. This is a result of the Soviet legacy and the backlash against any form of collectivism, in combination with a neoliberal culture that emphasises the market and individualisation. Latvian trade unions lack power in relation to employers' and their representatives, and need to increase public awareness of trade unions as a public good. After gaining public support, trade unions would also gain more symbolic capital to influence deeper bargaining. Two examples illustrate this. First, the narrative of 'hope' for trade unions is usually related to meaningful engagement in social dialogue, especially in relation to youth employment (Romele 2014). This 'hope', however, is not related to collective bargaining or to increased membership. LBAS hoped, for example, to find innovative solutions to current issues regarding employment during the Latvian Presidency of the European Council. As part of the Presidency events LBAS organised an international conference 'The Trade Union Role in Promoting Sustainable Growth and Quality Job Creation' in Riga in 2015. Prominent on the conference agenda was the need to tackle youth unemployment across the EU, the role of trade unions in facilitating youth employment and an evaluation of the European social partners' agreement on the Framework of Actions on Youth Employment. The spread of collective bargaining was not a priority. Second, in 2014 the Financial Sector Trade Union of Latvia (Finanšu nozares arodbiedrība, FNA) and the Association of Estonian Financial Sector Employees (Eesti Finantssektori Töötajate Liit/Igaunijas finanšu nozares darbinieku asociācija,



EFT/IFNDA) signed a memorandum of cooperation. The goal of this memorandum was to develop cooperation and information exchange between employees in finance in Latvia and Estonia in order to secure stable employment (BC 2014). This practice of widening collaboration geographically may contribute to broader bargaining in future at the industrial level as some employers in finance are the same in Estonia and Latvia. The role of collective bargaining and increased union membership, however, was downplayed in both of these events.

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

In terms of mechanisms for controlling the implementation of collective agreements, the trade unions have few options. Strict provisions are made in the Labour Law (Likumi.lv 2002a: Article 6) that prohibit forms of flexibility that erode employees' rights:

- (1) Provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer, which, contrary to regulatory enactments, erode the legal status of an employee shall not be valid.
- (2) Provisions of an employment contract which contrary to a collective agreement erode the legal status of an employee shall not be valid.

Regardless of these provisions, wage formation in the private sector is strongly influenced by the labour market, whereas wage formation in the public sector is influenced by the labour market and the state budget situation. In the private sector the principles of wage formation and pay are described in the employment contract. Trade unions may influence wage formation through collective bargaining in companies where they are established and in industries in which the social partners are represented. State bodies play a role in wage setting insofar as they elaborate, implement and control relevant legislation, set tariffs in public service industries, particularly in transport, heating, gas, water supply and electricity, and establish wage systems and levels in public institutions (Karnite 2009).

The State Labour Inspectorate (Valsts darba inspekcija, VDI) carries out national surveillance and control of the implementation of labour relations and occupational health and safety. The VDI can impose administrative sanctions on employers in accordance with the procedures prescribed for administrative violations. According to Article 3 of the State Labour Inspectorate Act (Valsts darba inspekcijas likums, Likumi.lv 2008), the basic function of the VDI is to control the employment relationship and work safety. Another task is thus to ensure that employees and employers abide by the terms of labour contracts and collective agreements.

Strikes are rare. When they do occur it is generally in the public sector, particularly in health care and education. Several restrictions regarding strikes are in place as a result of the 1998 Strike Act (Streiku likums, Likumi.lv 1998b). There is an obligation to have majority support for strike action; a majority is at least 50 per cent of all employees that attend a meeting for a company strike or 50 per cent of members of the trade union for industrial strikes. Political strikes are illegal and so are solidarity strikes, with the

exception of disputes on general or industry-level collective agreements, which are a rarity in Latvia. There is also a list of ‘essential services’ that must be ensured during a strike, in accordance with Article 17 of the Strike Act (*ibid.*). The list is very broad and includes medical and first aid services; public transportation services; drinking water supply services; services producing and supplying electrical energy and gas; communication services; air traffic control and the service supplying meteorological information to the air traffic control; services relating to the security of all kinds of transportation; waste and sewage collection and water purification services; radioactive goods and waste storage utilisation and control services; and civil protection services (ETUI 2017). Judges, prosecutors, police officers, fire-protection, fire-fighting and rescue service employees, border-guards, members of the state security service, warders and persons who serve in the national armed forces are prohibited from striking altogether (Karnite 2017a).

## Scope of agreements

Article 17 of the Labour Law (Likumi.lv 2002a) states that in collective agreements stakeholders agree upon terms of the employment relationship covering, in particular, wages, work safety, beginning and ending employment relationships, increasing employee qualifications, working regulations, employee social security rights and the duties of parties. The scope of agreements is regularly reviewed by Latvian trade unions, primarily in the light of changes in legislation. Changes to agreements usually concern basic wage and national legislation, particularly amendments to the Labour Law. The scope of agreements can be enlarged due to health and safety regulations, work–life balance improvements and lifelong learning. Mutual learning within trade unions is also common. When some trade unionists negotiated additional support for parents of school age children, other trade unionists introduced similar additions to other collective agreements. LBAS coordinates and exchanges information between affiliated unions at the industrial level.

The content of collective agreements most frequently covers qualitative issues, such as work–life balance and quality of life. Wages are seldom set by industrial agreements, with the exception of certain industries, such as education. Specifically, these agreements cover additional holidays and various allowances and financial support, especially for parents with school age children. Financial support prior to the beginning of the school year is very popular, for example, as it helps parents make ends meet when preparing children for a new school year. Other support includes additional vacation money for health improvement purposes, additional holidays when related to personal issues, such as weddings, funerals and graduation from schools; and health and safety related support, such as for health checks, doctor appointments and buying glasses (Interview with LIZDA representative, 2017; Karnite 2016b).

Throughout the 2000s LBAS priorities have been increases in the minimum wage and overall wage levels, tax reductions for the low paid and increases in social benefits for wage earners, covering care for children and/or family members (LBAS 2014). LBAS supported the increase of minimum monthly wage for 2017, but pointed out that,

despite the increase, the minimum wage in Latvia still remained the lowest in the Baltic states (Karnite 2016a).

Employers' representatives are more active in comparing the terms and conditions of employees. From the point of view of public sector employers, the most pressing issue is the loss of good workers to the private sector due to wage differences. The LDDK and LTRK, representing mainly private enterprises, but also some public-private enterprises, for example, have repeatedly sought reforms to the public administration system. The first condition for successful change, according to a report published by SIA Fontes Management Consulting in the third quarter of 2016, is to ensure that salary levels, especially for key positions, are in line with those in the private sector. The report showed that 90 per cent of those employed in public administration were paid less than their private sector counterparts, with senior experts, IT professionals and high level managers in the public sector paid substantially less than their private sector counterparts. The report called for an increase in salaries across the board for public administration employees in 2017 (Karnite 2016a). As a result, on 4 January 2018 during a meeting of State Secretaries amendments to the Remuneration of Officials and Employees of State and Local Government Authorities Act (*Valsts un pašvaldību institūciju amatpersonu un darbinieku atlīdzības likums*, Likumi.lv 2010) were announced, raising the wages of lower and higher level managers. Although these public sector employees receive higher wages than most other public sector employees, their wages had not risen since 2010. An increase was necessary in order to align management wages in the public and private sectors because, as the report by SIA Fontes Management Consulting revealed, lower, middle, and higher level managers and experts in the public sector were paid only 37 per cent of the average monthly wages of managers and experts in the private sector (Brikmane 2018). This shows the effectiveness of employers' representatives regarding improvements in employment relations.

The scope of industry agreements is wider than that of company agreements. In the former, it is possible to determine the direction of development, professional classifications and regional development, while the latter deal with specific conditions in a certain company and may include the following: salaries, bonuses, additional holidays including those related to study, redundancy, study and obtaining further qualifications, health checks, working conditions, grievances, social guarantees and analyses of the challenges faced by the company and its likely future development. If branch and general industry agreements set terms and conditions, company agreements cannot undercut them.

## Conclusions

Collective bargaining is rudimentary in the neoliberal and open Latvian economy. Robust institutions capable of conducting collective bargaining were not established in the transition from the Soviet-style economy. There are clear political and economic reasons for this outcome: in 1991 Latvia declared its independence from the crumbling USSR and set out on a neoliberal path. Most industries were dismantled, privatisation was imposed and private business was promoted politically, albeit without the

underpinning of stable tax policies. While the initial constituent congress of LBAS, held before the restoration of state independence in Latvia, indicated a willingness to take part in the restoration of industrial relations in the independent state, this gesture was not enough to secure political influence, as the majority of Latvia's coalition governments have comprised centre-right parties.

Company bargaining is predominant in Latvia: industry agreements act as guidelines rather than substantive documents, similarly to the situation in the other Baltic States (see Chapters 9 and 18 of this volume). The depth of bargaining is shallow and relies on bargaining between government representatives and senior trade union leaders. Instead of negotiating within a tripartite system, trade unions are more focused on social dialogue and adding a voice in consultations on legislation and legal initiatives ranging from work relations to education. In terms of the degree of control of collective agreements, the strict provisions of the Labour Law prohibit flexibility. Wage levels are set in the public sector by legislation, influenced by the labour market and the state budget situation, while wage formation in the private sector is strongly influenced by the labour market. In terms of the scope of bargaining, agreements set conditions for pay, minimum pay and bonuses, additional bonuses for higher qualifications and experience and higher productivity. These terms are negotiated between the signatories to the agreement. Typically, trade unions want to include more terms, while employers want more flexible and less specific agreements. In practice, however, collective bargaining is constrained by economic and political realities, not least of which is the trade unions' lack of influence within government.

Trade union bargaining power has been systemically limited in Latvia since independence. The impact of EU membership and involvement at the EU level have had no direct impact on collective bargaining. Furthermore, Latvia adhered to ILO regulations before becoming an EU member state. Joining the EU and deeper collaboration with trade unions in the European Economic Area have had an indirect positive impact in the form of access to funds and the knowledge of European and Nordic partners (EEA Grants, 2016a, 2016b: 74). Awareness raising among and educating trade union leaders in Latvia is one of the challenges that can be addressed through this deeper collaboration and access to funds (Liekna 2011). Some trade unions have tried to solve this problem by preparing manuals for leaders of trade unions in individual enterprises on basic steps of collective agreement procedure (LBAS 2013). Despite this generally bleak picture, the impact of international collaboration has been helpful for Latvia's trade unions, most recently in the form of LBAS involvement in projects supported by the European Social Fund to establish industry agreements in five priority industries. Such projects, in combination with better educated and internationally connected staff at LBAS, can be a push factor for higher recognition and bargaining power in Latvia.

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All links were checked on 25 October 2018.



## Abbreviations

<b>CSP</b>	Latvijas Centrālā statistikas pārvalde (Central Statistical Bureau of Latvia)
<b>EFT/IFNDA</b>	Eesti Finantssektori Töötajate Liit/Igaunijas finanšu nozares darbinieku asociācija (Association of Estonian Financial Sector Employees)
<b>FNA</b>	Finanšu nozares arodbiedrība (Financial Sector Trade Union of Latvia)
<b>HEI</b>	Augstākās izglītības iestādes (Higher Education Institutions)
<b>LBAS</b>	Latvijas Brīvo arodbiedrību savienība (Free Trade Union Confederation of Latvia)
<b>LDDK</b>	Latvijas Darba devēju konfederācija (Employers' Confederation of Latvia)
<b>LIDA</b>	Latvijas Iekšlietu darbinieku arodbiedrība (Union of Latvian Interior Employees)
<b>LIZDA</b>	Latvijas Izglītības un Zinātnes Darbinieku Arodbiedrība (Latvian Trade Union of Education and Science Employees)
<b>LALRG</b>	Latvijas Pašvaldību savienība (Latvian Association of Local and Regional Governments)
<b>LSAB</b>	Latvijas Sakaru darbinieku arodbiedrība (Post and Telecommunications Workers' Trade Union)
<b>LTRK</b>	Latvijas Tirdzniecības un rūpniecības kamera (Latvia's Chamber of Commerce and Industry)
<b>LVSADA</b>	Latvijas Veselības un sociālās aprūpes darbinieku arodbiedrību (Trade Union of Health and Social Care Employees of Latvia)
<b>NTSP</b>	Nacionālā Trīspusējās sadarbības padome (National Tripartite Cooperation Council)
<b>VDI</b>	Valsts darba inspekcija (State Labour Inspectorate)



## Chapter 18

### Lithuania: will new legislation increase the role of social dialogue and collective bargaining?

Inga Blažienė, Nerijus Kasiliauskas and Ramunė Guobaitė-Kiršlienė

The economy of Lithuania, the EU Member State hardest hit by the global financial crisis, started to recover in 2011. Stable economic growth has continued to this day. Both the employment rate and wage growth in Lithuania, however, have significantly lagged behind the overall economic recovery. Furthermore, wage share as a percentage of GDP has remained at the bottom and income inequality at the top among EU Member States during the past decade (see Appendix A1). Similar to the situation in several other Central and Eastern European countries such economic and social developments have been greatly influenced by, among other things, the domination of neoliberal market-based policies and the relative absence of industrial relations and social dialogue from policymaking processes. Lithuania is among the countries in the EU with the lowest trade union density and collective bargaining coverage. Despite this, Lithuania has fairly strict regulations on employment and social conditions, which are guaranteed mainly by prescriptive legal regulation (Table 18.1).

During the past decade neither employers nor employees' representatives have been satisfied with a situation in which, according to the employers, very tough regulation of the labour market discourages the creation of new jobs and hampers the country's ability to attract foreign direct investment. In turn, employees' representatives were

Table 18.1 Principal characteristics of collective bargaining in Lithuania

Key features	2000	2016
Actors entitled to collective bargaining	Trade unions and employers, at all levels	Trade unions or works councils and employers at company level; trade unions and employers at industrial, territorial and national levels
Importance of bargaining levels	Company level	
Favourability principle/derogation possibilities	Favourability principle applies	
Collective bargaining coverage (%)	15 <sup>1</sup>	10 <sup>2</sup>
Extension mechanism (or functional equivalent)	n.a.	Available, but never applied in practice
Trade union density (%)	14 <sup>3</sup>	9 <sup>4</sup>
Employers' association rate (%)	20 <sup>5</sup>	14 <sup>6</sup>

Notes: <sup>1</sup> 2002, <sup>2</sup> 2012, <sup>3</sup> 2003, <sup>4</sup> 2012, <sup>5</sup> 2007, <sup>6</sup> 2012.

Source: Appendix A1.

dissatisfied with undeveloped industrial relations and the minor roles afforded to social dialogue and collective bargaining in determining employment and employees' social conditions. In response to this, a national reform of employment and social security laws, commonly known as the the new social model (*Socialinis modelis*) was initiated in Lithuania in 2014. The main labour laws in force hitherto, in particular, the Labour Code of the Republic of Lithuania, were fundamentally amended within the framework of the new social model. The new Labour Code came into effect in Lithuania on 1 July 2017 introducing, among other things, fairly radical amendments to the provisions regulating industrial relations, including collective bargaining.

From 1 July onwards, the right to conduct collective bargaining is granted exclusively to trade unions, instead of trade unions and works councils, as in the old version of the Labour Code; collective agreements apply only to members of signatory trade unions, instead to all of the employees of the company, as in the old Labour Code; and employers are obliged to initiate the election of a works council. The new Labour Code is expected to facilitate social dialogue and collective bargaining, to create more favourable conditions for the parties to reach an agreement on the most acceptable conditions, to enhance the competitiveness of Lithuanian companies, to create more new jobs and to contribute to wage growth. It is very difficult to say yet whether these expectations will be fulfilled in practice, what influence the new Labour Code will have on industrial relations and how it will impact collective bargaining.

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

It should be noted that assessment of the collective bargaining situation and industrial relations in general before and after the new Labour Code is severely hampered by the absence of reliable data representing the entire economy, as well as by the absence of relevant research. Unfortunately, as of the beginning of 2018 no information was available in Lithuania on the number and contents of company-level collective agreements and/or the main collectively agreed issues. This situation is currently changing as, pursuant to the new Labour Code, companies have to report on newly signed company-level collective agreements. The database of such agreements is slowly emerging, though so far it is far from complete. Likewise, there is no reliable information on collective bargaining coverage, association rate of employer organisations or related information at industrial level. All the information presented below is based rather on expert judgements, interviews with social partners and practical experiences of the authors.

The main national social dialogue institution in Lithuania is the Tripartite Council of the Republic of Lithuania (*Lietuvos Respublikos Trišalė taryba, LRTT*). The LRTT was established in 1995 following an agreement on tripartite partnership signed by the government, trade unions and employers' organisations. The LRTT is based on the principle of equal tripartite partnership and seeks to tackle social, economic and labour problems by mutual agreement of the parties. All legislative drafts submitted to the parliament on relevant labour, social and economic issues are supposed to be agreed in advance at the LRTT.

The new Labour Code introduced nine criteria on the basis of which social partner organisations can be represented at the LRTT. The most important criteria are: membership of international trade union or employers' organisations, having members or representatives in different regions or industries, being active for at least three years, covering at least 0.5 per cent of the employees in the country for trade unions and having at least 3 per cent of salaried employees in the country employed by their companies for employers' organisations.

Six employers' organisations are currently represented in the Tripartite Council: the Lithuanian Confederation of Industrialists (Lietuvos pramoninkų konfederacija, LPK), the Confederation of Lithuanian Employers (Lietuvos darbdavių konfederacija, LDK), the Association of Lithuanian Chambers of Commerce, Industry and Crafts (Lietuvos prekybos, pramonės ir amatų rūmų asociacija, LPPARA), the Chamber of Agriculture of the Republic of Lithuania (Lietuvos Respublikos Žemės ūkio rūmai, LRŽŪR), the Investors' Forum (Investuotojų forumas, IF) and the Lithuanian Business Confederation (Lietuvos verslo konfederacija, LVK). The last two organisations listed joined the Council only in 2017. There are two main national trade union confederations in Lithuania: the Lithuanian Trade Union Confederation (Lietuvos profesinių sąjungų konfederacija, LPSK) and the Lithuanian trade union Solidarumas (Lietuvos profesinė sąjunga 'Solidarumas', LPS 'Solidarumas'). At the outset of 2017 two more trade union confederations joined the Tripartite Council: the National Joint Trade Union (Respublikinė jungtinė profesinė sąjunga, RJPS) and the Lithuanian trade union Sandrauga (Lietuvos profesinė sąjunga 'Sandrauga', LPS 'Sandrauga'), but since mid-2018 only the latter has been represented at the LRTT.

Almost all national organisations of employers and trade unions have both industrial and territorial affiliates. The strongest industrial unions are in the public sector, particularly in education and health care. The most active trade unions in the private sector operate in the food industry and transport.

## Extent of bargaining

The current Labour Code allows collective agreements, depending on the type, to be concluded by trade unions and employers and their organisations. Until 1 July 2017, works councils could also sign company-level collective agreements. The spread of collective bargaining and collective agreements thus depends on the particular activities of the social partners and their organisations. According to Statistics Lithuania the number of trade union members in Lithuania in 2016 was 91,500 or approximately 7.7 per cent of salaried employees. During the past decade this share has tended to decline. Union membership in Lithuania in 2012 was 9 per cent (Appendix A1). The association rate of employer organisations was close to 16 per cent in 2016 (Statistics Lithuania 2017; see Appendix A1.G).

Low trade union density, as well as a number of other related factors, determines the low collective bargaining coverage in the country. Lithuania is positioned towards the bottom of the EU ranking with regard to collective bargaining with coverage at 10 per

cent in 2012 (Appendix A1). According to other sources (Eurofound 2013; 2015), this indicator might be somewhat higher, reaching between 15 and 20 per cent, although the latter figure is too optimistic.<sup>1</sup> In such circumstances, it can reasonably be argued that collective agreements generally have no great influence on employment relations in Lithuania.

Despite the absence of specific research in Lithuania allowing for substantiated conclusions about the reasons why collective bargaining coverage is low, we can still identify two principal reasons why this is so, namely low trade union density and the absence of genuine industrial collective bargaining. Low trade union density is strongly influenced by the absence of industrial relations traditions at company level and is closely related to the poor financial and human capacities, including legal, analytical and organisational skills, of trade union organisations, which impedes collective bargaining development at company level.

The absence of collective bargaining at industrial level is determined by several factors, which differ between the public and private sectors. In the public sector all main employment and working conditions, including remuneration issues, are strictly regulated by national legislation; thus there is little room for manoeuvre for collective bargaining. Moreover, the state has taken the position of ‘third party’ within national social dialogue and, in the majority of cases, the state has not been involved in industrial collective bargaining although it has a role as an employer. It should be noted that the state could have considerably more influence on, and be more active in promoting, industrial collective bargaining and acting as the guarantor of such bargaining by establishing institutional structures for bargaining-related dispute resolution; adopting laws that promote collective bargaining, with clearly defined parties to collective bargaining, their rights and duties, as well as bargaining procedures; expanding the scope of application of collective agreements; providing statistics and analysis with regard to the main industrial relations indicators, such as average wage data in certain industries; providing technical support to social partners; and organising training for the social partners on collective bargaining related issues.

In the private sector, there is an incongruity between the respective structures of trade unions and employers’ organisations at the industrial level that has prevented the parties from engaging in collective bargaining. Moreover, employers’ organisations have been reluctant to take up the role of social partners and/or sign collective agreements, claiming the absence of a mandate from their members to do so (Blaziene and Gruzevskis, 2017). At both the company and industrial levels, the extent of collective bargaining is also affected by generally low trade union density in Lithuania. Low union

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1. There is no reliable statistical information in Lithuania regarding collective agreements. So far, the Ministry of Social Security and Labour has registered, in direct filing order, only national, industrial or territorial collective agreements. With the coming into force of the new Labour Code on 1 July 2017, all types of collective agreements, including company-level collective agreements, are supposed to be registered and made publicly available in accordance with the procedure prescribed by the government. This will provide a more comprehensive picture of the trends of conclusion and operation of collective agreements. Taking this into account, information on coverage of collective agreements is presented in this chapter only on the basis of secondary sources.

representation at the company and industrial levels makes it difficult for trade unions to initiate collective bargaining.

The structure of the Lithuanian economy, which is unfavourable for collective bargaining, also contributes to low trade union density. There is a high prevalence of companies with 50 employees or fewer; such companies account for more than 95 per cent of the total number of enterprises operating in Lithuania and employ about 50 per cent of all workers. As a rule, the smallest companies have the least developed industrial relations. Likewise, industries are relatively small in Lithuania: companies often transact business in several areas, which complicates the unification of workers in a particular industry.

In this context, a measure aimed at facilitating collective bargaining implemented during the 2007–2013 programming period should be mentioned. The measure was aimed at promoting higher bargaining coverage through the conclusion of collective agreements in enterprises, as well as at regional and industrial levels. The results achieved by the measure include, among other things, 12 industrial, 21 regional and 263 company collective agreements signed during the period 2011–2015. Despite the number of agreements concluded, the measure did not have a significant impact on the collective bargaining situation in Lithuania nor on the social and economic conditions of the employees covered by these agreements (Research Council 2015; ESTEP 2016). The majority of the agreements concluded were ‘formal’ and their contents primarily repeated existing legal norms and no collective wage agreements were signed.

With regard to the duration of the 22 industrial and territorial collective agreements, which are formally in effect today, it should be noted that 18 of them are of indefinite duration. One collective agreement has been valid for more than 10 years with no updates. The remaining four collective agreements have been concluded for a period of two to six years. Although most collective agreements are of indefinite duration, the Labour Code valid at the time these agreements were signed specified that such agreements were valid until the date specified therein or until the conclusion of a new agreement.<sup>2</sup> This leads to a situation in which a number of industrial and territorial collective agreements have been formally in place for a number of years. In practice, however, they have no material impact on the social and economic situation of the employees they cover and are not taken into account for the purpose of measuring collective bargaining coverage in the country.

With regard to genuine industrial collective bargaining, due mention should be given to collective bargaining in education, which has been in progress for a number of years and, hopefully, will be concluded in 2017–2018 with the crowning achievement of a robust education employees’ collective agreement that, among other things, covers certain issues of wage remuneration. Likewise, special mention should be given to an industrial collective agreement signed in health care in 2017. This collective agreement also contains provisions on work remuneration.

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2. The new Labour Code stipulates that ‘[a] collective agreement shall be valid for a maximum period of four years unless said agreement specifies otherwise’.



According to the Labour Code valid up to 1 July 2017,

where the provisions of an industrial or territorial agreement are of consequence for an appropriate industry of production or profession, the Minister of Social Security and Labour may extend the scope of application of that industrial or territorial collective agreement or separate provisions thereof, establishing that the agreement shall be applied with respect to the entire industry, profession, sphere of services or a certain territory if such a request has been submitted by one or several employees' or employers' organisations that are parties to the industrial or territorial agreement.

Lithuania thus has an explicit extension mechanism.

National or cross-industry, territorial and industrial collective agreements may be compulsorily extended by an order of the Minister for Social Security and Labour to bind all the employers of the appropriate territory or industry if such a request has been submitted in writing by both parties to the collective agreement. The request must specify the following: the name of the collective agreement; the coverage to which the agreement is to be extended; the scope of extension, whether the entire collective agreement or only separate provisions thereof are to be extended; the grounds for extending the scope of the collective agreement; and the projected number of employees to whom the extended collective agreement will apply. The Minister for Social Security and Labour shall take a decision regarding the extension of the scope of the collective agreement within 60 calendar days of receiving the request.

Although the provision above was in force in the versions of the Labour Code both before and after 1 July 2017, it has never been applied in practice. It is likely that there are several reasons for this. The main reason is probably the absence of bargaining traditions, particularly at the industrial level, in the country. Collective bargaining and collective agreements are more an 'exception' than a 'norm' in Lithuanian working life.

Although collective bargaining coverage is generally low, collective bargaining and collective agreements are usually in place in companies with unionised workers. In compliance with the Labour Code valid until 1 July 2017, collective agreements used to apply to all the employees of the signatory companies. From 1 July 2017, after the entry into force of the new Labour Code, collective agreements are to apply only to the employees of the company who are trade union members. Indeed, the new Labour Code stipulates that the trade union and the employer may agree on the application of a company or plant collective agreement to all of the employees (for details see below). This Labour Code provision may lead to a further reduction of collective bargaining coverage unless other conditions change, such as an increase in trade union membership or the introduction of collective bargaining at industrial level. The legislators, however, expect the restriction of collective agreements only to trade union members to encourage non-unionists to join a trade union. According to trade unionists, however, the application of a collective agreement exclusively to members of the trade union that signed the collective agreement hampers the signing of collective agreements because 'employers

delay initiation of real bargaining on the grounds of not being able to apply two systems of remuneration for work in their companies' (Interview 2017).

A further new measure in force in Lithuania from 1 July 2017 is the barring of works councils from conducting collective bargaining and signing collective agreements. Formally, this amendment will act to reduce collective bargaining coverage. The Lithuanian Law on Works councils (*Lietuvos Respublikos darbo tarybų įstatymas, DTĮ*), was adopted in 2004 and allowed works councils to conclude collective agreements. Even though works councils were not very widespread in Lithuania<sup>3</sup> and, according to the experts, agreements signed by them had no material effect on the social and working conditions of employees,<sup>4</sup> the introduction of the new legal regulation might reduce collective bargaining coverage even more.

In Lithuania, collective bargaining usually takes place in the public sector or public-related industries, such as education, health, railways, culture, forestry, post and energy, and in large and medium-sized, more often multinational, private sector companies in food, alcohol, tobacco and other manufacturing industries. The duration of the majority of collective agreements signed in Lithuania at company level is two to three years, although sometimes agreements are signed for an indefinite period. As a rule, bargaining for a new collective agreement is initiated several months before the existing agreement expires. It should be noted that even though between 2004 and 2017 collective agreements were signed between employers and works councils at company level in Lithuania, there are no studies that provide evidence of the content and scope of such agreements. The prevalent view is that works councils are strongly dependent on employers and therefore cannot be equal partners in bargaining and represent/defend employees' interests in an appropriate manner (Interview, 2017). Again, no research has been carried out in Lithuania to confirm this view.

## Level of bargaining

According to the Labour Code of the Republic of Lithuania valid until 1 July 2017, collective agreements could be concluded at four levels: the state or national level; the industrial level, including production, services and professions; the territorial level, embracing municipalities or counties; and the enterprise level, covering agencies or enterprises and including structural subdivisions. From 1 July 2017, collective agreements can be concluded in Lithuania at the following five levels: national or cross-industry; territorial; industrial, including production, services and professions; employer or company; and workplace or plant. According to the Labour Code the latter is possible only in cases stipulated in collective agreements concluded at the national, industrial or company levels. The new Labour Code thus introduced two new types of collective agreements, in particular, cross-industry and plant-level collective agreements.

3. According to the State Labour Inspectorate, around 5 per cent of entities that submitted information to the State Labour Inspectorate in 2016 had functioning work councils; according to Eurofound 2013, 15 per cent of private sector entities with more than 10 employees had works councils.
4. Interviews with trade union and works council members conducted by the authors during 2016–2017.

According to the current legislation:

- parties to a national or cross-industry collective agreement shall be one or several national trade union organisations as one party, and one or several national employer organisations as the other party;
- parties to a territorial collective agreement shall be one or several trade union organisations, as one party, and one or several employers' organisations, as the other party, functioning in the specified territory;
- parties to an industrial collective agreement shall be one or several industrial trade union organisations as one party, and one or several employers' organisations of an appropriate industry of production, services or profession, as the other party. Industrial collective agreements may be restricted to a certain territory;
- parties to a company-level or a plant-level collective agreement shall be the trade union of the relevant company and the employer;
- collective agreements in companies with several trade unions may be also concluded between the joint representation of trade unions and the employer.

Although the Labour Code operative after 1 July 2017 states that collective agreements shall apply to the employees who are members of signatory trade unions only, a company-level or plant-level collective agreement may apply to all the employees of the company if so agreed by the trade union and the employer and approved by the general staff meeting or conference of the company. A 'conference' in this context is a meeting of employees' representatives elected within the structural units of a company, establishment or organisation. Where a company has no functioning trade union, a collective agreement may be concluded by the industrial trade union and the employer and shall apply, subject to approval by the general staff meeting or conference of the company, to all the employees.

A company-level or plant-level collective agreement shall be binding on the employer party to the agreement. Collective agreements concluded at the national or cross-industry, territorial and industrial levels shall apply to employees represented by trade unions or members of trade union organisations and shall be binding upon their employers that:

- are members of the employer organisation that signed the collective agreement;
- joined the signatory employer organisation after the conclusion of the collective agreement;
- were members of the employer organisation when the collective agreement was concluded but left the organisation thereafter. In this case, application of the collective agreement ceases to be binding on them three months after the withdrawal from the employer organisation unless the collective agreement expires earlier;
- fall within the extended scope of the collective agreement (for details see below).

If an employee is covered by several collective agreements:

- in the event of company-level and industrial collective agreements, provisions of the industrial collective agreement shall apply unless the industrial collective agreement

- allows the company-level collective agreement to derogate from the provisions of the industrial agreement;
- in the event of company-level and territorial collective agreements, provisions of the territorial collective agreement shall apply unless the territorial collective agreement allows the company-level collective agreement to derogate from the provisions of the territorial collective agreement;
  - in the event of industrial and territorial collective agreements, *lex specialis* provisions of the collective agreement shall apply. In this case the favourability principle shall not apply as the *lex specialis* principle is more important (Davulis 2018: 557).

Even though the Labour Code provides for, and defines options for concluding, collective agreements at different levels, company-level agreements are nevertheless dominant in practice. Industrial collective bargaining is very rare in Lithuania and there are just a few valid industrial agreements. Despite several agreements signed between actors – trade unions, employers’ organisations, government and NGOs – at the national level since the country regained independence, there are no national-level collective agreements in Lithuania. Likewise, there is no articulation between different levels. While there are no extensive studies on this issue, it can nonetheless be assumed that pattern bargaining is absent from Lithuania, as is coordination across different industries.

## Depth of bargaining

Depth of bargaining addresses the extent of local representatives’ involvement in the formulation of wage claims and the implementation of agreements. Before 1 July 2017 both trade unions and works councils had powers to conduct collective bargaining and enter into collective agreements. From 1 July 2017 onwards, collective bargaining, the signing of collective agreements and the initiation of industrial labour disputes over interests are the exclusive right of trade unions. Where a company or plant has several functioning trade unions, a company-level or plant-level agreement may be concluded between the trade unions or joint representation of trade unions and the employer. In these circumstances the joint representation arrangements made by the trade unions are underpinned by an agreement. When there is no trade union in a company, the general staff meeting may authorise an industrial trade union to negotiate the collective agreement with the company.

The party willing to initiate collective bargaining shall present itself to the other party to the bargaining. The party seeking collective bargaining shall present clearly formulated demands and proposals and indicate the representatives it will delegate to conduct the bargaining. The party receiving the request must join collective bargaining within 14 days by giving a written response to the party initiating the process and indicating the representatives it delegates to conduct the bargaining. In practice, participants in the collective bargaining process are, as a rule, members of the company trade union’s executive and, quite frequently, experts, usually legal and/or financial professionals, appointed by an industrial trade union. Ordinary trade union members or, even more so, ordinary employees of the company are typically not involved in collective bargaining. The employer also delegates representatives. In practice, a negotiation group usually

includes representatives of the human resources department, the company lawyer and/or deputy director.

According to the document ‘Research on collective agreements and their role in creating quality labour relations’ (Research Council 2015), the trade union and, less frequently, its lawyers usually draft a company collective agreement. Only in a minority of cases are collective agreements drafted by trade unions and employers together. In the majority of cases, representatives of the industrial trade union participate in drafting, negotiating and/or signing the collective agreement within the company. Research findings show that, on average, negotiating a collective agreement takes six months in the private sector and three to four months in the public sector.

According to trade union representatives interviewed within the framework of the abovementioned research (Research Council 2015), the chairs of company-/plant-level trade unions and/or their representatives usually face the following problems in the process of collective bargaining:

- lack of or no access to information necessary to conclude a collective agreement, such as corporate, financial and other documents. This problem is particularly relevant for private sector trade unions;
- employer inactivity and claims of lack of authority;
- insufficient legal regulation of the procedures in the Labour Code, particularly a lack of precise and specific norms. This problem is particularly relevant for public sector trade unions.

The generally poor negotiating experiences among the social partners have led to the situation in which industrial agreements more often than not contain provisions that have simply been transposed from legislation rather than establish new rights and obligations. Such provisions are thus recommendations rather than binding provisions (for more details on the content of collective agreements, see below on the scope of agreements). Although ordinary trade union members typically play a minor role in collective bargaining, the experience of trade unionists shows that companies with high trade union membership usually end up with conditions that are more advantageous for employees than companies in which union membership is low (Interview 2017).

The involvement of trade union members in the process of collective bargaining is also to a certain extent limited by the fairly strict strike regulations in Lithuania and striking practices that disadvantage trade unions. From 2000 to 2014, the average strike volume per 1,000 employees in Lithuania was only four, one of the lowest in the EU28, alongside Latvia, Poland and Slovakia – see Appendix A1.I). Prior to the entry into force of the new Labour Code on 1 July 2017, the right to take a decision to call a strike in a company or a structural unit of a company was vested in the trade union or works council operating in it. A strike could be called in the company if the relevant decision was approved by a secret ballot of more than half of the employees, or of more than half of the employees of a structural unit of the company, if a strike was called there. The right to take the decision to call a strike at the industrial level was vested in industrial trade union organisations, after discussions held at the Tripartite Council of

the Republic of Lithuania. The employer had to be given, at least, seven days written notice of the beginning of the intended strike. When a strike was declared, only the demands that had not been met during the conciliation or mediation processes might be put forward.

In addition to the fairly strict regulatory requirements, Lithuanian case law is also unfavourable for the organisation of strikes. In recent years, Lithuanian courts have been fairly willing to issue negative rulings on the lawfulness of strikes and the demands being put forward. Moreover, the courts have explained and applied provisional safeguards in a very (economic) liberal and broad manner, holding that

strikes may have negative economic effects on the employer and the society as a whole. This argument denies the very essence of a strike, which is to pose economic threats to the employer for a settlement of the existing industrial dispute and to draw the attention of the society to existing problems. [...] At the same time, courts tend to extend the list of agencies of public interest, frequently even depriving employees of the possibility to exercise their right to strike (Petrylaite 2015).

In 2011, for example, a strike by the employees of brewery UAB Svyturys-Utenos Alus was postponed on the grounds that the brewery was 'satisfying the vital needs of society' (Blaziene 2011).

The regulation of strikes has been facilitated by the new Labour Code. Although from 1 July 2017 the right to call a strike is given only to the trade union or trade union organisation, the decision to call a strike at the company level requires approval by at least one-quarter of all union members. Calling a strike in an industry requires a relevant decision from the industrial trade union. The employer or employers' organisation and its individual members must be given written notice at least three working days before the beginning of a token strike or at least five working days before the beginning of a real strike. When a strike is declared, only the demands heard by the labour disputes commission, labour arbitration or in the mediation process may be put forward.

According to the new Labour Code, the parties to a collective agreement or their designated representatives exercise control over the implementation of a collective agreement. The procedure, methods and time limits for reporting are established in the agreement. When exercising this control, the parties to the agreement must provide each other with necessary information within one month of receiving the request. Disputes arising in relation to implementation or inadequate implementation of the collective agreement, including in relation to the employees and employers falling within the scope of the agreement, shall be settled in accordance with the procedure for settling labour disputes over rights. In practice, if the employer fails to meet the terms of the collective agreement, the trade union will refer the case to a court, which, as a rule, orders the employer to fulfil their obligations within a certain period of time. Unlike trade unions, works councils normally do not apply to a court regarding the non-implementation of collective agreements because they have neither the necessary financial resources nor adequate competences.



## Security of bargaining

Security of bargaining encompasses the factors that determine the trade unions' bargaining role. The new Labour Code introduced radical changes to the provisions that regulate employee representation, particularly those dealing with the operation of trade unions and works councils. In the version of the Labour Code valid until 2017, a works council had the right to represent and defend the rights and interests of employees only if 'an enterprise, agency or organisation has no functioning trade union and if the staff meeting has not transferred the function of employee representation and protection to the trade union of the appropriate industry of economic activity'. This regulation was intended to create the principle of priority for trade unions in representing the rights and interests of employees. According to the Labour Code valid from July 2017, workers' representatives are trade unions, works councils or trustees. According to the Labour Code, if the average number of employees is below 20, employee representation rights may be exercised not by a works council, but by an employee trustee elected at a general meeting of the employees. An employer is required to initiate the formation of a works council when the average annual number of employees in the company is 20 or more. A works council shall not be established in a unionised company in which more than one-third of the employees are trade union members.

A company-level trade union can be set up where it has at least 20 members or its members account for at least 10 per cent of the total employees of the company, provided this is equivalent to three or more employees. Trade unionists have the right to join and/or set up an industrial or territorial trade union organisation, provided that there are at least five company-level trade unions. Industrial and territorial trade unions may join national-level trade union organisations.

The new system of employee representation distinguishes between works councils and trade unions. The primary role of works councils is to represent employees in information and consultation processes, while trade unions have an exclusive right to represent employees in the collective bargaining process (Sorainen 2017). Both the old and new versions of the Labour Code provide sufficient guarantees for workers' representatives. According to the Labour Code in force from 2017, workers' representatives shall act freely and independently from any other parties to social partnership. The employer or other parties to social partnership are prohibited from exerting influence over decisions of workers' representatives or otherwise interfering with their activities. Employers, their statutory representatives or authorised persons are prohibited from influencing admission to work or proposing job retention for not joining a trade union or leaving it or setting up and funding organisations with a view to discouraging, preventing or exerting control over trade union activities. National and municipal authorities are supposed to refrain from interfering with the activities of workers' representatives unless statutory grounds for violations of law exist. Workers' representatives are entitled to refer to bodies for labour dispute resolution and other competent institutions regarding cases of unlawful interference in their activities and request the termination of those activities, issue directions to carry out certain steps or order compensation for damage.

The new Labour Code also stipulates that the employer shall provide premises free of charge and access to equipment for the performance of functions of members of the executive bodies of the company-level trade union, members of the works council and works trustees. Other conditions of material and technical supplies shall be laid down in agreements between the social partners. Certain funds may also be allocated for the activities of workers' representatives in accordance with laws, provisions of labour legislation and/or agreements between the social partners. Workers' representatives are entitled to address, in the procedure established by law, bodies for labour dispute resolution and other competent institutions regarding violations of their rights and valid interests. Any person who causes damage to workers' representatives by unlawful conduct is liable for the damage in the manner prescribed by law.

Members of the decision-making bodies of trade unions, members of works councils and trustees normally perform their duties during company working time. According to the Labour Code, the aforementioned persons shall be released from work for at least 60 working hours per year for the performance of their duties and receive their average wage for this period. The Labour Code further states that the employer must create conditions for the training and education of workers' representatives. For this purpose, workers' representatives shall be given at least five working days per year at a time agreed with the employer. During this period, workers' representatives shall receive their average wage for at least two working days, unless labour-law norms and/or social partners' agreements specify otherwise.

According to the Labour Code, workers' representatives may not be dismissed from work on the initiative of the employer or at the employer's volition, and the mandatory terms and conditions of their employment contract may not be made worse without the consent of the State Labour Inspectorate (Valstybinė darbo inspekcija, VDI) during the period for which the workers' representatives have been elected and six months after the end of their mandate. Likewise, membership of a trade union and involvement in the activities of a trade union or workers' representative bodies shall not be considered a breach of work duties. The Labour Code stipulates that labour-law norms or social partners' agreements may provide for other guarantees.

In practice, a trade union's capacity to bargain depends on a variety of factors, including the number of union members in a company, the relationship with the industrial trade union, the attitude of the employer, the union's ability to organise strikes, the personal/negotiating characteristics of the trade union chair and the use of membership fees. Trade unions in companies with a high membership and robust ties with the industrial union have greater bargaining power, as a very influential factor in the bargaining power of a company-level union is the organisational, financial and human capacities of the industrial union. The industrial trade unions that efficiently organise their activities and use membership fees effectively can afford to hire highly qualified experts and thus contribute significantly to collective bargaining in their member companies. An example of this is the Lithuanian Trade Union of Food Producers (Lietuvos maistininkų profesinė sąjunga, LMPS). Although an industrial collective agreement has not been signed and collective bargaining is not in place in the food industry, this industry can nonetheless be characterised as highly effective. The LMPS reformed collecting



membership fees by concentrating the majority of fees at the industrial level, in contrast to many other industries in which the bulk of fees go to company-level unions. The effective management of funds enabled the LMPS in food to employ qualified experts, including lawyers and economists, who are involved in collective bargaining at the company level and greatly reinforce the union's negotiating position. Considerable funds are also assigned for training and improving the qualifications of company-level union representatives.

Most of the factors that influence trade union bargaining strength are subjective to some degree. One objective factor that does not depend on a specific trade union is the legal regime regarding strikes and its practical implementation (see 'Depth of bargaining'). In short, due to the relatively strict regulation of strikes and negative case law outcomes, an environment that is unfriendly to strikes has been established in Lithuania, which negatively impacts on trade union bargaining power.

Among the factors that have a significant influence on the bargaining role of unions is national-level tripartite social dialogue, implemented through the Tripartite Council of the Republic of Lithuania and other tripartite commissions and committees. Since the establishment of the Council no social and labour market-related legislation has been adopted in Lithuania without prior consideration at the Council. Other tripartite commissions and committees function under the Public Employment Office (Lietuvos darbo birža, LDB), the State Social Insurance Fund Board (Valstybinio socialinio draudimo fondo taryba, VSDFT) and some other, more minor institutions. Social partners at the national level also participate actively in various working groups engaged in legislation drafting and policy design. Although the direct effects on collective bargaining cannot be identified, the level of activity among the social partners at the national level can be described as contributing to the positive image of the social partners in Lithuania and, at the same time, as creating better preconditions for the development of collective bargaining.

Because legislation in Lithuania provides for rather high social guarantees for employees, collective agreements typically have no material effect on employees' working conditions and social guarantees. A number of collective agreements contain provisions on various additional social benefits/allowances, days off and training/study opportunities, not covered by social guarantees (for more details, see scope of agreements). Once signed, however, a collective agreement becomes legally binding. When an employer fails to comply with a signed collective agreement, the trade union has the possibility of direct recourse to a court and the court will order the employer to observe the agreement or meet their obligations.

## **Scope of agreements**

Parties to a collective agreement have the right to define the issues to be placed on the bargaining agenda, as well as the content of the agreement. When negotiating the content of a collective agreement, however, the parties are required to take due account of labour law. Parties involved in collective bargaining at any level must comply with

the *in favorem* principle, which means that the working conditions guaranteed by law are the minimum and collective or individual subjects can agree additional guarantees and conditions more favourable to employees. To comply with the new Labour Code, no collective agreement or any other local regulations on working conditions is considered valid if it places employees in a worse position than that defined by the Labour Code, laws and other regulations. This means that not only the Labour Code and laws take precedence over collective agreements, but also resolutions of the government and regulations adopted by other national and municipal authorities.

Collective agreements usually contain several types of provision:

- *Contractual* provisions. This part of the collective agreement contains specific commitments on the part of the employer and employees that become legally binding upon signing the collective agreement and the parties must comply with these commitments within set time limits. Most of the contractual provisions of the agreement relate to improvements of working conditions and employees' health and safety; for example, an employer may commit in a collective agreement to provide employees with a rest room or a medical post.
- *Regulatory* provisions. These provisions contain legal rules that define certain local working conditions and standards to be observed by the employer and employees. The regulatory section of an agreement may include provisions that reinforce guarantees of labour rights for employees, including additional advantages/benefits, such as number of vacation days. It is prohibited to set out provisions that prevent the application of one or another legal rule or establish working conditions that are inferior to those stipulated by the Labour Code, other applicable laws and regulations. Examples of regulatory provisions include those covering information and consultation procedures, and higher pay for night work, work on public holidays and overtime work.
- *Organisational* provisions define the procedure for amending and reviewing the collective agreement, monitoring its implementation, examination of disputes related to the application of the agreement and liability for non-compliance.
- *Information* provisions. Even though not required by law, collective agreements often contain information references reiterating legal provisions. These provisions perform the employee communication function because, by becoming familiar with the collective agreement, employees learn their essential rights and obligations entrenched in labour laws.

Currently valid legislation does not define the content of collective agreements: that is, there is no detailed list of provisions. The parties define the content and structure of a collective agreement. Annexes to a collective agreement constitute an integral part of it. The annexes may specify incentive payment procedures or provide a list of employees in jobs exposed to dangerous or harmful agents. The legislator provides a model list of provisions to be covered by a collective agreement. The list is neither exhaustive nor compulsory, but the provisions are grouped as follows:

- (i) Provisions regarding remuneration for work: forms, system and level of remuneration for work, bonuses, compensatory allowances and additional pay,

- regulatory mechanisms for wages/salaries subject to price movements and inflation, implementation of the indicators set in the collective agreement.
- (ii) Employment-related provisions: employment, in-service training, retraining, conclusion, amendment and termination of employment contracts.
  - (iii) Provisions regarding working time and rest periods: length of working time and rest, leaves, benefits to employees as regards education.
  - (iv) Occupational health and safety-related provisions: improvement of working conditions and occupational health and safety, situation of women and children, environmental protection.
  - (v) Other work, social and economic conditions in the parties' interest, provisions regarding the procedure for amendment and duration of the collective agreement, collective agreement implementation monitoring, liability for breach of agreements, social partnership instruments to avoid industrial disputes and strikes.

In practice, collective agreements also contain provisions regarding issues that are not regulated by law. Such provisions are frequently related to social welfare, financial support, medical services, healthcare services for employees, financial support for employees in difficult family situations, transport services and employees' home improvements. These provisions do not directly regulate employment relations or define working conditions. They might be described as factors influencing the motivation to work and compensating for low pay.

The current Labour Code states that a derogation from its rules or from other rules prescribed by labour legislation is allowed in a national, industrial or territorial collective agreement, provided that a balance is achieved between the interests of the employer and employees. This provision excludes rules related to maximum working time and minimum rest period, entering into or expiration of the employment contract, minimum wages, occupational health and safety, and gender equality and non-discrimination on other grounds. Disputes related to the validity of such rules shall be settled in the procedure prescribed for labour disputes over rights. If it is established that a provision of a collective agreement is contrary to the rules laid down in the Labour Code or other labour law regulations, or that no balance between the interests of the employer and employees has been achieved in the collective agreement, the provision is disallowed and therefore should be replaced by the relevant provision of the Labour Code or labour law regulation. In any case, collective agreements may put employees in a better position than that defined in the Labour Code or other labour law regulations. Insofar as there is no current case law arising from the new Labour Code, it is difficult to judge how the aforementioned principles will be applied in practice.

Virtually no research has been conducted in Lithuania that could serve as a basis for evaluating the content of collective agreements, which is difficult to access by the general public and researchers. Fragmentary research and interviews with trade union representatives suggest that the contents of collective agreements mainly reiterate the provisions of the Labour Code and other secondary legislation relevant to the parties. Some collective agreements contain contractual provisions whereby employers commit to perform one-off actions, such as providing a rest room or hold a celebratory event. It should be noted that freedoms allowed by the Labour Code to regulate certain issues

in a collective agreement, such as work rationing and information and consultation procedures, are underused. Even though information provisions are found in agreements in both the public and private sectors, there is a higher prevalence of organisational arrangements, provisions related to cooperation with trade unions, more favourable work organisation procedures and other similar provisions in public-sector collective agreements due to the stricter regulation of this sector (Research Council 2015).

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

The degree of control of collective agreements refers to the extent to which the terms mentioned are applied in practice. Similarly to many other post-Soviet countries, the terms and conditions of employment in Lithuania are governed strictly, and in detail, by the Labour Code and other legislation. Collective agreements therefore generally do not play a significant role in determining the terms and conditions of employment. Budgetary planning alone, for example, is enough to limit the bargaining power of the public sector trade unions regarding terms and conditions additional to those laid down in laws and other regulatory acts. Thus information provisions are found more frequently in public-sector collective agreements. Private-sector collective agreements, particularly in large and medium-sized production companies, contain a higher level of regulatory and contractual provisions.

There is a control system to ensure compliance with labour laws, other regulatory acts and collective agreements by the parties to employment relationships. There are government and non-government bodies that regulate compliance with labour laws, other regulatory acts and collective agreements. This means that the state also recognises and encourages non-governmental organisations supervising implementation of labour laws and monitoring the performance of public authorities in the field of labour laws.

The central institution exercising control over employer compliance with the Labour Code, labour laws and collective agreements is the State Labour Inspectorate. Issues within the competence of the State Labour Inspectorate include control of accidents at work; occupational diseases and occupational health and safety; prevention of violations of labour law regulations and the Labour Code; control of laws and other regulations governing occupational health and safety; and employment relationships within companies, agencies, organisations or other organisational structures, irrespective of the form of their ownership, type and/or nature of activities, including cases in which the employer is a named person. Other public authorities also exercise government control over collective agreements in certain fields. For instance, the Office of the Equal Opportunities (Ombudsperson Lygių galimybių kontrolieriaus tarnyba, LGKT) verifies implementation of equal opportunities for women and men by employers.

Trade unions or works councils exercise non-governmental control over labour laws, other regulations and collective agreements. Works councils exercise such control only in non-unionised companies, agencies and organisations. In case of an employer's failure to comply with labour laws, trade unions are entitled to seek annulment by the employer of decisions in breach of the rights of union members, to take part in labour

dispute resolution and to perform other functions provided for in the law. Failure of the parties to observe the adopted agreements gives rise to a collective industrial labour dispute over rights. The Labour Code valid from 1 July 2017 defines a collective industrial labour dispute over rights as a disagreement between employees' representatives, on one hand, and the employer or employer organisations, on the other, with regard to non-compliance or inadequate compliance with labour regulations or mutual agreements. Labour Disputes Commissions (*Darbo ginčų komisijos*, DGK) hear collective industrial labour disputes over rights. Labour disputes over rights relating to strikes or lockouts are heard directly before the court.

A body hearing a labour dispute over rights is empowered to order restoration of rights prejudiced by non-compliance or defective compliance with labour regulatory acts or mutual agreements; to award pecuniary and non-pecuniary damages, as well as to impose fines or penalties in the cases prescribed by labour regulatory acts or agreements; to terminate or change legal relations; and to order performance of other acts prescribed by law or labour regulatory acts. A body hearing a collective industrial labour dispute over rights is empowered to impose a fine on the party in breach of labour regulatory acts or agreements between the parties in the amount of up to €3,000. The fine should be proportional to the gravity of the infringement and constitute a deterrent to future infringements of the law.

The Labour Code prohibits the calling of a strike during the term of the collective agreement if the parties comply with the agreement. In this context, the term 'collective agreement' is understood in its broad sense and the view is taken that strikes are prohibited not only when the company complies with the collective agreement, but also when the employer, being a member of the employers' organisation that has signed an industrial, territorial or national collective agreement, meets the obligations set out in this agreement.

The prohibition of strikes during the term of a collective agreement is related to the fulfilment of the obligations pertaining to industrial relations. By signing a collective agreement and agreeing upon future work, social and economic conditions, the parties thereto assume certain obligations. It is thus apparent that if the employer duly performs their obligations under a collective agreement, employees should also fulfil their commitments without requiring conditions going beyond those laid down in the agreement. In order to amend certain work, social or economic terms and conditions, employees and their representatives are supposed to initiate collective bargaining in accordance with the Labour Code and refer to the employer with a proposal for a new collective agreement.

## Conclusions

In summary, Lithuania can be regarded as having one of the least developed systems of industrial relations among EU Member States. Trade union density in Lithuania is less than 10 per cent and collective bargaining coverage is no more than 15–20 per cent. According to current legislation, collective agreements may be concluded at national,

industrial, territorial, company or plant level. In practice, however, the principal level of collective bargaining is the company and there actually are no industrial wage agreements in the country. Collective bargaining usually takes place in the public sector and in large and medium-sized companies, which are often multinational private sector companies.

Before 1 July 2017, collective agreements were applicable to all the employees of the company. After 1 July 2017, collective agreements apply only to the employees who are members of signatory trade unions. Before 1 July 2017, both trade unions and works councils had powers to conduct collective bargaining and enter into collective agreements. From 1 July 2017 onwards, collective bargaining, the signing of collective agreements and the initiation of industrial labour disputes over interests are the exclusive rights of trade unions. Similar to several other post-Soviet countries, the Labour Code and other legislation strictly regulate terms and conditions of employment in Lithuania. Collective agreements generally do not play a significant role in determining the terms and conditions of employment in the country.

Although virtually no research has been conducted in Lithuania that may serve as a basis for evaluating the content of collective agreements, fragmentary research and interviews with trade union representatives suggest that the content of agreements often reiterates the provisions of the Labour Code and other secondary legislation. It can be assumed that pattern bargaining and the coordination of bargaining across different industries is absent from Lithuania.

To summarise this chapter, Lithuanian social partners have not realised the full benefits of collective bargaining. A number of factors have influenced this situation, including the paternalist treatment of the social partners by the state, manifested in the rigid and detailed regulation of employment and social conditions, undeveloped industrial relations traditions and a lack of experience among the social partners that prevents them from using bargaining to its full potential.

The new Labour Code holds the promise of creating more favourable conditions for developing collective bargaining in Lithuania, enhances employee involvement in information and consultation, creates conditions for determining more advantageous employment and social guarantees to trade union members than to non-unionised workers of the company, and facilitates strike organisation. It is currently difficult to judge how, and to what extent, trade unions will succeed in making use of these provisions to promote collective bargaining and social dialogue.

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- Statistics Lithuania, [www.stat.gov.lt](http://www.stat.gov.lt)
- Trade Unions' News, [www.lprofsajungos.lt](http://www.lprofsajungos.lt)

All links were checked on 29 March 2019.



## Abbreviations

DGK	Darbo ginčų komisijos (Labour Dispute Committees)
DTĮ	Lietuvos Respublikos darbo tarybų įstatymas (Lithuanian Law on Works Councils)
IF	Investuotojų forumas (Investors' Forum)
LDB	Lietuvos darbo birža (Public Employment Office)
LDK	Lietuvos darbdavių konfederacija (Confederation of Lithuanian Employers)
LGKT	Lygių galimybių kontrolieriaus tarnyba (Office of the Equal Opportunities Ombudsman)
LMPS	Lietuvos maistininkų profesinė sąjunga (Lithuanian Trade Union of Food Producers)
LPK	Lietuvos pramoninkų konfederacija (Lithuanian Confederation of Industrialists)
LPPARA	Lietuvos prekybos, pramonės ir amatų rūmų asociacija (Association of Lithuanian Chambers of Commerce, Industry and Crafts)
LPS 'Sandrauga'	Lietuvos profesinė sąjunga 'Sandrauga' (Lithuanian trade union Sandrauga)
LPS 'Solidarumas'	Lietuvos profesinė sąjunga 'Solidarumas' (Lithuanian trade union Solidarumas)
LPSK	Lietuvos profesinių sąjungų konfederacija (Lithuanian Trade Union Confederation)
LRTT	Lietuvos Respublikos Trišalė taryba (Tripartite Council of the Republic of Lithuania)
LRŽŪR	Lietuvos Respublikos Žemės ūkio rūmai (Chamber of Agriculture of the Republic of Lithuania)
LVK	Lietuvos verslo konfederacija (Lithuanian Business Confederation)
RJPS	Respublikinė jungtinė profesinė sąjunga (National Joint Trade Union)
VDI	Valstybinė darbo inspekcija (State Labour Inspectorate)
VSDFT	Valstybinio socialinio draudimo fondo taryba (State Social Insurance Fund Board)



## Chapter 19

### Luxembourg: an instance of eroding stability?

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Luxembourg is a small western European country that, following the varieties of capitalism approach, can be classified as a coordinated market economy, in which the market is regulated fairly strongly (Hall and Soskice 2001). Luxembourg's employment relations system has further been described as neo-corporatist with some statist elements, because the government retains a coordinating role and a strong foothold in all arenas of national social dialogue (Kirov and Thill 2018; Vollaard *et al.* 2015). Luxembourg has a long history of workplace representation and trade unions play a key role in collective bargaining. Trade unions continue to exert an influence on neo-corporatist political decision-making, which guarantees them political legitimacy and social influence (Allegrezza *et al.* 2003; Thill and Thomas 2011).

In Luxembourg, as in other European countries such as France and Germany, trade unions maintain a presence mostly in larger companies in the public and manufacturing sectors. They negotiate collective agreements at different levels, primarily industrial and company level, encouraged by provisions that make it possible to legally extend those collective agreements at industry level. Furthermore, representative trade unions have the sole right to conclude collective agreements at the different levels, including the company.

Confronted with demographic and labour market changes, characterised by the effects of deindustrialisation and marked by the decline of the steel industry since the 1970s and the transition to a service economy with the finance sector predominant, Luxembourg's trade unions have tried to adapt their organisational structures and preserve bargaining power. Even if the crisis of trade unionism is not an issue of public debate in Luxembourg, unlike in France or Germany, trade unions in Luxembourg have lost membership and social influence over the past few decades. Overall, trade union density in Luxembourg decreased from 42.1 per cent in 2002 to 32.8 per cent in 2012 according to the OECD (see Table 19.1). Likewise, collective bargaining coverage has declined. Trade unions, however, have retained an important institutional role in national politics, in particular through their involvement in tripartite decision-making (Thill and Thomas 2011) and indirectly through the Chamber of Employees (Chambre des salariés, CSL) in the legislative process through non-binding assessments of draft laws.

While relatively extensive research work has been devoted to the Tripartite Coordination Committee (Comité de coordination tripartite) and to tripartite social dialogue at the national level, involving the government, employers' associations and trade unions, research has been scarce on industrial relations at the industry and company levels.

Table 19.1 Principal characteristics of collective bargaining in Luxembourg

Key features	2000	2016
Actors entitled to collective bargaining	Trade unions and employers/employers' organisations	
Importance of bargaining levels	Important bargaining at the national level, industry and company level bargaining prevail	Less bargaining at the national level, industry and company level bargaining prevail
Favourability principle/ derogation possibilities	Limited	
Collective bargaining coverage (%)	60	59 (2012)
Extension mechanism (or functional equivalent)	Yes	
Trade union density (%)	42.1 (2002)	32.8 (2012)
Employers' association rate (%)	80	80

Sources: Appendix A1.

The content of collective agreements is also rarely studied with few exceptions, namely studies on mandatory bargaining topics during the negotiation of collective agreements: working time, employment, training and gender equality (Maas *et al.* 2012; Brochard *et al.* 2015). The role of employee representatives in companies and their practices of discussion, negotiation and conflict remain under-researched, as does the internal organisation of employers' organisations and their development (Thomas 2012).

The economic and financial crisis of 2008 had a moderate impact on Luxembourg's economy and industrial relations (Thill and Thomas 2011) compared with the magnitude of the repercussions experienced by southern and eastern European economies. While important building blocks of the long-term stability of industrial relations in Luxembourg, including minimum wage and collective bargaining mechanisms, have been preserved through the crisis or temporarily modulated, as was the case with the wage indexation system, elements of erosion have also become apparent. Trade unions have continued to increase their absolute number of members, although they have not been able to match the continuing increase in employment levels, as a result of which union density has gradually declined. In addition, employment creation has been strong in industries in which unions are not well established, such as business services and retail. Broadly speaking, Luxembourg's industrial relations system, with its bargaining instruments and actors, has been characterised by overall stability, even though some signs of erosion have become apparent, as this chapter highlights.

## Industrial relations context and principal actors

In order to better understand the evolution of collective bargaining since 2000, it is helpful to provide some information on the context and highlight a number of key points about Luxembourg's economy and labour market. The country is a small, open economy, with highly developed international finance and business services. Luxembourg has experienced a long period of high GDP growth with the highest per

capita GDP in Europe and strong employment creation both for residents and cross-border workers, who account for 180,000 of Luxembourg's 418,000 workers (2016). In contrast, Luxembourg witnessed nearly a doubling of unemployment, from 3.1 per cent in 2000 to 5.7 per cent in 2017, as well as an increase in social inequality.

While the overall system of worker representation in Luxembourg has been strongly influenced by the situation in the neighbouring countries of Germany, Belgium and France, the institutions of worker representation in Luxembourg have followed their own development over time (Seifert 2011). The principle of union freedom is laid down in Article 11 of the Constitution in Luxembourg. Trade unions can engage in collective bargaining, however, only if they are recognised as representative as stipulated by the 2004 legislation on collective labour market agreements, the management of social conflicts and the organisation of the National Conciliation Office (Office national de conciliation, ONC). This legal framework has remained unchanged and has introduced and defined the criteria that determine trade union representativeness with the stated aim of ensuring the continued stability of collective bargaining. In the general observations accompanying the draft bill, the government highlighted the risk that cross-border workers 'introduce different trade union cultures' and that these put at risk the 'well-trying' social dialogue in Luxembourg. The 2004 reform therefore was aimed at avoiding trade union fragmentation and preserving strong and representative multi-industry unions. In addition, the 2004 legislation organises the negotiation process of collective agreements, defines the role of the parties to negotiations and stipulates a number of mandatory bargaining issues to be discussed during the negotiation of a collective agreement. The impact of the legislation on these matters is discussed below.

Luxembourg has dual-channel workers' representation. It is based on both trade unions and elected employee representatives at the company level, who can be elected either as independent candidates or as members of a trade union. Elected employee representatives are not allowed to conclude collective agreements because only trade unions recognised as representative in terms of the 2004 law on collective bargaining can negotiate such agreements. In practice, however, trade unions involve employee representatives in the negotiation of collective agreements.

At the company level, employees are represented by staff delegations (*délégations du personnel*) whose mission is defined under Article 414-2 of the law to 'safeguard and defend the interests of employees in terms of working conditions, employment security and social status'. With the elimination of the joint committee (*comité mixte*) for companies with 150 employees or more after the social elections in 2019, as a result of a new law on social dialogue adopted in July 2015, the mission and competences of staff delegations, as well as protection against dismissal of employee representatives will be increased. Public limited companies with more than 1,000 employees fall under board-level employee codetermination regulations, involving employee representatives directly in corporate decision-making.

Luxembourg's trade union movement is characterised by pluralism. Trade unions in Luxembourg are divided along political lines and according to workers' occupational

status and industry. There are two nationally representative trade union confederations, the Independent Trade Union Confederation of Luxembourg (Onofhängege Gewerkschaftsbond Lëtzebuerg, OGBL) and the Luxembourg Confederation of Christian Trade Unions (Lëtzebuenger Chrëschtliche Gewerkschaftsbond, LCGB). The OGBL represents 72,000 members and the LCGB 42,000 (2017). The OGBL is historically close to Luxembourg's Social Democratic Party (Krier *et al.* 2016) and the LCGB is close to the Christian Democratic Party and the Catholic Church (Weber 1999). Both confederations have a dual structure that organises members both at the workplace and on a geographical basis. Union members are represented by an industry structure according to their occupation or place of work and by a regional structure in line with their place of residence. According to their individual situation, members can also belong to other structures, such as the immigrant, youth or disabled workers' departments.

Besides these two confederations present in all industries there are also a number of independent unions. The civil service union the General Confederation of the Civil Service (Confédération Générale de la Fonction Publique, CGFP), with about 28,000 members, was established in 1909 as the Association Générale des Fonctionnaires. The private sector trade union, the Luxembourg Association of Bank and Insurance Employees (Association Luxembourgeoise des Employés de Banque et Assurance, ALEBA) was founded in 1918 as a professional association of bank employees. The ALEBA focuses on the financial sector and has approximately 10,000 members. Founded in 1912, the General Federation of the Municipal Administration (Fédération Générale de la Fonction Communale, FGFC) is a union uniting local and professional organisations of municipal administrative staff and public institutions overseen by the municipalities. The FGFC represents 4,200 civil servants and municipal employees. The National Federation of Railroad Workers, Transport Workers, Civil Servants and Employees (Fédération Nationale des Cheminots, Travailleurs du Transport, Fonctionnaires et Employés, FNCTTFEL), whose foundation dates back to 1909, represents the interests of railroad, public service and public transportation personnel.

Trade union candidates compete in the social elections that are held every five years for the company-based staff delegations and for the national Chamber of Employees. The Chamber of Employees was created in 2008 after the introduction of the 'single status' that abolished the distinction between blue- and white-collar workers in Luxembourg. As a result of this move, the two representative chambers of blue-collar workers (Chambre de travail) and of white-collar workers (Chambre des employés privés) fused into a single national institution to represent workers. All employees or pensioners, excluding civil servants or public-sector employees, must be affiliated to the Chamber of Employees, regardless of their nationality or place of residence. In addition to its traditional role as a professional chamber to safeguard and defend the interests of its affiliates and to assess draft legislation of concern to them the CSL informs employees and pensioners about economic and social developments and contributes to the broader political debate. By law, the CSL and the professional chambers of employers are involved in vocational training.

The main employer confederation is the Union of Luxembourg Enterprises (Union des Entreprises Luxembourgeoises, UEL), representing private sector companies.

UEL has eight member organisations, including the Chamber of Commerce (Chambre de commerce) and the Chamber of Crafts (Chambre des métiers), and covers 35,000 companies, which employ about 85 per cent of the workforce. UEL was founded in 2000 as a result of formalising an existing liaison committee of industrial business organisations. It represents employers' interests in national tripartite bargaining arenas and has signed the rare economy-wide agreements concluded in Luxembourg that implemented European framework agreements. Industrial employer organisations within UEL conduct industrial bargaining. Within UEL, the main industrial organisation is the Luxembourg Business Federation (Fédération des industriels luxembourgeois, FEDIL), which represents companies in construction, manufacturing and business services. The members of FEDIL employ about 30 per cent of the national workforce.

## Extent of bargaining

This section analyses the current state of play in the collective bargaining system in Luxembourg by presenting information on bargaining coverage and provides an analysis of the bargaining actors and the crucial issue of trade union representativeness.

The overall rate of collective bargaining coverage in Luxembourg is rather low, at 59 per cent in 2012 (see Appendix A1). This rate is comparable with that of Germany (see Chapter 12), but significantly lower than in France, where it stands at 85 per cent (see Chapter 11) or in Belgium, with 96 per cent (see Chapter 3). The number of workers covered by collective agreements varies from 87 per cent in health and welfare and in education to 12 per cent in catering (Ries 2013). The coverage rate decreases with workers' level of education. Workers with a low education level (lower secondary school) are covered at a rate of 67 per cent by a collective agreement and workers with an intermediate education level (upper secondary school) are covered at 63 per cent. The coverage rate among graduates with tertiary education is only 46 per cent. If the public sector is excluded from the data, the coverage rate among graduates with tertiary education is as low as 36 per cent (Ries 2013).

The coverage rate of collective agreements varies also with size of company. The larger the company, the more its employees are likely to be covered by a collective agreement. The coverage rate varies from 30 per cent for companies with 10 to 49 employees to 79 per cent for companies with over 1,000 employees (Ries 2013).

In Luxembourg, there are two types of collective agreement: those that are not extended and those that are. Collective agreements that are not extended apply to a particular enterprise or to a group of employers belonging to an employers' organisation. Those that have been extended, through a declaration of 'general obligation' by the Ministry of Labour, Employment and the Social and Solidarity Economy (Ministère du Travail, de l'Emploi et de l'Economie Sociale et Solidaire), apply to all companies in a given sector, industry, occupation or type of activity. Both trade unions and employers' associations can request the extension of collective agreements. The ONC, in which employers and trade unions are represented, then makes a recommendation to the Ministry of Labour,



which takes the final decision. 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. The industry-wide collective agreements that are currently of ‘general obligation’ are often the result of a shared interest between employers and trade unions in limiting potential competition on wages from new entrants in a specific industry or industrial segment, for instance in hospitals or in private security services.

The existence of a wage indexation mechanism and the mandatory minimum wage contribute to the overall moderate level of collective bargaining coverage. Through the automatic wage indexation system, wages regularly increase, which limits the room for manoeuvre of wage bargaining. The wage indexation mechanism that is laid down by law in the Labour Code provides for the automatic adjustment of salaries, wages and social contributions in line with the evolution of the cost of living. If the consumer price index increased by 2.5 per cent during the previous semester, salaries are normally adjusted by the same proportion. The law specifies a minimum wage for unskilled workers and one for skilled workers. The latter is 20 per cent higher than the wage for unskilled workers. The minimum wage is periodically adjusted and was last modified by law in 2015 and 2017. Another factor explaining the moderate level of collective bargaining coverage may be the unequal industrial presence of trade unions, which play a crucial role in collective bargaining.

Since the end of the 1990s, trade union density in Luxembourg has decreased continuously. The paradox of unionisation in Luxembourg, however, is that while trade union density decreased from 42.1 per cent in 2002 to 32.8 per cent in 2012, the absolute number of trade union members increased significantly. This is because Luxembourg has experienced strong employment creation of 3.2 per cent per year, on average, between 2002 and 2016. While unionisation has not kept pace with this increase in employment, trade unions have nevertheless acquired new members. Unionisation rates in Luxembourg also vary strongly between industries, with repercussions for trade unions’ ability to negotiate collective agreements. The unionisation rate is high in the public service (63 per cent), transport (61 per cent) and education (60 per cent). It is, however, weak in retail (25 per cent) and catering (24 per cent). In manufacturing and construction, it stands at 48 per cent and 39 per cent, respectively (Ries 2011).

When assessing the unionisation rate in Luxembourg, it is important to highlight that the labour force is made up of both domestic workers residing in Luxembourg and of cross-border workers, living either in France, Belgium or Germany, and crossing the border every day to work in Luxembourg. In 2017, 45 per cent of workers in Luxembourg were cross-border workers. In addition, Luxembourg has experienced strong immigration: immigrants residing in Luxembourg currently comprise 47 per cent of the country’s overall population. While Luxembourg’s two main trade union confederations, OGBL and LCGB, have invested much effort in organising migrant workers and representing their interests, sustained labour migration represents a challenge when it comes to unifying interests and ensuring an adequate representation, in particular, of cross-border workers (Thomas 2015). Noticeably, trade unions have built up sections for cross-border workers in the neighbouring regions, providing an interesting example

of effective Europeanisation of trade union action. In addition, trade unions have used European regulations on the free movement of labour as a legal infrastructure to develop services for migrant workers. At the same time, the free movement of labour and equality of treatment have come to permeate trade union strategies and rhetoric. With regard to the inclusion of migrant workers in decision-making processes and access to leadership positions, however, numerous obstacles to their effective participation persist (Thomas 2016).

## **Level of bargaining**

Collective bargaining in Luxembourg is characterised by the coexistence of company-level collective agreements and industry-level agreements. Cross-industry agreements have been limited so far to the implementation of European cross-industry agreements, such as on telework and on harassment and violence at work. There is tripartite social dialogue between government, employers and trade unions at national level.

Interactions between industry collective agreements and company-level agreements are not frequent, and possibilities for opening clauses or opt-out clauses are rare. The ‘favourability principle’ remains in operation, except for the regulation of various dimensions of working time. This provides for a certain degree of flexibilisation in terms of length of working time, maximum daily and weekly working time, and reference period. In the future, decentralisation could further increase through the use of framework agreements. At the time of writing, however, the legal possibilities for signing such framework agreements, which are then later articulated with ‘subordinated agreements’ concluded at the company level, are not broadly used (Putz 2012).

Industry agreements exist in banking, insurance and private security services. In these industries, single-industry agreements cover 100 per cent of the workforce, as they are extended by the Ministry of Labour, Employment and the Social and Solidarity Economy. Many industries have no industry-level agreements. The high level of decentralisation of collective bargaining and the weak presence of trade unions in some industries explain this situation. Unless stipulated otherwise in the collective agreement, senior management is generally not covered by the provisions on working time and wages. The maximum legal duration of collective agreements is three years and the average duration of negotiated agreements varies between two and three years. As long as the signatories do not formally terminate a collective agreement it continues to be applicable. Once terminated it is no longer valid. Usually, collective agreements are terminated when a new collective agreement enters into force.

The principle of the unity of the collective agreement applies in Luxembourg. In theory it should not be possible to have more than one agreement in one company. In practice, however, there may be different agreements that apply in a company when it conducts different kind of activities covered by various collective agreements. In construction firms, for example, employees may be covered by different collective agreements, depending on their occupation.

Since the economic crisis of 2008 more tensions have appeared in collective bargaining, with a tendency for increasingly difficult negotiations in certain industries. In recent years, negotiations on the renewal of collective agreements, for example, have been difficult – for various reasons – in construction, the steel industry, cleaning and finance. After the crisis of 2008, there was a tendency to conclude more short-term collective agreements. This was regarded by trade unions as a means of shortening the duration of agreements containing only limited advantages for workers. Under improved economic conditions, trade unions hoped again to be in a better position to obtain advantages. In finance, for example, the latest collective agreement was prolonged for only a year and covered those bargaining elements where consensus could be reached: this provided time to discuss the broader challenges, such as digitalisation, that affect the industry in the longer run (Kirov and Thill 2018).

Table 19.2 provides an overview of collective bargaining in Luxembourg and indicates the number of new or amended collective agreements filed with the Mine and Labour Inspectorate (Inspection des Mines et du Travail, ITM). While no data are available on the total number of valid collective agreements at any given time, some insights can be advanced based on the available data. First, the increase in the number of collective agreements at the company level is noteworthy. While in 2004, almost all of the 36 company agreements filed at the ITM were in the industrial sector, there was a sectoral diversification after 2004. For instance, the data for 2015 show that while collective agreements in the industrial sector still prevailed, a considerable number of collective agreements were also concluded in the service sector.

At the national level, tripartite forums play an important role in discussing issues of macroeconomic governance in Luxembourg. In the recent period, social dialogue at the national level has had a direct impact on wage levels through the modulation of the wage indexation mechanism. The introduction of single status in 2008, abolishing the differences between white-collar and blue-collar workers, is another example of a decision resulting from tripartite social dialogue having a direct influence upon company and industry-level collective bargaining. The short pathways inherent in the small size of the country and an industrial relations system characterised by a small number of actors also contribute to creating links between the various arenas of social dialogue and collective bargaining. In addition, the role of trade unions in the national-level forums for institutionalised social dialogue confers on them an enhanced political legitimacy that may also serve as a resource at the company level.

Table 19.2 **Collective agreements and annexes filed at the Mine and Labour Inspection (selected years)**

	2004	2006	2008	2010	2012	2014	2015
Industry level	7	13	11	9	3	11	8
Company level	36	90	60	65	87	79	114

Sources: Authors' compilation on the basis of ITM annual reports.

Social dialogue at the national level is organised mainly within the Tripartite Coordination Committee (Comité de coordination tripartite), created by law in 1977. The Committee was conceived originally as a legal crisis instrument for organising and managing restructuring in steel. Since then, it has continued to issue consensus-based broader agreements between the government, employers and trade unions. In 1999 and 2006, for example, these agreements were then put into law by Parliament (lois tripartites). In April 2006, trade unions, employers and the government decided in the Tripartite Coordination Committee to ‘modulate’ the application of the wage indexation mechanism for the period 2006–2009. The modulation consisted of postponing the periodic adjustment of wage levels according to inflation by up to seven months. The modulation was justified by concerns over economic competitiveness following the rapid increase in oil prices. During the period covered by the modulation, the rate of wage increase was below the increase in inflation.

Since the financial and economic crisis of 2008, the stability and predictability of national-level social dialogue in Luxembourg has increasingly come under challenge: some agreements with limited content, for example, have been only bipartite and not tripartite before being put into law, such as legislation on parental leave. The impact of the crisis on social dialogue became especially salient when no large tripartite agreements were reached. In April 2010, the government announced the failure of the Tripartite Coordination Committee talks on Luxembourg’s economic competitiveness, employment policies and public finances. The government resorted to unilateral decision-making on the key issue of automatic wage indexation when in 2011 it announced the temporary modulation of the wage indexation system until 2014. Wages were to be indexed no more than once a year, independently of inflation, in 2012, 2013 and 2014. The new government elected in 2014 reinstated the standard automatic indexation mechanism of all wages. During this time, the government was also under pressure to reform the automatic indexation system, as repeatedly advocated by the European Commission in a series of country-specific recommendations in the context of the European Semester. Nonetheless, no reform of the mechanism has been introduced as a result of these recommendations.

Other prominent tripartite arenas at the national level (see Table 19.3) include the Economic and Social Committee (Conseil économique et social), created in 1966, whose mission is to produce assessments commissioned by the government or on its own initiative. More recently, the Economic and Social Committee has seen its mission enhanced in the context of the European Semester, as the National Reform Programme has to be discussed by the government and the social partners. The national tripartite Permanent Committee of Employment and Work (Comité permanent de l’emploi et du travail) seeks consensus on employment-specific issues, such as the implementation of the European Youth Guarantee or other employment measures. Finally, the tripartite Conjunction Committee (Comité de conjoncture) conducts a monthly analysis of the overall labour market situation in Luxembourg and discusses government participation and measures with trade unions and employer organisations, such as temporary unemployment for companies in economic difficulties.

Table 19.3 Synoptic view of neo-corporatist instruments in Luxembourg

Instrument	Role	Topics	Year
Tripartite Coordination Committee (Comité de coordination tripartite)	Tripartite advisory instrument, consensus-based assessments enforced by law, 'lois tripartites'	Economic and social	1979
Permanent committee of employment and work (Comité permanent de l'emploi et du travail)	Tripartite advisory instrument, consensus-based assessments lead to draft laws	Employment	2007
Economic and Social Committee (Conseil économique et social)	Tripartite advisory instrument, provision of assessments of nationally relevant topics	Economic and social, European issues	1966
Conjuncture Committee (Comité de conjoncture)	Crisis tripartite advisory instrument, consensus-based decisions on government participation in social plans, legislation on maintaining employment	Economic, company, employment	1975
Female Work Committee (Comité du travail féminin)	Quadripartite advisory instrument	Gender issues, European issues if relevant for Luxembourg	1984

Sources: Authors' compilation.

## Scope of agreements

In addition to the organisation of collective bargaining negotiation processes and defining the role of the parties, the legal framework on collective bargaining, enacted in 2004, stipulates a number of mandatory bargaining issues to be discussed. In recent years, there has been a tentative enlargement of bargaining topics.

Industry and company-level agreements include topics required by the 2004 law, such as the engagement and dismissal of workers, training and professional qualifications, wages, working time and holidays. Some industry agreements, such as in banking or the social sector, or agreements regarding occupations such as pharmacists and painters, make reference to work organisation plans, which allow for flexible working time arrangements. Employers and trade unions may thus adopt a work organisation scheme with flexible working hours and modulate the period of reference for a period of up to twelve months, choosing the relevant mode of organisation for their industry (Etienne-Robert 2012). Collective agreements can also include industry-specific clauses, for instance on non-declared work and on collective summer and winter holidays, as in the case of construction. Collective agreements include social peace clauses. During the period of validity of a collective agreement, strike action is not allowed on topics dealt with in the collective agreement.

Cross-industry agreements are rarely concluded in Luxembourg. When such agreements are reached, they mainly implement EU-wide agreements concluded by social partners at the European level, such as those on telework or the framework agreement on harassment and violence at the workplace, and have not yet covered issues such as wages or working time.

The public sector union CGFP negotiates agreements for civil servants and public servants (*fonctionnaires d'Etat* and *employés de l'Etat*) with the government. These agreements can be assimilated to a collective agreement, even though they are not labelled as such for legal reasons. Important negotiations took place in the public sector in 2011 because of the envisaged reform of the status of public servants, which led to the signing of two agreements by the government and CGFP. The first agreement focused on reform of the career structure of civil and public servants; the second regulated wages for the period 2011–2013. A more recent agreement, signed in December 2016, stipulated a pay rise of 1 per cent for 2017 for all civil and public servants.

In terms of topics on the bargaining agenda at company and industry levels, a tentative increase and enlargement of the thematic scope of collective agreements has occurred over recent years. As part of a general emphasis on employability, vocational training and lifelong learning are increasingly becoming a bargaining issue. Recently concluded collective agreements have thus included topics such as training and outplacement. The collective agreement for hospitals contains, for example, provisions on the financing of a training centre for health employees and on its bipartite governance by employers and trade union representatives. Banking is another industry in which a broadening of the scope of bargaining topics has occurred. In the context of wide-ranging restructuring, in 2014 the right to the outplacement of employees made redundant for economic reasons was included in the collective agreement concluded in banking (Kirov and Thill 2015).

At the national level, tripartite agreements have been negotiated that have wider scope. An example of such negotiations concerned the introduction of single status (*statut unique*). During the meetings of the Tripartite Coordination Committee, between 31 October 2005 and 19 April 2006, the government, employers and trade unions decided to introduce single status arrangements that eliminated the established division between blue-collar and white-collar workers. Trade unions often quote single status as a social milestone and as a major law. On 29 April 2008, the National Parliament (*Chambre des Députés*) voted in favour of bill No. 5750 on single status. Numerous discussions between the government, trade unions and employers' organisations had preceded the vote. The law on single status took effect on 1 January 2009. The law abolished all differences within social legislation between blue-collar and white-collar workers in the private sector, and put an end to the negotiation of separate collective agreements for blue-collar and white-collar workers. The law allowed a transition period that ended in 2013 for companies in which only one part of the staff, for example blue-collar workers, were covered by a collective agreement. During the transition period, agreements were negotiated for workers who previously had not been covered by a collective agreement or existing agreements were amended to include workers not previously covered.

Since the economic crisis of 2008, collective bargaining negotiations appear to have become more conflict-ridden. Employers' associations demand the flexibilisation of working conditions and wage differentiation, which runs counter to the core trade union aim of standardising working conditions and wages. In the period since the crisis of 2008 we have witnessed a number of implicit agreements, not openly defended by trade unions, intended to exchange wage moderation for job security. Especially



in the industrial sector, linear wage increases for all workers have become rare and one-off payments, dependant on the economic situation of the company, became more frequent. The National Statistical Office (Institut national de la statistique et des études économiques, STATEC) has demonstrated that the disconnection between wages and productivity has increased. While labour productivity increased by 11 per cent during the period 2012–2017, real wages increased by only 4.5 per cent (STATEC 2017).

The increasing tensions during the negotiation of collective agreements have not led to increased strike activity, however. Open conflicts, such as the strikes in elderly care homes in 2018, have remained the exception. It is noticeable that a number of attempts by trade unions to mobilise their members for strike action have failed, for instance, in steel and education. The culture of consensus-seeking still strongly impregnates the industrial relations culture in Luxembourg.

The flexibilisation of working time was a major issue of disagreement during the negotiations on the renewal of the collective agreement for construction in 2013. Employers demanded, eventually unsuccessfully, greater flexibility of working time. Negotiations in banking, which is the principal industry in Luxembourg, also illustrate this tendency toward heightened difficulties in reaching agreements. Banks' outsourcing of IT services and back-office functions has led to a reconfiguration of professions (Kirov and Thill 2015). In the social sector, the same tendency towards conflict-ridden negotiations has been confirmed. After a series of public demonstrations by trade unions, negotiations led to pay increases and new career opportunity paths in the social sector through the conclusion of a new industry-wide collective agreement in 2016.

## **Security of bargaining**

The factors that determine the trade unions' bargaining role are central to security of bargaining. 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 ITM for approval by the Ministry of Labour, Employment and the Social and Solidarity Economy. Both parties can take the initiative to start negotiations, but in practice, it is usually the trade unions. If a previous agreement exists, it is taken as a basis.

As regards the negotiation of collective agreements, participation in the bargaining process is a statutory obligation, but reaching agreement is not. Negotiations are supposed to begin within 30 days of a demand to open negotiations. The requirement to participate in bargaining does not apply to cross-industry agreements. It can be assumed from the requirement to negotiate that relevant information has to circulate during collective bargaining so as to ensure a 'fair' negotiation (Putz 2012).

Even though strikes are not frequent in Luxembourg, they are a component of the collective bargaining process. In Luxembourg, the right to strike is based on a judicial interpretation of the concept of freedom of collective industrial organisation, as



enshrined in Article 11 of the Constitution. The right to commence strike action is subject to the observance of preliminary conciliation procedures. The right to strike was more clearly defined by the law of 30 June 2004 on collective bargaining, without there being a significant impact on the number of strikes. The ONC, a tripartite conciliation body, has the task of settling collective disputes that arise during the negotiation of a collective agreement. All strikes have to be preceded by conciliation conducted by the ONC. The results of the mediation procedure do not have to be accepted by employers and trade unions. If no agreement is reached, non-conciliation is declared and strike action becomes possible. If non-conciliation is declared, the Ministry of Labour, Employment and the Social and Solidarity Economy can also be asked either by trade unions or by employers to designate an arbitrator. Once the arbitrator is designated, both parties have the freedom to accept or reject the arbitrator. Once they have accepted the arbitrator, they are, however, obliged to accept the arbitration decision. During the arbitration period, strikes are not allowed. During the period of validity of a collective agreement, strike action is forbidden on issues covered by the collective agreement.

There are few industrial disputes in Luxembourg (Rey 2010). Since 2009, between four and a dozen disputes arising from collective bargaining have taken place each year within the scope of the ONC, according to the annual report by the Ministry of Labour, Employment and the Social and Solidarity Economy. For instance, in 2016, according to the latest annual report, four disputes were referred to the ONC. Statistically speaking, strikes are extremely rare in Luxembourg as a result of the consensus-seeking industrial relations culture, which is reinforced by social peace clauses and the compulsory conciliation procedure.

No new organisations representing specific groups of workers or employers have appeared over recent decades that could have challenged the bargaining prerogatives of the established organisations. This is partly due to the internal restructuring of existing organisations. FEDIL, the Luxembourg Business Federation, which has its origins in manufacturing industry, aims to represent also the business services sector, which has grown markedly in recent years. Likewise, trade unions have developed specific structures and service points for cross-border workers, successfully recruiting them and preventing the formation of separate organisations by cross-border workers (Thomas 2015).

Despite the significant role of trade unions in collective bargaining at the company level, Luxembourg's legislators have always had an ambiguous attitude towards the involvement of trade unions in the everyday running of companies. As a consequence, Luxembourg knows no equivalent of the trade union delegate or the union section in companies, as they exist in France. Unions may present lists during the election of staff delegations and almost half of the employee representatives are elected from such lists. A staff delegation is elected every five years among the staff of companies with more than 15 employees. Staff delegations are entitled to make proposals on measures to improve working conditions and to present individual or collective claims to the employer. During the most recent election of employee representatives in 2013, 49 per cent of elected employee representatives were unionised, according to the ITM, the institution that supervises social elections. This constitutes a decrease from 53 per cent in 2008.

In companies with fewer than 100 employees, the percentage of non-union delegates was 71 per cent in 2013. In companies with more than 150 employees, joint company committees (*comité mixtes d'entreprise*) are competent until the next social elections in 2019 to co-decide on health, security and working conditions at the company level. New legislation implemented in July 2015 introduced a new configuration of intra-company social dialogue, with the suppression of the joint company committee and the transfer of its competences to the staff delegations.

There are two levels of representativeness that entitle trade unions to conclude collective agreements: the general national level and the industry level. At the general level, trade unions must have received at least 20 per cent of the votes in the Chamber of Employees in the national social elections, and be actively present in a majority of industries. This latter condition is measured by the outcomes of company-level staff delegation elections. At industry level, trade unions are considered representative when they are strongly represented within a significant industry that employs at least 10 per cent of private sector workers. They also have to put forward candidates at the election of the Chamber of Employees and receive at least 50 per cent of the votes in the industry concerned or 50 per cent of the votes in the elections of company-based staff delegations in the industry. On the employers' side, there are no statutory regulations in the 2004 law setting representativeness criteria for employers' organisations.

## **Depth of bargaining**

Depth of bargaining refers to the involvement of local representatives of labour and employers in the administration of agreements. The depth of bargaining thus concerns the internal processes through which trade unions formulate their claims and how managers respond to them. Little research has been conducted on unions' internal formulation of bargaining goals and validation of bargaining outcomes in Luxembourg (Thomas 2012).

The internal organisation of trade unions in Luxembourg is traditionally strongly centralised, in part because of trade union involvement in neo-corporatist decision-making and the need to guarantee the acquiescence of union members to the negotiated peak-level agreements. In the two main private sector confederations, OGBL and LCGB, the senior leadership bodies have a strong role in the daily running of the union, and the autonomy of branch and regional structures is relatively limited. Unlike French unions, in which members are primarily affiliated to their company-based union structure, union members in Luxembourg are directly affiliated to the confederal structure, and then only to the professional federations and the regional union structure. This mode of organisation confers control over union dues directly on the confederal leadership and contributes to the strong centralisation of trade unionism in Luxembourg.

While trade unions recognised as representative have the sole right to conclude collective agreements and negotiations on collective agreements are led by the unions' full-time officials, unionised employee representatives from the concerned company or

industry participate in the negotiations with employers. The outcome of the negotiations has to be ratified by a meeting of the unionised employee representatives from the relevant company or industry. In the case of large industry collective agreements, as in construction or hospitals, this meeting comprises several hundred employee representatives. If there is no clear majority at the meeting of the unionised employee representatives, which is exceptional, union members may be consulted directly. In addition, unions may hold meetings with workers to vote on the proposed collective agreement. In some industrial companies, such as in the chemical industry, this is customary, while in other companies it is not. In the latter, workers are consulted primarily when negotiations give rise to conflict. The unions may use the outcome of this consultation to put pressure on the employer. In the recent past, a number of industrial collective bargaining rounds have also seen consultations of rank-and-file members and workers through the use of surveys. The union of the banking and insurance industries ALEBA, for example, conducted an online survey in 2017 on members' and workers' preferences, while preparing for negotiations on the new collective agreement for insurance.

On the employers' side, there is also a practice of validating collective agreements. For instance, in the case of the Luxembourg Bankers' Association (Association des banques et banquiers, Luxembourg, ABBL), industry agreements negotiated with trade unions have to be ratified by ABBL members at an extraordinary general meeting.

In the case of contentious negotiations on the renewal of a collective agreement, trade unions regularly try to mobilise the rank-and-file members and workers. In recent times, the success of such endeavours has been uneven. In some instances, trade unions have managed successfully to mobilise the rank-and-file members and in other instances they have failed. During contentious negotiations on the collective agreements in construction and in the social sectors, trade unions mobilised workers on a number of occasions for demonstrations and managed finally to obtain a number of concessions from employers. In other industries, such as cleaning and steel, the attempts at mobilising the rank-and-file during the negotiation of collective agreements failed.

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

In Luxembourg the degree of control of collective agreements is high, whether concluded at industry or company level, as agreements serve to set the actual terms and conditions of employment. No data are available on wage drift, however.

In case of violations, control can be exercised by the ITM. The ITM's mission is to advise and assist employees and employers and to provide practical legal and technical information on the implementation of legal, regulatory, administrative and collective agreement provisions in the field of labour law and safety, security and health at work. Recently, the ITM underwent restructuring and introduced a Help Call Centre. In 2017, this Help Centre registered 376 contacts on collective agreements (out of a total of 34,722 contacts), according to the ITM's own statistics, while field inspections concerning collective agreements were conducted in 20 instances. In case of disagreements over the

interpretation of a collective agreement, trade unions and employers can use bipartite structures inscribed in certain collective agreements or the mechanism of collective labour dispute resolution, the ONC.

Conflicts arising over the interpretation of a collective agreement can be resolved at industry level through bipartite bodies established by collective agreement. For instance, in construction, a joint committee composed of delegates from both employers' organisations and trade unions exists to settle conflicts over interpretation. A number of other structures for monitoring collective bargaining are included in the industry collective agreements. In finance, for example, smaller bipartite bargaining units (commissions paritaires) monitor specific aspects of the industry-level collective agreement and meet to discuss relevant bargaining issues.

Labour courts are competent in cases in which a conflict over the interpretation of a collective agreement cannot be resolved elsewhere. Cases can be brought before labour courts by the signatories of the collective agreement or by individual employees. At the company level the staff delegation can, in the absence of a specific conflict resolution mechanism put in place by the collective agreement, refer to the ITM any complaint or observation related to the application of the legal, regulatory, administrative or contractual provisions of a collective agreement concerning working conditions and protection of employees at their workplace.

## Conclusions

The industrial relations system in Luxembourg developed in a small state with an open economy, characterised both by drastic economic changes due to the demise of the steel industry in the 1970s and by a long period of economic growth starting in the mid-1980s, which was due mainly to the internationalisation of finance. The strength of the trade union movement has been a key component of the stability of collective bargaining in Luxembourg. But since 2000, and particularly since the international economic and financial crisis of 2008, there have been signs of erosion of this stability, even though the employment relations system has been maintained. During this period, the absolute number of trade union members has increased, but trade union density has decreased. Unions are still strong in a number of industries, but there are areas with a low union presence and low collective bargaining coverage.

At the same time, trade unions still exercise significant political influence through the tripartite institutions and their involvement in public policymaking. The extension of collective agreements is an important mechanism in Luxembourg, both in high-qualification industries, such as banking and insurance, and in low-qualification industries, such as private security. Given the unequal union presence at the company level, at which many employee representatives are not members of a union, the conclusion of further collective agreements will pose challenges to unions.

Although no profound changes in the setting of collective bargaining in Luxembourg are to be expected in the short term, the slowly decreasing trade union presence

and bargaining coverage could gradually erode the stability of collective bargaining. In parallel, existing collective agreements risk gradually losing substance when they are renegotiated, with the result that they contain fewer and fewer advantages for employees. Collective bargaining also faces the challenges of increased digitalisation, reflected, for example, in a reconfiguration of careers and related wage groups in a number of industries. More contentious industrial relations and increasing conflicts within and among trade unions over collective bargaining objectives might result from these processes and dynamics.

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## Abbreviations

<b>ABBL</b>	Association des banques et banquiers, Luxembourg (Luxembourg Bankers' Association)
<b>ALEBA</b>	Association Luxembourgeoise des Employés de Banque et Assurance (Luxembourg Association of Bank and Insurance Employees)
<b>CGFP</b>	Confédération Générale de la Fonction Publique (General Confederation of the Civil Service)
<b>CSL</b>	Chambre des salariés (Chamber of Employees)
<b>FEDIL</b>	Fédération des industriels luxembourgeois (Luxembourg Business Federation)
<b>FGFC</b>	Fédération Générale de la Fonction Communale (General Federation of the Municipal Administration)
<b>FNCTTFEL</b>	Fédération Nationale des Cheminots, Travailleurs du Transport, Fonctionnaires et Employés (National Federation of Railroad Workers, Transport Workers, Civil Servants and Employees)
<b>ITM</b>	Inspection des Mines et du Travail (Mine and Labour Inspectorate)
<b>LCGB</b>	Lëtzebuurger Chrëschtliche Gewerkschaftsbond (Luxembourg Confederation of Christian Trade Unions)
<b>OGBL</b>	Onafhängege Gewerkschaftsbond Lëtzebuerg (Independent Trade Union Confederation of Luxembourg)
<b>ONC</b>	Office national de conciliation (National Conciliation Office)
<b>STATEC</b>	Institut national de la statistique et des études économiques (National Statistical Office)
<b>UEL</b>	Union des entreprises luxembourgeoises (Union of Luxembourg Enterprises)





## **Chapter 20**

### **Malta: moving away from confrontation**

**Manwel Debono and Godfrey Baldacchino**

Malta is a small country with a land area of just 316 km<sup>2</sup>, located in the middle of the Mediterranean Sea, between Italy and Libya, comprising three inhabited islands with a total resident population of about 440,000. The country achieved independence from the United Kingdom in 1964 after serving essentially as a fortress economy throughout most of its history (Pirotta 2001). Coupled with its small size, this means that manufacturing was essentially non-existent and the Colonial Government was by far the major employer (Zammit 1984). The country has a British-style 'Westminster-Whitehall' political system with just two major political parties in Parliament between 1966 and 2007: the Labour Party, which has been in government since 2013, and the Nationalist Party, currently in opposition. Over the past 30 years, the country's economy has undergone a dramatic transformation, with a decline in the wave of export-led manufacturing fuelled by foreign investment and technology that characterized the period between the first national development plan (1959–1964) and the mid-1980s, and in which the labour-intensive and female worker-dominated sub-industries of textiles and clothing featured prominently. These have now been replaced by a diversified service sector, including tourism, transshipment, financial services, aircraft maintenance and electronic gaming.

The development of collective bargaining in Malta is inevitably related to the structure of the economy, the macroeconomic performance and the labour market situation. Malta's economy has recovered quickly from the negative effects of the international economic recession of 2008. It registered the highest GDP growth at constant prices (6.3 per cent) in 2015 across the European Union (EU) (European Commission 2016). Between 2001 and 2015, real wage growth averaged 1.9 per cent a year, higher than most other EU countries. Meanwhile, the unions have also helped to keep income inequality at a lower level than in most other EU member states (Appendix A1.E). These positive economic trends have been accompanied by a steady decline in unemployment, resulting in an unemployment rate of just 4.3 per cent in the last quarter of 2016, among the lowest in the EU (Eurostat 2017). There has also been a decline in involuntary part-time work, which reached a relatively low 10.3 per cent as a percentage of total part-time work in 2016 (Eurostat 2017). These positive figures, however, need to be seen alongside the low female activity rate, which has been rising steadily but was still 55.5 per cent in 2016 (Eurostat 2017), and the high levels of public sector employment: 27 per cent of all workers were employed in the public sector in 2015 (Eurostat 2017).

Malta has a largely voluntarist collective bargaining system in which there is free collective bargaining between unions and employers, without much state intervention through

Table 20.1 Principal characteristics of collective bargaining in Malta

Key features	2000	2018
Actors entitled to collective bargaining	Unions (directly) and employers, or their representatives, with collective agreements normally having a three-year coverage.	Unions (directly) and employers, or their representatives, with collective agreements normally having a three to five year coverage.
Importance of bargaining levels	100% at enterprise level in the private sector; industry-wide agreements in the public sector but negotiated and signed collectively, as one package deal.	
Favourability principle/derogation possibilities	The favourability principle does not exist in Maltese industrial relations. Any derogation from collective agreements or the law can only take place under special circumstances with the approval of the Director of the Department of Industrial and Employment Relations.	
Collective bargaining coverage (%)	60 (2002)	55.8 according to survey data
Extension mechanism (or functional equivalent)	None	
Trade union density (%)	60.3	33.8 according to survey data
Employers' association rate (%)	63.3 (2003)	60 (2008)

Source: Authors' compilation and Appendix A1.

regulations. The Employment and Industrial Relations Act (EIRA; Laws of Malta 2002) provides the general framework in which industrial relations are conducted in Malta, and more recently, the Recognition of Trade Unions Regulations (2016) has helped to reduce tensions among unions. Furthermore, over the years there have been some important developments that have affected industrial relations, such as the setting up of the Cost of Living Allowance (COLA) mechanism in 1990, a mandatory annual salary increase given to all employees. Collective bargaining in the private sector is carried out between unions and employers at enterprise level, without the direct involvement of employers' associations. There is one important industrial collective agreement, that for public service employees. While most collective agreements in the private sector have a three-year span, those in the public sector now cover five years (see Table 20.1).

Accession to the EU quietly ushered in a new era of labour relations in Malta. A confrontation-based union culture, bred out of and fashioned on the twentieth century British model, has steadily evolved into a more continental one, premised on social partnership (Vassallo 2015). This trend is also evidenced by the steady decline in industrial action (see Appendix A1.I), particularly in the private sector. The increasing emphasis on social partnership has been influenced not only by the EU's ideals, but also by a growing realisation among the social partners themselves that, in the contemporary world of work, confrontation often results in negative unintended consequences. Having said that, elements of the traditional confrontational system may lurk in the limited industrial actions in the public sector, usually restricted to the strategic industries of health and education, as well as public transport, to the general consternation of local employers. In-fighting between trade unions for recognition is one of the causes of such localised disputes.

## Industrial relations context and principal actors

Various countries have seen trajectories of union organisation and collective bargaining emerge from two broad and contrasting employment clusters. The first cluster includes private sector workplaces with large and skilled workforces, driven by experiences of collective working-class consciousness and anti-capitalist ideas. The second is the public sector, with industrial, technical, clerical and professional grades concerned with protecting workers' rights and improving working conditions from the power base of a service monopoly that is immune to market forces, but vulnerable to political pressure. Malta conforms to these dual trends. What makes the Maltese case idiosyncratic is that the thrust towards both these developments was born in the late nineteenth century, during the heyday of British colonialism. The British administration created the conditions for both an English-speaking public service and a commercial and mercantile proletariat, which explains the origins of unionism and collective bargaining in Malta. With the arrival of the British administration a civil service and an ancillary public sector developed and contributed to the birth of a new middle class fluent in English (the language of administration) (Pirota 1996). Meanwhile, drydocks were built and became a large employer in Malta.

An Imperial Government Workers Union (IGWU) was set up in 1916, influenced by British trade unionism. An IGWU Secretary, Reggie Miller, left that union to set up a new General Workers Union (GWU) in 1943, with militant drydocks workers at its core. It remains Malta's largest union, social democratic in outlook. A second general union, the Union of United Workers (Union Haddiema Magħqudin, UHM), arose from a series of mergers in the late 1970s as a non-left-leaning response to the GWU (Baldacchino 2009). In parallel, professional educators in the public sector<sup>1</sup> were taking their own mobilisation initiatives. Malta's first registered union was the Malta Union of Teachers (MUT), set up in 1919, and still in operation as both a union and a professional body (Cassar 2009). The IGWU-GWU and MUT represent the two historical strands of Maltese unionism: the first is mass-based, often socially progressive and anti-clerical, with mainly male, industrial or blue-collar members; the second is 'elite-based', socially conservative, with white-collar or graduate, and now mainly female, members. The members of these two broadly defined factions have tended towards different political party allegiances, with the GWU supporting the Malta Labour Party (MLP), while the professional classes and graduate employees tend to support the more Christian-Democratic Nationalist Party (NP).

The general architecture of collective bargaining in Malta is characterised by the wide diversity in the basis of union membership. There are two catch-all general unions, GWU and UHM, which by themselves comprise 80 per cent of all union members reported by unions to the state in their statutory annual returns. There is only one industry-wide union, the Malta Union of Bank Employees (MUBE). There are no subnational or regional unions. There are two company-based unions, each recruiting

1. The Maltese public sector encompasses all government organizations and their employees, as distinct from the private sector, which comprises private companies, non-government organizations and their employees. While the public sector employs some 50,000 workers, the public service by itself, consisting of government ministries and departments, employs around 30,000 (Office of the Prime Minister, n.d.).

Table 20.2 Union membership by confederation (2007 and 2015)

Confederation	Affiliated unions in 2015	Number	Declared membership	
			June 2007	June 2015
FORUM	Malta Union of Teachers, Airline Pilots Association, Union of Cabin Crew, EneMalta Professional Officers Union, Union for Public Sector Architects and Civil Engineers (Union Periti u Inġiniera tas-Servizz Pubbliku), Malta Union of Midwives and Nurses, Central Bank of Malta Employees Union (Union Haddiema Bank Ċentrali), Union for Professionals of Malta's Authority for the Environment and Planning (Union Professjonisti tal-Awtorita Maltija dwar l-Ambjent u l-Ippjanar), Engineering Resources Limited Senior Staff Union, Association of Airline Engineers (Malta), University of Malta Academic Staff Association, Technical and Clerical Staff Union of Malta Planning and Environment Authority	12	3,385	13,653
General Workers Union	(Considered to be its own confederation)	1	45,993	49,894
CMTU	Lotto Receivers Union, Union of United Workers (Union Haddiema Magħqudin), Malta Union of Bank Employees, Malta Chamber of Pharmacists (Kamra tal-Ispizjara), University of Malta Workers Union (Union Haddiema Università ta' Malta), Medical Association of Malta, Malta Union of Professional Psychologists	7	37,281	29,819
None	Malta Air Traffic Controllers Association, Malta Psychological Association, Malta Dockers Union, Professionals and Services Employees Union, Union of TEFL Teachers, Water Services Corporation Professional Staff Union, Care Workers Union, Malta Transport Employees Union, Malta Union of Tourist Guides	9	1,358	648
Total		29	88,017	94,014

Source: Government Gazette (2007, 2015).

all categories of workers from a specific workplace. The remaining 24 unions base their recruitment on the classic definition of a trade or profession. In about half of these cases, the designation of the profession is narrow enough to implicitly denote employees who work at just one employer, be it the state, a public corporation or a private employer. The dominant rationale for union organisation in Malta, and in true British tradition, remains the trade or employment class or profession: this is the organising principle for 24 out of the 28 unions currently on the register. Apart from the two general unions, only one union, the MUBE, accepts members of *any* class but within a specific industry, in this case, banking and finance; and only one other union, the Union Haddiema Bank Ċentrali (UHBC), operates as a house union, each accepting employees belonging to any class of employment if they work for a particular employer.

In June 2015, 29 unions were registered in Malta, with a total declared membership of 94,014 (see Table 20.2). These include various persons who are not in the labour force, including at least 11,000 pensioners who are members of the GWU and UHM (Chapter 452 of the Laws of Malta 2002 lays down that a union is only obliged to have workers constitute a *majority* of its membership). Apart from the GWU, which with 49,000

members has its own sections and behaves as a confederation unto itself, most of the remaining 28 unions are affiliated with one of two local confederations. With 26,000 members, the UHM is the largest member of the Confederation of Malta Trade Unions (CMTU), set up in 1959, and now including six other unions as its members. The second confederation is the Forum of Maltese Unions (Forum Unjons Maltin, FORUM) that was set up in 2004. FORUM consists of twelve unions, the largest of which is the MUT with 8,800 members. On the employer side, the main organisation is the Malta Employers Association (MEA). The MEA, set up in 1965 after a merger, is the national voice for employer interests and provides expert advice in support of employer bargaining and policy development. There is also a Malta Chamber of Commerce, Enterprise and Industry, set up as early as 1848, to promote the interests of the commercial classes and small-to-micro enterprises, which dominate the local economy. Collective agreements in Malta are concluded at enterprise level, so, unlike unions, employers' associations play a marginal role during collective bargaining; they tend to be consulted if and when required and do not sign collective agreements.

Employee relations in Malta are conducted within the general framework set by the Employment and Industrial Relations Act (EIRA; Laws of Malta 2002), which is complemented by other regulations, including several orders regulating wages. The legislation, which was developed through lengthy consultations with the social partners, has been accredited with helping to maintain industrial peace in the country. Among other things, EIRA (2002) restricts collective bargaining to places of work at which workers are unionised, thus affecting the industries covered by collective agreements. In recent years, there have been calls, especially from the MEA, for an overhaul and streamlining of EIRA. The Recognition of Trade Unions Regulations (2016) state that a union shall have the right to request recognition from the employer as the sole collective bargaining union when it has more than 50 per cent of the employees concerned as its members. The regulations also state that 'once a union is recognised as the sole collective bargaining union, no other union may intervene on a collective matter relating to the employees concerned with the employer, and conversely, no employer shall discuss collective matters relating to the employees concerned with a union other than the recognised union' (Laws of Malta 2016: 2). Furthermore, Malta has a wage-indexation system that plays an important role in foregrounding the country's industrial relations and collective bargaining. The National Agreement on Industrial Relations (1990) established a mechanism based on the inflation rate that determines the annual mandatory COLA which is given to all employees, including minimum wage earners. COLA is based on the inflation rate over the previous twelve months, as calculated by the Retail Price Index (RPI), which is a measure of inflation based on monthly changes in the cost of purchasing a constant representative basket of consumer goods and services. 'The basket of consumption items considered for the RPI is reviewed periodically, in line with the Household Budgetary Survey (HBS)' (National Statistics Office, NSO 2018: 6). COLA is taken into consideration during collective bargaining. Before this agreement was concluded, industrial relations in Malta suffered from considerable instability brought about by the then government practice of mandating annual discretionary cost of living grants during the Budget Speech over and above the increases stipulated by collective agreements (Ministry for Finance 2013).

## Extent of bargaining

This section assesses and explains the level and development of collective bargaining coverage and its sectoral diversity. According to the data in Appendix A1.A, bargaining coverage stands at around 63 per cent in Malta, but the figure has been claimed to be lower, at 55.8 per cent (Debono 2015) and might even be below 50 per cent (Baldacchino and Gatt 2009). These substantial statistical differences are partly attributable to data collection methodologies, but might also be indicative of unreliable data. While these data issues are one part of the explanation, the decline in union density is also important. Again, while in 2012 union density was 52.9 per cent, according to the data in Appendix A1.H, a national stratified survey of attitudes to unions suggests that union density currently stands at a considerably lower level, for example, at 33.8 per cent in 2014 (Debono 2015). Thus, in line with the general trend across the EU, union density in Malta has been on the decline in recent years. This in turn explains the decline of bargaining coverage (Baldacchino and Gatt 2009), which contrasts with the data in Appendix A1.H. Collective agreements are legally binding on all the employees they cover, even those who are not union members, if such agreements do not provide conditions below the minimum national standards stipulated in EIRA. There is no legal procedure for extending collective agreements to companies that were not signatories of the original agreement. Such a practice has never been adopted in Malta and would be considered negatively by both unions and employers for the same reason that collective bargaining is normally carried out at enterprise rather than industry-wide or cross-industry level: it would eliminate the current flexibility that social partners have in adapting working conditions and benefits according to the circumstances and needs of the specific company.

The EIRA (2002) restricts collective bargaining to unionised workplaces. Put differently, the extent of bargaining is driven by trade union organisation, presence and ability to mobilise at workplaces. At the same time, one might argue that the private-sector workers who might need union protection most are not likely to be union members. Those on fixed-term contracts, casual employees, including many young people and women, foreigners, and many who are notionally self-employed but depend on one contractor are largely non-unionised, some fearing that union membership may jeopardise their current or future employment. Furthermore, the younger generation, generally comprising well-educated workers, are driven by more individualistic notions of advancement and negotiation. They believe in merit-based progression and do not wish to have anyone allegedly push their interests on their behalf; nor do they wish to find their conditions of employment collapsed within larger, general categories as may often result from union involvement (Baldacchino *et al.* 2003). These cohorts are matched by strategic human resource management cadres that implicitly or explicitly dissuade workers from opting for union membership as a solution to their work-based concerns.

The fact that collective bargaining coverage is still higher than union density must be attributed to the high coverage level in the public sector. By default, both Maltese general unions, the GWU and the UHM, wield considerable power in the public sector, in which around 98 per cent of employees are covered by collective bargaining (Greenland 2011).



Table 20.3 Collective agreements in the private sector (2008)

NACE Code	Economic activity (by industry)	Collective agreements	
		Number of firms	Percentage of employees covered
01	Agriculture, hunting and related services	0	0.0
05	Fishing, fish farming and related services	0	0.0
10–14	Mining and quarrying	1	4.1
15–37	Manufacturing	61	47.1
40–41	Electricity, gas and water supply	0	0.0
45	Construction	3	7.1
50–52	Wholesale and retail trade, repair of motor vehicles and motorcycles, personal and household goods	16	4.2
55	Food and accommodation	15	15.6
60–64	Transport, storage and communications	12	44.4
65–67	Finance and insurance intermediation	9	66.1
70–74	Real estate, renting and business activities	13	13.5
80	Education	10	58.1
85	Human health and social work	8	12.6
90–93	Other community, social and personal services	13	15.3
	Total	161	26.7

Source: Baldacchino and Gatt (2009).

The largest collective agreement in this sector is the agreement for employees in the public service, which affects some 30,000 workers. While previous agreements were five years in duration, the latest public sector collective agreement, signed in April 2017, covers a period of eight years (Government of Malta 2017). When collective agreements are not renewed, they remain valid; unions normally start negotiations with the employer on a new collective agreement either before or after the expiry of the existing one. There is no law enforcing the retroactivity of agreements signed after the expiry of previous ones, but employers sometimes concede this mechanism.

The fact that collective bargaining is restricted to unionised workplaces explains the strong differences in bargaining coverage across industries. Table 20.3 provides a snapshot of the respective penetration of unions in the Malta private sector by NACE economic category in 2008, as measured by the securing of collective agreements. In total, including the public sector, there are around 200 collective agreements, with those in the private sector concentrated mainly in the few dozen or so manufacturing firms that employ more than 100 employees, along with traditional service sectors, such as retail banking, some large hotels and formal education. There are no collective agreements in the primary sector, which is characterised by self-employed persons and family-owned micro-enterprises. For the same reason, hardly any wholesale and retail employees are covered by collective agreements. Manufacturing has traditionally been strongly covered by collective agreements, as are the predominantly white-collar

industries of education and finance and insurance. The latter consists of a few large banks that are covered by collective agreements and an increasing number of small organisations not covered by collective agreements. Collective bargaining coverage is generally correlated to organisational size, with workers in larger organisations being much more likely to be unionised than those in smaller organisations. Collective agreements in the private sector usually remain in force for three years, though some have a longer duration. For example, the recent agreements signed in banking with the Bank of Valletta (2015) and HSBC (Malta) (2016a, 2016b) cover a five-year period. Just over a quarter of the full-time private sector labour force (26.7 per cent) benefited from collective agreement coverage in 2008, down from a coverage of 32.9 per cent for the same category of workers in 1995 (Baldacchino and Gatt 2009).

## **Security of bargaining**

No legal or institutional support is given by either the employers or the state towards union efforts to recruit or retain members. Legislation has traditionally been silent on union recognition. Still, the collective bargaining process is assisted, or indirectly secured, by collective agreements that regulate union membership fees. Indeed, collective agreements normally specify that the employer shall deduct the membership fees of union members from salaries, on written instructions from the employees concerned. This ‘check off’ system ensures that unions receive their monthly fees regularly. Some workers prefer to pay union dues directly, however, thus preventing their employer from knowing whether they are unionised and, if so, with which union. Thus the unions’ strength is derived primarily from their organisational power and influence, based on number of members. Indeed, the largest unions are also the strongest. They tend to be active not only at enterprise level, but also at national level. Smaller unions rely on other considerations to achieve strength in bargaining, such as their members’ specialisation and their ability to focus on specific workplaces or small groups of employees: unions with more highly qualified members tend to have greater bargaining power, albeit in restricted areas of the economy. The ability to carry out industrial action, which has traditionally been a major source of union strength, is safeguarded by law. Strike legislation is fairly lax. Unions and employers’ associations are bound by law to give notice by declaring a ‘trade dispute’ in advance of strike action or lockouts. The Director of the Department of Industrial and Employment Relations (DIER) is legally empowered to investigate trade disputes, even before they are registered.

In practice, collective bargaining in Malta is currently characterised by a huge contrast between the private and public sectors. In the former, other than in a few medium-sized factories, four banks, church-run schools and hotels, union membership is barely strong enough for any union to reach the critical ‘50 per cent + 1’ threshold and thus claim representative rights, which would then lead to collective bargaining, as stipulated by law (Baldacchino 1996; Baldacchino and Gatt 2009). Having said that, while in general unions need to have the majority of employees as their members in order to be able to negotiate on their behalf, in other situations, particularly in German-owned firms, unions have been invited by enterprise management to negotiate for the purpose of collective bargaining, even when no single union has been able to claim to represent

50 per cent or more of the workers that would be covered by collective bargaining. The MEA has urged the adoption of statutory measures on union recognition. Some of the most common industrial relations disputes do not involve disagreements with the employer but constitute ‘turf wars’ between different unions competing for recognition as legitimate bargaining agents. Discussions between government and the social partners led to the enactment of the Recognition of Trade Unions Regulations (2016), which are supposed to reduce inter-union recognition disputes by providing a clearer definition of union membership and guidelines for the arbitration of such disputes. These regulations also increase the security of the collective bargaining process by stating that, once a union has been recognised as the sole collective bargaining union, no other union may discuss collective matters with the employer and conversely, no employer shall discuss such collective matters with another union.

Finally, while legal support for bargaining in Malta is limited, successive governments have strengthened social dialogue by such mechanisms as establishing institutions for tripartite consultation and exchange. Thus, the constitution does recognise the role of unions as social partners, and significant developments have occurred in promoting unions, along with employers’ associations and civil society representatives, in national social partnership institutions, particularly in the recent context of Europeanisation. Foremost among these is the Malta Council for Economic and Social Development (MCESD), a national advisory body set up in its present form in 2001, in which the major unions and employers’ associations are represented. Such institutions play an important role at policy level and may influence employee relations at the workplace through the enactment of laws and the implementation of new government measures. The most significant of these in recent years has been an agreement in 2017 on the provision of real increases to the national minimum wage, the first such increase over and above a cost of living adjustment in 27 years (Times of Malta 2017). The unions’ role at policy level does not necessarily translate into strength at workplace level, however. Indeed, workers join unions if they believe that unions can help them directly at their places of work (Debono 2015), rather than based on the perceived relevance of unions at national or industrial level.

## Level of bargaining

Collective bargaining in the private sector occurs at highly decentralised enterprise level. This system has traditionally been preferred by unions and employers over industrial or cross-industry agreements as it provides the opportunity to consider each firm’s specific needs: ‘Enterprise based bargaining is seen as introducing a level of flexibility to wage policy by allowing enterprises which can afford to pay higher wages and to offer better conditions than some others, to be able to do so’ (Zammit *et al.* 2015: 243). This preference for enterprise-level bargaining in the private sector has remained virtually unchanged over the years, apart from one known instance of an industrial agreement involving car importers (Debono and Farrugia 2008). Employers’ associations only give advice, such as legal support, if so requested by individual employers. Collective bargaining is thus a rather local affair, with a union proceeding with negotiations, supported by a ‘committee’ of workers from the company at which the negotiations are

taking place. In the case of large unions, there are attempts at benchmarking conditions of employment across different employers and industries. Thus, as the two general unions, GWU and UHM, sign more than 90 per cent of all agreements, their pressure for extensions and precedents, from one catchment group or industry to another, leads to both ‘pattern bargaining’ and ‘bargaining coordination’ across industries, with the understanding that bargaining still takes place at the enterprise level. In the case of other, smaller unions, no such coordination exists.

The main existing exception to decentralised bargaining at company level is the collective agreement for employees in the public service (for example, Government of Malta 2012), which covers many organisations and occupational groups. The last agreement, covering the years 2017–2024 was signed by government representatives and seven unions. Complementing this agreement, there are industry-wide agreements focusing ‘mostly on career progression and entry requirements and other specific conditions, in a particular class’ of workers (Government of Malta 2012: 5). Among the latter agreements, there is an industrial agreement for teaching grades in the public service that was last signed in 2017. The MUT is the main union carrying out collective bargaining in teaching grades in the public sector, church schools and independent schools. The union also signs minor collective agreements with other related occupations, such as ‘student services grades’ in the public sector’s educational division, and memorandums of understanding on various aspects of working conditions, which complement collective agreements. In general, in the public sector, the union bargaining strategy often involves identifying exceptions to the general rule, such as introducing allowances on an ad hoc basis, which eventually start being negotiated as mainstream. Alternatively, unions are always on the lookout to see whether similar professional or trade groups have secured ‘concessions’, which can then be lobbied for across wider segments of the labour force.

## **Depth of bargaining**

We now turn to trade union bargaining processes, including the possibility of industrial action. Due to the small size of most unions in Malta, claims are normally formulated centrally, by the top union officials, or the officials in charge of specific sections and their teams in the case of the two general unions. Before starting negotiations, unions review the existing agreement in order to improve it and update it in accordance with any relevant legislative changes. Unions formulate their claims after taking into consideration feedback from their shop stewards, sometimes known as ‘delegates’, and ordinary members, who are informed before negotiations begin. For example, in the metal industry it is customary for the GWU to issue an announcement on the organisation’s notice board to ask for proposals before the start of negotiations. When formulating their claims, unions also consider the particular financial situation of the organisation. For example, unions increased their compensation demands for the new public service collective agreement in response to Malta’s positive economic growth. In the case of the industrial agreement for teaching grades in the public service, the MUT’s proposals are approved by the Union’s Council, which gathers representatives of the various industries. After discussing the document with government, the latter would issue counterproposals.

Negotiations, which are usually initiated by unions, tend to start early if the latter feel that they are going to be difficult or complex, for example when they involve more than one union, such as the collective agreement of public service employees, or when it is deemed that the employer will not concede easily to union demands. By contrast, when unions feel that it would be easy to renew a collective agreement, negotiations may start later. The timing of the commencement of negotiations also depends on the unions' available resources and whether the employer accepts that the agreement will be retroactive. For example, the collective agreement for the support staff section of the Bank of Valletta signed in 2016 by the Bank of Valletta and the GWU was retroactive, backdated to January 2014 (Malta Independent 2016a). Sometimes, when employers do not concede retroactive agreements, they might employ delaying tactics to save money. Thus, unions would start negotiations even six months or more before the existing agreement expires. The industrial agreement signed between the MUT and the government regarding teaching grades is atypical as it does not have a termination date. Thus, negotiations start when the government or MUT feel the need for changes or improvements in the existing agreement. Sometimes the MUT asks the government to start negotiations in anticipation of major reforms that the latter plans to implement in the industry. The agreement in church schools is tied to the industrial agreement for teaching grades in the public service, due to a historical agreement between the Catholic Church and the government in 1993, which resulted in the wages of teachers in church schools being paid by the Maltese government. Thus, negotiations for church schools start when the industrial agreement has been signed.

Industrial action is becoming less common. This trend has probably been brought about by the growing realisation that confrontation often results in negative unintended consequences, and that dialogue is more productive in the long term. Having said that, industrial action may take place at any point before, during or after the collective bargaining process to address issues that a union deems of crucial importance. Unions tend not to compromise on safety and security aspects. As expected, the topic is given high importance in metal, but also in education. With regard to the latter, in 2015, all the teaching grades at a particular 'school were ordered by the union to report for work one hour late ... [on a specific day] because of continuous disruptions, threats and serious misbehaviour from individuals or groups of students' (Times of Malta 2015). This led to a conciliation meeting called by the Director of DIER, at which solutions were found to the problems. It is interesting to note that, while industrial action is uncommon, directives are issued regularly in education. These may focus on specific schools, industries or union members. Industrial action is normally taken by the top union officials after consultation with the members that are going to be affected. Unions in general are careful to tackle arising issues in ways that do not affect their members negatively, such as wage losses.

When negotiations are concluded, the final document must be approved by the Union's Council. In metal and banking, the final document has to be approved by the union members or their representatives. In education, when an agreement has been signed, the MUT normally presents the major changes to its delegates. When delegates point out dubious practices – which often stem from misunderstandings on the part of management or employees – that might hinder the agreement, the MUT sorts them out

with management. The MUT also intends to introduce a procedure for its industry-wide agreements giving member representatives the right to vote on the final version of the agreement (one representative for every ten members). If members do not accept the agreement, negotiations with the employer must start again. This practice is viewed negatively by employers who consider it ‘very destabilizing as management can never be certain that the negotiations have been closed’ (Malta Employers’ Association 2015: 8–9). It has been reported that ‘in some cases, management will hold back on conceding points in the collective agreement out of fear that the union will invariably come back with fresh claims even after negotiations have been supposedly finalised’ (Malta Employers’ Association 2015: 9). Unions agree that they need to educate their members to understand the outcome of collective bargaining as a whole package, meaning that if they obtain substantial concessions in one area of the negotiations, this might come at the cost of not receiving concessions in another area. As collective bargaining in Malta takes place mainly at enterprise level, employers’ associations do not play a direct role and are not signatories of collective agreements, although they assist their members when requested.

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

Collective agreements strongly influence work practices by stipulating the main working conditions and human resource practices.<sup>2</sup> Collective agreements are not able to determine working conditions across the board, however; market power and certain gaps also come into it. The EIRA leaves considerable discretion to collective agreements to set out terms and conditions of employment. Collective agreements in Malta tend to govern all the normal aspects of employee relations in the private sector. They have the strength of a contract at law; the moral authority of agreements is enhanced by the fact that they are agreed to by both employer and union(s) and are not imposed unilaterally. The reduction of unilateral actions by either party is an important aspect of the degree of control exerted by collective agreements. For example, during an impasse in the negotiations on the 2014–2018 collective agreement at HSBC Bank (Malta), the MUBE cited various alleged unilateral decisions by management as the main points of contention (*Malta Independent* 2016b).

Collective agreements also normally stipulate grievance, dispute or arbitration procedures when there is an alleged infringement of some substantive or procedural aspect. For example, when an employee receives a formal reprimand, there is a period of days in which the employee may give their reply. Employees also have the right to appear in front of a disciplinary board assisted by a trusted person, who may be a shop steward or another trade union official. According to the GWU, very often disciplinary issues in metal are resolved at that stage because of the generally good relations with management. If there is a disagreement, the general manager is sometimes involved. Then, if the issue is still not sorted out, the employee may take the

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2. Collective agreements are often written in English. Sometimes there are both English and Maltese versions. When there are issues regarding the interpretation of collective agreements, the English version normally takes precedence due to its greater precision.



case to the DIER Director, and eventually it may end up in front of an industrial tribunal or even a court.

Market power somewhat dents the abovementioned high degree of control of collective agreements. Wage drift, that is the difference between the wage actually paid and the negotiated wage stipulated in a collective agreement, is one phenomenon that regularly impinges on the stability and control offered by collective bargaining in the private sector. For example, Eurostat (2017) indicates that workers in Malta perform more overtime than other EU workers. Apart from the ongoing pressure on the control of collective agreements in prosperous times derived from phenomena such as wage drift, there also exist inverse market pressures in times of economic downturn that reduce the control of collective agreements. For example, Article 42 of EIRA provides that, in exceptional cases, the employer, in agreement with the employees and union representatives, may impose different conditions of employment as a temporary measure to avoid redundancies. In 2009, during the global economic recession, 148 organisations made use of this clause, while in 2015, when the economic climate was much better, only four did so (private correspondence with DIER).

Most working conditions of teachers in the public sector are covered in their industrial agreement. If there are discrepancies between the general and the industrial agreements, the clauses most beneficial to the employees prevail. The public service is also governed by a Public Service Management Code (PSMC), however, which prescribes various conditions of employment to apply to public servants and complements public sector collective agreements. The PSMC contains, among other things, regulations detailing family-friendly measures and the different types of leave. The PSMC also includes detailed procedures on such things as grievances in the public service. In the teachers' agreement there are specific grievances relating to the industry, for example how to deal with a school head who does not follow the proper procedures. The collective agreement of church schools is more detailed than the industrial agreement for public schools because the former are not governed by the PSMC. For example, family-friendly measures are spelled out in the collective agreements of church schools. The conditions of work in public and church schools are very similar. Collective agreements in independent schools are patterned on the church school agreements, although their scope, such as the availability of promotions, tends to be more limited, especially because of private ownership and the smaller size of the organisations concerned.

Lack of detail within the national industrial relations legal framework, along with a low degree of control exercised by collective agreements over union recognition, has over the years resulted in considerable conflict between unions. Such disputes have been rare in compulsory education and metal because of the dominance of the MUT and the GWU in these industries. On the other hand, recently there was a high-profile dispute between the GWU and the MUBE in banking. In 1994, the GWU lost the right to represent employees at one of the largest banks in Malta, the Bank of Valletta, to the MUBE. In 2014, however, the GWU claimed that it had regained the majority of clerical and management staff as its members (Rizzo 2014). This claim was contested by the MUBE before the DIER Director and the industrial tribunal. Verification of union membership, however, led the GWU to acquire sole recognition of clerical and management staff.



As often happens in such cases, the matter was brought into the public domain as the unions berated each other on mass and social media (Vella 2013). The coming into force of the Recognition of Trade Union Regulations (Laws of Malta 2016), as referred to above, has clarified the procedures involved in trade union recognition, thus reducing the potential for conflict between unions.

## Scope of agreements

Collective agreements are based on a model agreement developed in 1967 by the GWU and the MEA as a way of creating harmony in their operations (Greenland 2011). Contemporary agreements retain the standard operating structure and elements of the model agreement. In line with the basic template, these agreements establish the framework within which the agreement is signed.

Collective agreements normally include substantive provisions setting the terms and conditions for individual workers. The wage structure and wage scales are traditionally the most important topic of collective bargaining; monetary issues have remained a top priority in collective agreements, irrespective of external economic and political changes. Details of bonuses, allowances and grants are also found in collective agreements. Working time is another topic normally included. While agreements may or may not include COLA, those that do not end up being more expensive for employers; whatever they agree on specific annual wage increases, they eventually have to factor in the annual COLA increases. During the global recession, the MEA was among the employers' associations that highlighted the destabilising effect of the COLA mechanism on the private sector (Malta Employers' Association 2009). In recent years, however, there has hardly been any public debate about COLA, probably because the Maltese economy is growing rapidly. The Maltese government has resisted EU recommendations to reform the wage indexation system, arguing that it has a net positive effect on competitiveness (Ministry for Finance 2013). Faced with ever increasing public sector expenditure, in order to curb wage increases the government, through its Industrial Relations Unit (IRU), has started to include clauses in public sector collective agreements stating that salary increases shall be inclusive of COLA for the period covered by the agreement.

Collective agreements in the private sector normally include provisions on the types and quantity of leave, seniority and retirement age. Performance-based management systems linking financial rewards to employees' individual performance and the organisation's financial results have existed for many years in collective agreements in banking. In a bid not only to attract but also to retain employees, private employers are increasingly focusing on more innovative packages that enhance their employees' commitment. Thus, medical benefits, including health insurance, health and safety provisions, physical fitness and childcare facilities or assistance are increasingly finding their way into collective agreements in the private sector.

Other substantive provisions may be included, depending on the nature of the organisation. For example, collective agreements at banking institutions sometimes include sections on financial facilities for employees, including housing loan subsidies

and profit-sharing schemes. Provisions on long-service bonuses and early retirement schemes also exist in collective agreements in banking, reflecting the need to retain experienced workers, but also to shed excessive staff and make banking organisations leaner. As hinted earlier, health and safety issues are given importance in the relatively dangerous metal industry. Due to the large size of the public sector and emerging needs in different departments, the collective agreement includes the working practice of ‘structured mobility’, which offers ‘the employees the opportunity of exposure, experience and sustainable development which at the same time addresses the various work exigencies and work practices of the different departments’ (Government of Malta 2012: 14). The teachers’ agreement in the public sector includes all aspects of working conditions of the grades represented by the MUT, such as job descriptions, allowances (but not salaries, which are covered by the main public sector agreement), teaching loads, number of students per class and special duties.

It is unusual for unions to ask for changes in work conditions or organisational procedures while collective agreements are still in force. Nevertheless, over the years, the MUT has signed various memorandums of understanding, outside the main collective agreements, that affect teachers’ working conditions at the various grades.

The topics covered by most clauses in collective agreements in the private sector have not changed much over the years because they deal with basic procedural aspects that have retained their relevance across time. These include: absence from work, discipline, grievances, dispute procedures and industrial action, recruitment, promotions, demotions, redundancies and reemployment following redundancies. As stated earlier, collective agreements in the public service do not include details of procedures that are covered in the PSMC.

Contemporary collective agreements have increased their focus on issues related to the context of work, such as gender equality and work–life balance. Joining the EU has boosted the general public’s awareness of the importance of such issues. It is interesting to note that while most workers in metal are men, collective agreements focus on such aspects nevertheless. While family-friendly measures in the public service have, over the years, remained better than those in the private sector, they are governed by the PSMC rather than by collective agreements. Banking also tends to have good family-friendly measures. For example, flexible working arrangements, career breaks and medical health checks were introduced in the collective agreement signed between the MUBE and the Bank of Valletta covering the period 2011–2013.

Certain elements in collective agreements have been developed to accommodate the specific needs of some industries. Thus, in view of the higher accident rates, some collective agreements in metal entitle employees to much longer periods of sick leave in cases of serious illness, work-related injuries and hospitalisation than those envisaged nationally in law.

While collective agreements in both the public and private sectors increasingly include clauses regulating training, the topic was particularly developed in the collective agreement for employees in the public service (2011–2016), which also affected teachers

(Government of Malta 2012: 19). All the clauses on training were removed from the last collective agreement, covering 2017–2024, as detailed information can be found in the PSMC. Three important factors appear to have contributed to the high emphasis on training in the public sector. First, the government wants to be a model employer in order to boost training levels, which are lower than the EU average. Second, the government is aware of the tight labour market situation and would like to retain its employees; training and professional development opportunities have a positive effect on morale and career progression and therefore retention. Third and finally, unions in the public sector are traditionally more assertive in their collective bargaining demands than those in the private sector, mainly because there is no fear that high demands may backfire and result in redundancies.

## Conclusions

This chapter has highlighted several trends in industrial relations and collective bargaining in Malta. There has been a gradual departure from the British-style antagonism between trade unions and employers and the resulting confrontational bargaining. The change in style is apparent from the downward trend in the number and intensity of strikes and the greater propensity for unions to discuss with employers, both at company level and at a national tripartite level. Unions are trying to adapt to a changing landscape in which employment is more volatile and confrontation can quickly lead to unintended negative consequences for both the organisation and its employees. The influence of ‘Europe’, aligned with local initiatives towards social dialogue at the macro-level, has also generally improved employment relations in Maltese workplaces.

Collective bargaining has steadily improved the working conditions of a large proportion of workers, while maintaining a stable industrial relations climate in which companies have generally maintained their competitiveness. A dual landscape in collective bargaining between the private and public sectors has, however, evolved over recent decades. On one hand, virtually all public sector workers are covered by collective agreements, and most public sector management is engaged in regular discussions, consultations and negotiations with unions. On the other hand, the private sector is increasingly struggling to maintain an industrial relations climate in which unions are seen as natural players. Indeed, unions have to date been unable to stop the declining coverage of collective bargaining in the private sector. They have remained virtually absent from traditionally non-unionised industries, such as construction, retail, agriculture and fishing. Their manufacturing strongholds are destined to continue shedding workers. Furthermore, the unions have been unable to infiltrate emerging industries such as financial services and electronic gaming, in which the proportion of foreign workers is significant. With over 40,000 foreign workers in Malta reported in 2018 (one-fifth of the labour supply) the scope of collective bargaining is under strain (Micallef 2018).

Because of these and other factors, collective bargaining coverage is likely to continue to shrink and the unions’ role at enterprise level will diminish if they do not manage to find innovative ways of reversing the trend. Unions need to become more open and proactive

towards non-traditional members, including foreigners and young people, while seeking a presence in emerging hi-tech service industries, such as artificial intelligence and distributed ledger (blockchain) technologies. Unions also need to collaborate better with each other, reducing inter-union conflict and building trust, to overcome capacity barriers and confront common challenges jointly and effectively.

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## Abbreviations

AAE	Association of Airline Engineers (Malta)
ALPA	Airline Pilots Association
BOV	Bank of Valletta
CMTU	Confederation of Malta Trade Unions
COLA	Cost of living allowance
DIER	Department of Industrial and Employment Relations
EIRA	Employment and Industrial Relations Act
EPOU	Enemalta Professional Officers Union
EU	European Union
GWU	General Workers Union
HSBC	Hongkong and Shanghai Banking Corporation
IGWU	Imperial Government Workers Union
IRU	Industrial Relations Unit
LRU	Lotto Receivers Union
MAM	Medical Association of Malta
MATCA	Malta Air Traffic Controllers Association
MCESD	Malta Council for Economic and Social Development
MCP	Kamra tal-Ispizjara (Malta Chamber of Pharmacists)
MDU	Malta Dockers Union
MEA	Malta Employers Association
MLP	Malta Labour Party
MPA	Malta Psychological Association
MTEU	Malta Transport Employees Union
MUBE	Malta Union of Bank Employees
MUMN	Malta Union of Midwives and Nurses
MUPP	Malta Union of Professional Psychologists
MUT	Malta Union of Teachers
MUTG	Malta Union of Tourist Guides
NACE	Nomenclature Statistique des Activités Économiques dans la Communauté Européenne (Statistical Classification of Economic Activities in the European Community)
NP	Nationalist Party
NSO	National Statistics Office
PL	Partit Laburista (Labour Party)
PSEU	Professionals and Services Employees Union
PSMC	Public Service Management Code
TEFL	Teaching English as a Foreign Language



<b>UCC</b>	Union of Cabin Crew
<b>UHBC</b>	Union Haddiema Bank Ċentrali (Central Bank of Malta Employees Union)
<b>UHM</b>	Union Haddiema Magħqudin (Union of United Workers)
<b>UMASA</b>	University of Malta Academic Staff Association
<b>UPAP</b>	Union Professjonisti tal-Awtorita Maltija dwar l-Ambjent u l-Ippjanar (Union for Professionals of Malta's Authority for the Environment and Planning)
<b>UPISP</b>	Union Periti u Inġiniera tas-Servizz Pubbliku (Union for Public Sector Architects and Civil Engineers)
<b>UTAC</b>	Technical and Clerical Staff Union of Malta Planning and Environment Authority
<b>UTT</b>	Union of TEFL (Teachers of English as a Foreign Language) Teachers



# Chapter 21

## The Netherlands: decentralisation and growing power imbalances within a stable institutional context

Wike Been and Maarten Keune

The Netherlands is a consensus-based democracy with important neo-corporatist elements; trade unions, employers’ organisations and other societal organisations play an important part in political decision-making. It is also a small, open economy with a substantial trade surplus, relatively small agricultural and industry sectors and a very large service sector. The Dutch collective bargaining system covers around 80 per cent of employees and this percentage has been fairly stable over the past 30 years. Bargaining takes place largely at industry level and only 10–15 per cent of bargaining coverage comes from company agreements. Coverage is strongly supported by the fact that many industrial agreements are extended quasi-automatically to the entire industry by the government. Dispensation from industrial agreements can be requested. The favourability principle applies to the relationship between industrial and company-level agreements. There is an ongoing process of organised decentralisation of collective bargaining, with the framework provided by industrial agreements increasingly creating space for lower-level agreements and decisions. The objective of this process is to allow for more tailor-made regulation adjusted to the requirements and preferences of companies or individuals. Table 21.1 shows developments in the collective bargaining system over the period 2000 until 2017. Stability in the institutional system can be observed together with a declining coverage of collective bargaining and declining membership of trade unions, as well as employers’ organisations.

Table 21.1 Principal characteristics of collective bargaining in the Netherlands

Key features	2000	2016/2017
Actors entitled to collective bargaining	Trade union(s) together with employers’ organisation(s)	
Important bargaining levels	Mainly industrial level	
Favourability principle / derogation possibilities	Yes, by requesting dispensation from the responsible government department	
Collective bargaining coverage (%)	82	80
Extension mechanism (or functional equivalent)	Yes, legal extension by the Ministry of Social Affairs and Employment	
Trade union density (%)	23	18
Employers’ association rate (%)	85	80

Source: Authors’ compilation and Appendix A1.

## Industrial relations context and principal actors

The legal foundations and formal institutions of the neo-corporatist industrial relations system in the Netherlands have been broadly unchanged since its introduction in the period just after the Second World War (De Beer and Keune 2017). As of 2018, the so-called 'Polder model' builds on the Law on collective agreements (1927), the Law on the extension of collective agreements (1937), the bipartite Labour Foundation (Stichting van de Arbeid) established in 1945, the tripartite Socio-Economic Council (Sociaal-Economische Raad, SER) established in 1950 and the Law on works councils also introduced in 1950. These laws and institutions have experienced only limited changes over the years and, together with the continuously high coverage of collective agreements and the practice of regularly concluding social pacts, they give the Dutch industrial relations system a stable and ordered character. Within this institutional continuity, however, important change has taken place, in particular in the power relations between unions and employers (De Beer and Keune 2018). Dutch unions have seen their membership decrease, following the decline of manufacturing and the rise of (private) services; the increase in non-standard employment such as part-time work, flexible work and temporary agency work; the rising share of working women; and, possibly, a change in the dominant norms, with younger generations not easily committing themselves permanently to a social organisation (De Beer and Keune 2017). Employers' organisations have managed to maintain their membership and see their interests supported by many national and European Union (EU) policies. As a result, the Polder institutions and, in particular collective agreements, more and more serve the interests of the latter, to the detriment of workers, who are confronted with prolonged wage moderation and flexibilisation. As a result, the originally fairly balanced and consensus-based Dutch model is being hollowed out more and more.

The Wassenaar Agreement of 1982 marked an important development in Dutch industrial relations. The government withdrew from the setting of wages and working conditions, which became the autonomous responsibility of employers and unions, with collective agreements as their main instrument. In the Wassenaar Agreement, employers and unions agreed to strengthen both the international competitiveness of the strongly export-oriented Dutch economy and job creation through wage moderation and working time reduction, intended to boost economic and employment growth. As will be shown below, wage moderation continues, while working time reduction was soon off the table. Wage moderation in the 1990s was complemented by a series of reforms of the labour market and the social security system. Initially, this seemed to work well, as in terms of economic and employment growth, the Netherlands started to outperform most other western European countries, leading some to refer to the 'Dutch miracle' (Visser and Hemerijck 1997). Since 2000, however, economic growth has been average and although the employment rate remains high in comparative terms, boosted above all by the strong growth of female part-time employment, in terms of quality of jobs the Netherlands is underperforming compared with most western European countries (Keune 2016).

The Wassenaar Agreement did not result in the absence of the state from industrial relations. Apart from its role as employer in part of the public sector, the state influences

industrial relations through its policies and legislative changes, and there is always the 'shadow of the government' hanging over collective bargaining processes. The last, and failed, attempt by the government to directly intervene in wage-setting, however, dates back to 2004. The state also often plays an important role in the conclusion of social pacts, a practice the government has deliberately been extending beyond the traditional industrial relations actors and subjects in recent years (Hemerijck and van der Meer 2016). With national politics being quite turbulent and government majorities small, the government often seeks the support of the 'social partners' and other societal actors and tries to codify this support in pacts before it presents reforms to the parliament. At the same time, in the period since Wassenaar, the political agenda of most governments has been inspired by neoliberal ideas, characterised by austerity and cuts in public services, strengthening of market mechanisms and competition, privatisation, a relative reduction of the minimum wage and increases in the pension age (De Beer and Keune 2018). Clearly, the respective reforms have been much more in line with the interests of employers than those of the unions. The latter have tried to resist them, but in most cases have only been able to slow down rather than avoid reforms because of their waning power.

The actors that are authorised to engage in collective bargaining in the Netherlands are individual employers, employers' organisations and unions. Formally, no other actors have the capacity to conclude collective agreements, although, as will be pointed out, works councils sometimes have a role to play. Most Dutch unions are organised in three main confederations: Federation of Dutch Trade Unions (Federatie Nederlandse Vakbeweging, FNV), the Christian Dutch Trade Union Confederation (Christelijk Nationaal Vakverbond, CNV) and the Confederation for Professionals (Vakcentrale voor Professionals, VCP). There are also several independent, often occupational, unions, not affiliated to any confederation. The FNV, with just over one million members, is by far the largest of the confederations, followed by the CNV with around 300,000 members and the VCP with close to 100,000 members. The independent unions together have a membership of around 250,000. Together they organise some 1.6 million workers, or 17 per cent of Dutch employees. Union membership and, especially, union density have declined substantially since the 1970s. At its highest level, in the mid-1970s, union density stood at 33 per cent. Since then it has declined to almost half that level. This decline is the result of both an absolute decline in membership and growth in the number of employees, with new employees much less inclined to become union members. The only growth has taken place in the membership of the independent unions, but this is largely caused by unions leaving the confederations (De Beer and Keune 2017).

Unions are active mainly at the national and industrial level. This is a result of the compromise that was reached just after the Second World War between the government and the 'social partners', which put the unions on an equal footing with the employers and the government at the industrial and national levels, in return for renouncing an active role within companies (De Beer and Keune 2017). This hinders their direct contact with workers and reduces the capacity to recruit new members. This does not mean that they are absent at the workplace level, but in most companies their presence is weak. Worker representation in companies became the responsibility of works councils, which, however, do not have any formal collective bargaining capacity. Works councils mainly

have information and consultation rights and, next to representing workers' interests, works councils also have the well-being of the company among their goals, giving them a more ambiguous position than a union. The boundaries between collective bargaining and works council activities, however, have been blurred in recent years. This results from the fact that, since 2014, almost all industrial collective agreements one way or the other assign a role to the works council in reaching agreement with management on issues such as working time, working schedules, holidays and holiday bonuses and, in some cases, also wage levels and increases (Jansen and Zaal 2017). Works councils then are indirectly becoming part of collective bargaining about employment conditions in ways that were not envisaged by, and are not properly regulated in, Dutch labour legislation. It remains to be seen how they handle this role and if they are able to represent workers' interests satisfactorily.

In recent years, some major reforms have taken place in the Dutch unions and especially in the largest confederation, the FNV. Most noticeable has been the breakup and subsequent re-foundation of the FNV in 2011–2014, after the confederation was thrown into crisis because of a conflict between the leadership and some of its main member unions about internal democracy and the political course of the confederation. This resulted, among other things, in the establishment of a members' parliament as the main decision-making body in the new FNV. Another development has been the increasing use by the FNV of organising tactics and strategies, applied with great success for example in cleaning. In the meantime, the second largest confederation, the CNV, is increasingly profiling itself as an organisation providing services to its individual members. New smaller occupational unions are also becoming more important, often after they split from the larger unions, as in certain industries workers seem to identify with such unions more easily.

Dutch employers at national level are organised in three main confederations: the political and lobby-oriented employers' organisation named Confederation of Netherlands Industry and Employers (Verbond van Nederlandse Ondernemingen – Nederlands Christelijk Werkgeversverbond, VNO-NCW), the employers' organisation for small and medium-sized enterprises, Small and Medium-sized Enterprises Netherlands (Midden en Kleinbedrijf Nederland, MKB Nederland) and the General Employers' Organisation (Algemene Werkgeversvereniging Nederland, AWWN), which is dedicated more to the direct assistance to employers and industry organisations in collective bargaining processes and relations with employees. Besides these national organisations, there are numerous employers' organisations for specific industries, most of which are affiliated to one or more of the national organisations. No clear data are available on the membership of employers' organisations and calculating membership is complicated by the fact that many companies are members of more than one organisation. De Beer (2016) estimates that the employers' organisation rate, expressed in the share of employees working for companies that are affiliated to an employers' organisation, is between 60 and 80 per cent. Their membership also seems to be more stable than that of the unions and there is no reason to think it is diminishing substantially.

In general, employers' organisations want to maintain a collective bargaining system that covers most of the labour market (see below). The large and increasing diversity

between companies and their specific challenges and interests, however, leads employers' organisations to seek more and more possibilities for flexibility and decentralisation within industrial collective agreements. Despite the high density rate, employers' organisations struggle with the limited membership of small enterprises, especially VNO-NCW, which is often seen as representing mainly the interests of large, domestic companies. Moreover, employers' organisations have a complicated relationship with the multinational companies, which are often not really interested in being part of collective bargaining and prefer not to be covered by industrial collective agreements.

Collective agreements can be signed by multiple unions and employers' organisations. On the union side, the largest confederation, the FNV traditionally (co)signs most agreements. Recently, several important agreements have been concluded without the FNV, however, as employers are more able and willing to cherry-pick the unions that will agree with more of their demands. The FNV is often not able to stop this process, but also refuses to sign what it considers bad agreements. It is unclear for now how important and structural this development is.

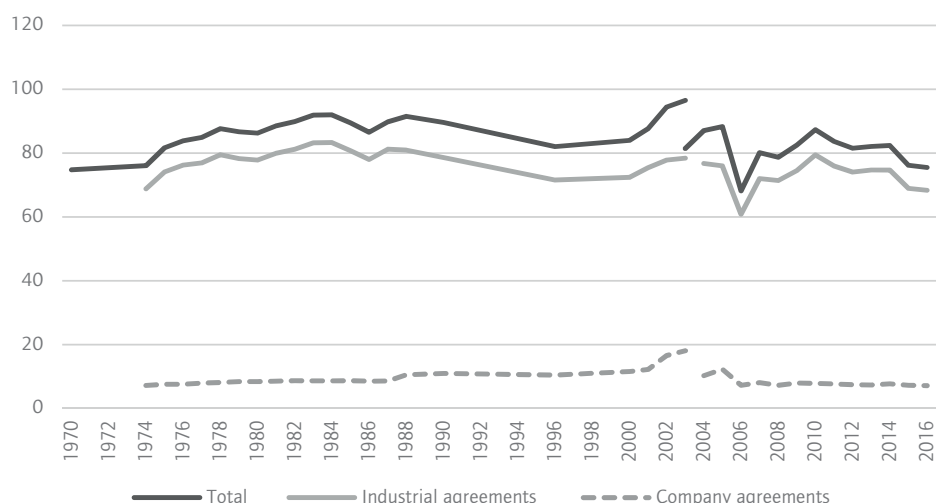
## Extent of bargaining

Despite the low union membership rate, the bargaining coverage of collective agreements in the Netherlands is high. Figure 21.1 shows the coverage rate between 1970 and 2015, with a current rate of just below 80 per cent. Most of the coverage stems from industrial collective agreements. The coverage rate in the public sector approaches 100 per cent (Stiller and Boonstra 2018), which sets it slightly apart from the private sector. The high rate, despite the low unionisation, is due to two main elements of Dutch collective agreement law. First, the collective agreement applies to all employees of a company that is covered by the agreement, regardless whether they are a union member or not. Because about 60–80 per cent of employees work for an employer that is a member of an employers' organisation (De Beer and Keune 2017: 224), and most of these associations are involved in negotiating industry-level collective agreements, this ensures a high coverage of employees (De Beer 2013). In addition, about 10 per cent of the mainly large employers have company-level collective agreements in place (SZW 2017). There are generally arranged by dispensation from the industrial agreement that would otherwise apply to the organisation, meaning that in total about 80 per cent of employees are still covered by a collective agreement. Second, most industry-level collective agreements are declared binding by the Ministry of Social Affairs and Employment. This practice extends the area of application of the collective agreement to all employers in the industry, as defined in the collective agreement, regardless whether they are a member of the employers' association or not. The government's intended effect in introducing the extension mechanism is to prevent competition on employment conditions between employers that are covered by the collective agreement within an industry and those that are not (Toetsingskader Algemeen Verbindend Verklaring CAO-bepalingen 1999).

The procedure of legally extending the collective agreement to the whole industry is semi-automatic when the bargaining coverage of an agreement in an industry reaches 55 per cent or more of employees in the industry working for employers that are part of the



Figure 21.1 Bargaining coverage in the Netherlands, 1970–2016 (% of employees)



Source: De Beer and Keune (2017), based on Schilstra and Smit (2005: 57); SZW and DCA (1989); SZW; CBS (Statline).

agreement (De Beer and Keune 2017; Toetsingskader Algemeen Verbindend Verklaring CAO-bepalingen 1999). About 15 per cent of the collective bargaining coverage is the result of legal extension (SZW 2017). This is a comparatively low percentage. The very existence of the extension mechanism, however, might well be an important reason why the membership rate of employers' associations is high to begin with. If the collective agreement will apply to your company anyway, you better become a member and have a chance to influence what is in it. From time to time the extension mechanism is questioned by one or other political party, but for the time being most of the political parties, employers' organisations and unions agree with the present practice.

Among both employers and employees, support for collective agreements is generally high in the Netherlands. Regardless of low union membership, most employees value the collective agreement, whether they are a member of a union or not (SER 2013). The low membership therefore cannot be interpreted as a sign that employees do not see the benefits of the collective agreement. Employers also see advantages of the existence of a collective agreement for them: it reduces conflicts; it gives the possibility of deviating from specific legislation that allows deviation under the condition that this is arranged within a collective agreement; and it saves time bargaining with each individual employee about working conditions (Verhoeff 2016). Moreover, the unions' 'moderate stance and the willingness to compromise' results in employers generally preferring to negotiate a collective agreement with them (De Beer and Keune 2017: 228).

The duration of a collective agreement is agreed between the unions and employers' organisation upon conclusion and can be up to five years (Wet op de collectieve arbeidsovereenkomst 1927). It tends to vary between collective agreements. In

2014, for example, it ranged between six months and five years and was on average 23 months.<sup>1</sup> The legal extension to all companies in an industry as defined within a collective agreement is at most two years (Toetsingskader Algemeen Verbindend Verklaring CAO-bepalingen 1999). When a collective agreement ends without there being a new one to replace it, the agreement will still have validity for existing employees after it has expired. The legal extension mechanism, however, ends at the same time the collective agreement ends.

The collective agreement coverage rate of about 80 per cent of employees means that 20 per cent are not covered. These are employees of industries without a collective agreement. Examples are the hotel and catering industry, parts of the creative industry and inland waterways. In addition to the 20 per cent of employees not covered by collective agreements, also self-employed and freelance workers are in principle not covered. This is especially relevant given the growing population of self-employed in the Netherlands; by mid-2017, there were 1,060,000 self-employed in the Netherlands, about 12 per cent of the working population (CBS 2017). There are some exceptions: some collective agreements include stipulations that regulate certain aspects of the hiring of self-employed workers by employers covered by the collective agreement.

## Security of bargaining

A central principle of collective agreement law in the Netherlands is that when a collective agreement is registered at the Ministry of Social Affairs and Employment, it covers all employees in an organisation regardless whether they are a member of a union (Wet op de collectieve arbeidsovereenkomst 1927). The exception is those explicitly excluded from the collective agreement. All unions, regardless of their size, can bargain for a collective agreement with an individual employer or employers' organisation. The requirement is that the statutes of the union explicitly mention that the association is competent to negotiate a collective agreement (Wet op de collectieve arbeidsovereenkomst 1927) and that they have at least two members.<sup>2</sup> It is sufficient that one union signs the collective agreement. In practice, this means that if a union's demands are too high, it can be side-stepped by an employer or employers' organisation by signing an agreement with another, less demanding union, even if this union is much smaller. The possibility for employers to side-step unions tends to be a mechanism for moderating union demands (De Beer 2013; De Beer and Keune 2017). It also leaves the largest unions relatively powerless: there are few consequences when they refuse to sign a collective agreement in an industry, as there will be a collective agreement anyway. They are especially powerless because striking, which would be the most important means of protesting against side-stepping a union, is not always feasible given the low membership rate of unions in many industries (Van der Valk 2016).

1. Based on a collective agreement database of the Ministry of Social Affairs and Employment of 2015, authors' calculations.
2. These requirements follow from the fact that a union is formally an association, the establishment of which requires at least two members (Burgerlijk Wetboek 2, Titel 2).

Strike incidence is very low in the Netherlands, although there is great variation between years. Between 2000 and 2014, there was an average of nine strikes a year, ranging from one in 2000 and 2009 to 34 in 2002. Consequently, the number of lost working days in the Netherlands due to strikes is among the lowest in Europe (Vandaele 2016). A strike is regarded legal in the Dutch context when organised by a union. The only exception is the military, who are not allowed to strike. An employer may not punish employees for participating in a strike other than by withholding wages. Moreover, striking employees may not be replaced by agency workers (Wet Allocatie Arbeidskrachten door Intermediaires 1998). When on strike, union members are generally compensated by their union with strike benefit; those who were members prior to the strike receive a higher benefit than those that joined during the strike.<sup>3</sup> The relatively low strike incidence in the Netherlands therefore cannot be attributed to legislation, but is sometimes stated to be related to the practice of compensation with strike benefits (Vandaele 2011). The benefits make strikes relatively expensive and therefore there is good reason to keep them short and to organise them only when they are expected to be most effective. In addition, the system in the Netherlands is argued to lower strike incidence, as it is based on consensus-seeking and deliberation. Both employers' organisations and unions have top-level organisations involved in tripartite consultations at the national level. The centralised system of wage bargaining in the Netherlands, the increasing absence of unions at the workplace and the peace obligation of collective agreements are also mentioned as factors contributing to the low strike incidence (Vandaele 2011). An alternative explanation, that the large share of flexible jobs in the Dutch labour market might tend to reduce strike incidence because of the personal risks involved for such workers, has not proved to be directly related (Jansen *et al.* 2017).

In the Netherlands, the legal adult minimum wage sets the wage floor for employees. For employees under 21 years of age (until recently 23) an age-dependent youth minimum wage applies, which is lowest for 15 years old and increases with every year until the age of 21. Social security benefits are tied to collective agreements and collective bargaining through several linkages. First, occupational welfare is in large part regulated through collective agreements, the main example being the quasi-mandatory occupational pensions that cover almost all employees (Keune and Payton 2016). Moreover, statutory benefits, for example concerning unemployment, sickness and disability, are often topped up in collective agreements. A study of the 100 largest collective agreements shows that 54 per cent have a clause topping up income during sickness, 52 per cent contain a clause topping up disability arrangements and 45 per cent top up unemployment benefits (SZW 2017). Second, more indirectly, government spending on social security is linked to collective bargaining through the mediating effect of the minimum wage level. This indirect linkage works as follows. As a first step, collective bargaining affects the minimum wage level, as the average increase in contractual wages forms the basis of the automatic uprating of the minimum wage level (De Beer *et al.* 2017). The minimum wage level, in turn, has determined government spending on social benefits since the introduction of the 'net-net linking' of social assistance and public pensions to the minimum wage level in 1974 and its formalisation

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3. Source: <https://loonwijzer.nl/home/arbeidsvoorwaarden/cao/vakbond-wat-is-het-en-wat-heb-je-er>, 9-11-2017

in 1980. Third, based on an agreement between the AWWN and the unions in 1966, employers pay an employer contribution for each of their employees falling under a collective agreement to the unions. In 2018 this contribution amounts to €20.63. The rationale for this contribution is that employers want to have a serious and competent partner at the negotiating table.

## Level of bargaining

As already mentioned,<sup>4</sup> the most important level for collective bargaining is the industry, with some 15 per cent of coverage stemming from company agreements. When company agreements are negotiated in industries covered by an extended industrial agreement, they require dispensation from that agreement. Collective agreements can provide dispensation for specific companies or can include a dispensation clause based on which companies can request dispensation from one or more stipulations in the extended agreement (Houtkoop *et al.* 2016). Dispensation can also be requested from the Ministry of Social Affairs and Employment during the extension process.

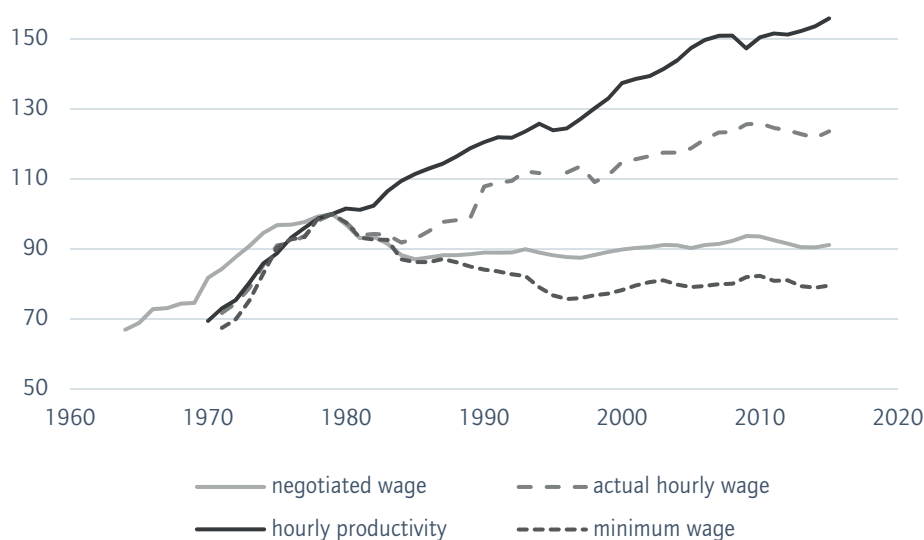
The predominance of industry-wide agreements has not declined over time. This does not mean that no decentralisation of collective bargaining has taken place. Rather, decentralisation of collective bargaining in the Netherlands has a decisively organised character: that is, it largely takes place within the framework of industrial agreements, which explicitly allow for the regulation of certain elements of working conditions and work organisation at company level and set certain minimum level standards, as well as procedures that must be respected (Ibsen *et al.* 2018). Organised decentralisation can be traced back to the social pact of 1993 titled *Een nieuwe koers* (A New Course), in which unions and employers' organisations agreed that industrial agreements should offer more decentralisation options for enterprises and workers, better adjusted to their specific interests. Since then, employers in particular have been pushing for organised decentralisation and a number of possibilities now exist.

The first important issue is the kind of industrial agreement, based on how they are characterised in the agreement. Van den Ameele and Schaeps (2014) provide a typology of four different types for the Netherlands: a standard agreement with absolute standards; minimum agreements, which provide minimum standards that can be topped up, but not undercut, at the company level; agreements containing both standard and minimum stipulations; and agreements that contain no explicit general characterisation. In 2014, 48 per cent of industrial agreements were minimum agreements and another 6 per cent combined minimum and standard stipulations that provide ample possibilities to define actual employment conditions at the company level; in two-thirds of the other agreements, however, there is some space for local deviations.

Different types of agreements can have very different implications at the company level. In terms of wages, for example, the industrial agreement for primary education stipulates the exact wages for all types of functions in the industry (Tros and Keune 2017). This

4. This section is to a large extent based on Ibsen *et al.* (2018).

Figure 21.2 Adult minimum wage, average contractual wages and actual wages and hourly labour productivity in the Netherlands, 1964–2016



Note: Wages with CPI deflator, productivity with GDP deflator; 1979=100); hourly wage: OECD Economic Outlook No. 99, wage rate corrected for the latest number of employees published by CBS. Reading note: In 2015 hourly productivity was 56 per cent above the level of 1979.

Source: De Beer *et al.* (2017), original source: CBS (Statline); Ministry of Social Affairs and Employment.

means that at the local level there is hardly any wage flexibility. Other agreements allow extensive flexibility by the way wage scales are formulated, for example, by including open wage scales or by setting wage scales only for lower positions. The latter is the case in metal. In addition, the metal collective agreement is an example of a minimum collective agreement, in which it is explicitly stated that it is meant to set only a minimum standard for the industry. Concretely, it is the practice in this industry to pay 10 to 20 per cent above the wage levels stated in the collective agreement (De Beer *et al.* 2017). The practice of going above the collective agreement is more common in the private sector than in the public sector, because of the available funds (Tros and Keune 2017).

In more general terms, there has been substantial (positive) wage drift in the Netherlands since the 1980s (Figure 21.2). The underlying factors are complex (Salverda 2014) and may include increasing skill levels, job reclassifications and technological change. There is no doubt that an important part of this wage drift stems from local wage increases over and above the wage increases defined in industrial agreements. This wage drift takes place in a context of prolonged wage moderation. Wage moderation has a long history in the Netherlands. Since the late 1970s, collectively agreed wage increases have lagged consistently behind productivity increases; the same applies, although to a lesser extent, to wages actually paid. The fact that wage moderation has been prolonged beyond periods of economic depression clearly shows the power difference between employers and unions, as well as the belief among unionists that wage moderation

stimulates employment growth. The same arguments can be made for the continuous flexibilisation of work in the Netherlands.

Related to this, most industrial agreements assign a role to the works council in reaching agreement with management on issues such as holidays and holiday bonuses, working time, work schedules and, sometimes, wages (Jansen and Zaal 2017). Works councils are thus indirectly becoming part of collective bargaining processes that settle employment conditions. An important question concerns the extent to which the collective agreement defines the limits within which local agreements can be made. Where these limits are absent, in theory it would be possible for works councils and management to agree to undercut wages and working conditions as defined in the industrial agreement (Ibsen *et al.* 2018). A third, and in a way most radical, type of decentralisation concerns regulations that allow individual employees to make certain choices concerning their employment conditions. Even though these opportunities for choice exist, many employees and employers prefer to have fewer options as they prefer a simple and clear-cut agreement (SvdA 2013). Indeed, only a minority of employees exercise their personal choice budget (Persoonlijk Keuzebudget, PCB) or à-la-carte options.

## Degree of control

It does not only matter what kind of regulations collective agreements contain, but also the extent to which they manage to ensure compliance. In the Netherlands, the parties that negotiate a collective agreement are themselves responsible, by law, for controlling compliance with the collective agreement. Within agreements, they can make additional arrangements to improve and ensure compliance. Many collective agreements in the Netherlands include such arrangements. A study of 2015 among 167 collective agreements shows that 47 per cent contain stipulations to inform and explain the agreement to the relevant actors and to help them with interpretation and implementation, in most cases also including a specific body charged with this activity; also, 19 per cent contain a grievance procedure, 75 per cent a dispute and arbitration procedure and 21 per cent ensure arrangements for an inspectorate body (Kuiper *et al.* 2015). Especially those industries in which the risk of non-compliance is highest have installed an inspectorate organisation to improve compliance. For example, construction and the retail industry have such arrangements in place (Kuiper *et al.* 2015), as do the temporary work agencies (Been and De Beer 2018).

The individual parties involved in collective bargaining can also have their own measures to improve compliance besides the collectively agreed measures. Information campaigns on the part of employers' organisations to inform their members are an example, as is the exclusion of members that violate the collective agreement by those organisations. Unions can support (a group of) their members to go to court when their collective agreement is violated. Employees can also do this without the support of a union.

## Depth of bargaining

Unions attempt in several ways to include members, as well as non-members, in the process resulting in a collective agreement. A report published by the SER (2013) describes the various processes. As a first measure, unions supply employees with information regarding the negotiation process. Employees are also actively asked to give their opinion, for example about what they would like as an outcome of the negotiations, what they think about the negotiated results or how these should be implemented. This is done through focus groups, panels and questionnaires. A modern way to increase involvement and support for collective agreements, which is nowadays being explored in an experimental manner, is co-creation. In this process, employers and employees of various parts of organisations or industries will sit down together to formulate input for a new collective agreement that can then be considered in the negotiation process. Unions actively try to include non-members in the process. Information is often sent to both members and non-members: meetings to discuss the collective agreement are often open to members and non-members and questionnaires to collect opinions are often used, including both groups. Unions in some industries let non-members vote on the collective agreement. The approach of leaving the interpretation of specific arrangements to the works council instead of arranging them in detail in the collective agreement is also an attempt to include other groups of employees besides union members in the process of determining working conditions. In general, the SER report notes that it is easier to include employees in case of a company-level collective agreement than in the case of industrial agreements, simply because having the target group located in one company makes it easier to reach them.

Employers' organisations also try to actively involve their members in the process of negotiating industry-wide agreements.<sup>5</sup> Involving members has become more important over the years, as differences and interest variations between smaller and larger employers have increased. This makes preparation and fine-tuning more important to avoid disagreements when the negotiation process gets stuck. Most importantly, employers' organisations determine the mandate of the negotiation delegation together with their members. There are various procedures for achieving such a mandate and it depends mainly on the size of the industry which option is preferred. The general meeting of the employers' organisation is an important occasion, as the mandate is decided there. In recent years, digital tools have been used to support this process: for example, online polls and online platforms to decide upon the input for the negotiation process. Alternatively, the general meeting decides upon the setting-up of a steering committee and its members that will decide upon the mandate. An important reason to do so is to involve human resource experts rather than company executive officers, who often participate in the general meeting. A steering committee then consists of members elected by the general meeting plus the negotiation delegation. In large industries, the general meeting is sometimes split into several regional meetings. During these meetings input for the negotiation process is collected and bundled at a national level. Regions can also elect members of a steering committee. The negotiation delegation is supported by a steering committee and by experts. The procedures for arriving at a

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5. This and the following paragraph are based on an interview with a representative of the AWWN.



mandate are not fixed or formalised, but the result of traditions and procedures within industries.

During the negotiation process, there is generally no direct input from members. In some cases, the steering committee may be actively involved but in most cases there is no feedback loop if negotiations stay within the mandate. Only when the mandate needs to be enlarged do members need to agree. Especially when there is the chance that no agreement can be reached or when strikes can be expected, employers' organisations go back to their members to determine a further course of action. The negotiation result is generally communicated to the members, who can vote on it. The procedures are formalised within the statutes of individual employers' organisations. This is often just a formality, however, when negotiation results stay within the mandate that was agreed before starting the negotiations. Sometimes there are meetings to discuss the results, but this generally does not lead to alterations.

## Scope of agreements

Collective agreements<sup>6</sup> tend to cover a range of topics, including procedural, substantive and contextual agreements. Procedural arrangements are included in many collective agreements. Important for collective agreements at the industrial level is the definition of the industry, as described in the agreement, as it defines which employers will be covered in case of legal extension of the collective agreement. Procedures to end the collective agreement and to increase compliance are also included. In terms of substantive agreements, components related to wages and financial compensation are regulated in most collective agreements, including adult wage scales, youth wage scales,<sup>7</sup> job rating systems, yearly and incidental wage increases, holiday allowances, end-of-year bonuses, work-to-home travel allowances, surcharges and profit-sharing. Standardised individual growth on a wage scale is also regulated in many collective agreements. About 75 per cent of the employees covered by a collective agreement fall under a system of automatic annual pay raises until they reach the end of their salary scale, whereas for six per cent of employees the pay rise depends on the approval of their boss. For another 14 per cent this depends on the preference of their individual employer: the collective agreement leaves room for those employers to choose a system according to their own preference. In the remaining five per cent of collective agreements, the system to be used is not explicitly stated. The division of systems used is stable and has not changed considerably over recent years (SZW 2017).

A broad range of arrangements in collective agreements in the Netherlands deal with the context of work.

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6. The Ministry of Social Affairs and Employment distinguishes between regular collective agreements (both industry and company), early pension regulations, social education and training funds, social funds and a miscellaneous category of agreements (SZW 2017).

7. The Netherlands has separate statutory adult- and youth minimum wages, with a relatively long tail of youth wages (see for more information, Beer *et al.* 2017).

Table 21.2 Collective agreements mentioning legal provisions, extension and restriction of legal provisions

Topic	Legal provisions mentioned (%)	Extension of legal provisions (%)	Restriction of legal provisions (%)
Part-time work <sup>A</sup>	5	7	n.a.
Parental leave <sup>A</sup>	40	26	n.a.
Paternity leave <sup>A</sup>	n.a.	23	7
Pay during short-term care leave <sup>A</sup>	23	3	34
Pay during long-term care leave <sup>A</sup>	20	15	n.a.
Length of maternity leave <sup>A</sup>	61	11	n.a.
Additional pay during sickness during the first year <sup>B</sup>	0	54	n.a.

Source A: Been *et al.* (2016), based on a sample of 99 of the largest collective agreements in the Netherlands in 2015.

Source B: SZW (2017).

A first range of topics covered by contextual agreements relate to working time and working days. In the Netherlands, the standard number of hours in a working week varies between industries and is determined in collective agreements. In practice, it is set between 36 and 40 hours a week, with an average of 37.2 hours a week. Collective agreements in the government, care and education have the lowest number of standard working hours, whereas the collective agreements in transport and communications contain the longest standard working week (SZW 2017). Many collective agreements moreover contain an extension of the legal number of vacation days, which stands at four weeks a year.

A second range of contextual agreements cover topics that are regulated by statutory provisions and can by legal definition be contracted out by means of a collective agreement. Examples include regulations specific to temporary agency workers and the chain system of temporary contracts (SZW 2017: 68).

A third range of contextual agreements contain topics related to the combination of work and care responsibilities. Collective agreements often contain just the description of statutory rights about these topics as a way of informing employees. In some agreements these government regulations are extended or sometimes, when legally allowed, restricted. Table 21.2 shows how often collective agreements contain these topics and whether they are restricted or extended.

A fourth group of topics related to the context of work are measures taken to generate a healthy and safe work environment. Of the employees covered by a collective agreement, 92 per cent fall under an agreement that includes general measures to improve health and safety. In addition, 82 per cent of those employees have individual measures included in the agreement: for example, prevention policies and the adjustment of work and workplace when needed (SZW 2017). Measures to handle and reduce absenteeism also belong to this category (48 per cent), as do educational measures: 51 per cent include general measures and 100 per cent more individual measures. In addition, 81

per cent of collective agreements contain terms that specifically target older workers (SZW 2017). Examples are exemption from certain shifts, more holidays, working time reductions, possibilities to work after pension age and part-time pensions.

Fifth, collective agreements contain measures to reduce and deal with sickness, inability to work and unemployment. Sometimes the legislation is mentioned as a way of informing employees and sometimes it is extended by the collective agreement. Even though legal extensions are fairly common, individual employers are not always aware of the legal extensions in their collective agreement, possibly because they only find out when they are confronted with a situation in which it is relevant (Cuelenaere *et al.* 2014).

Sixth, as already discussed, collective agreements can include regulations that allow individual employees to make certain choices as regards their employment conditions. Most widespread are *à la carte* regulations, which generally offer employees four options: swapping money for free time, using for example holiday allowances or bonuses; swapping free time for money, for example by ‘selling’ surplus holiday days for cash or for, say, a bicycle; swapping one form of monetary benefit for another, for example, by exchanging holiday allowances or profit bonuses for pension payments, but also for a tax-free bicycle or computer; or swapping one form of free time for another, for example, by saving holiday days for long-term leave (Harteveld *et al.* 2013). In both 2010 and 2014, some 53 per cent of collective agreements included *à la carte* possibilities (Van Lier and Zielschot 2014). In the meantime, the PCB (see Level of bargaining) has been introduced in an increasing number of agreements. The PCB provides an individual budget, comprising all the elements that can be exchanged as part of the *à la carte* system expressed in money terms. This can, for example, be used to sell or buy free time, travel allowances or to finance education and training. There are different forms of PCB (Van Lier and Zielschot 2014): the personal employment conditions budget offers all the abovementioned options, included in some 10 per cent of industrial and company agreements; the personal budget for additional leave, which allows workers to take extra leave or to save free time for later, is included in around 10 per cent of agreements; and the sustainable employability budget, in which a budget is made available for education, training, coaching and so on, is included in around 20 per cent of collective agreements. The value of PCBs is between €150 and €1,000 per year, with an average of €683, mainly in the form of annual amounts that can be accumulated over three to five years.<sup>8</sup>

Finally, some collective agreements include regulations on how employers may organise their workforce: for example, whether and when they can use temporary agency workers or hire self-employed workers, or both, offer internships or work experience jobs, or both. Provisions on hiring employees from certain target groups are also part of some collective agreements. These agreements follow from social pacts, for example the one between the social partners concluded in 2013 (SvdA 2013).

8. Source: authors’ compilation from the collective agreements database of employers’ organization AWWN.

## Conclusions

Collective bargaining in the Netherlands has proven to be highly stable in three institutional dimensions: it shows a continuously high coverage rate, the industrial level is the main bargaining level and the government extends many industrial agreements to the entire industry. In substantive terms, since the Wassenaar Agreement wage moderation has also been a constant as collectively bargained wage growth continues to lag behind productivity growth. Some of this gap is filled by wage drift, but a major shortfall remains. This does not mean, however, that the collective bargaining system is static or undisputed. Since the early 1990s, there has been an ongoing process of organised decentralisation, in which, within industry-wide frameworks, more and more decisions are transferred to the company and individual level. In terms of the content of collective agreements, the scope has evolved in line with societal developments. For example, collective agreements picked up societal needs to regulate a number of work–life balance issues earlier than legislation, although some were subsequently regulated by law (Yerkens and Tijdens 2011).

There has been a shift in power from the unions to the employers' organisations. Where in the 1980s the two sides were still reasonably balanced in terms of power, with the continuous decline of union membership and government policy favouring employers more than unions, the unions are today clearly the weaker actor. One result of this power shift is that in many industries the employers are trying to eliminate a number of regulations included in the collective agreements that, in their view, unjustifiably raise costs or limit flexibility. A core example here are extra free days for older workers or bonuses related to working time issues. This has resulted in bargaining becoming more conflictual in recent years; concluding collective agreements has proven more complicated and takes up more time (Keune 2016). Recently, several important agreements have been concluded without the FNV, the largest union confederation, as employers are more able and willing to cherry-pick unions more likely to fall in with their demands. The FNV is often not able to stop this process. This puts the system under significant pressure. This pressure is further increased by the fact that every so often the practice of extension is put up for discussion in the government and parliament. To date, this has not led to any changes, but it is not impossible that at some point a new government will do away with automatic extensions.

There is growing discontent on the union side concerning some of the outcomes of collective bargaining, in particular the ongoing wage moderation and flexibilisation. The unions increasingly differ on these issues, with FNV-affiliated unions demanding higher wages than the other unions. This has resulted in some, for now a minority, union voices questioning the present system and arguing for a stronger focus on defending the interests of members instead of those of all workers, especially at the enterprise level. Among the employers there are differences of opinion on how the collective bargaining system should function, specifically with regard to the relationship between national, industry sector and company regulations. Thus whereas the collective bargaining system exhibits a lot of stability, there is also change and pressures are building up that may result in more dramatic changes in the future.

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All links were checked on 28 August 2018

## Abbreviations

<b>AWVN</b>	Algemene Werkgeversvereniging Nederland (General Employers' Organisation)
<b>CNV</b>	Christelijk Nationaal Vakverbond (Christian Dutch Trade Union Confederation)
<b>FNV</b>	Federatie Nederlandse Vakbeweging (Federation of Dutch Trade Unions)
<b>MKB Nederland</b>	Midden en Kleinbedrijf Nederland (Small and medium-sized enterprises the Netherlands)
<b>SER</b>	Sociaal-Economische Raad (Socio-Economic Council)
<b>VCP</b>	Vakcentrale voor Professionals (Confederation for Professionals).
<b>VNO-NCW</b>	Verbond van Nederlandse Ondernemingen – Nederlands Christelijk Werkgeversverbond (Confederation of Netherlands Industry and Employers)





## Chapter 22

# Collective bargaining in Poland: a near-death experience

Jan Czarzasty

Poland is the largest of the new EU Member States with a population of approximately 38 million. Because of the size of its internal market, the economy is less export-dependent than those of the other Visegrad countries, Czechia, Hungary and Slovakia, as well as less reliant on foreign direct investment (Jasiecki 2013). Nevertheless the national labour market has witnessed robust out- and inward labour migration since Poland's accession to the EU in 2004. Agriculture has a relatively high share in overall employment. One of the key features of analysis is post-socialist path dependency, which has led to the creation of a hybrid form of capitalism labelled the 'dependent market economy'. 'Dependence' is determined by the power of foreign capital, represented predominantly by transnational enterprises (Nölke and Vliegenthart 2009: 680).<sup>1</sup> Industrial relations are also hybrid and have been characterised as 'corporatism in the public sector, pluralism in the private sector' (Morawski 1995), 'illusory corporatism' (Ost 2000) or 'fake corporatism' (King 2007). In all cases, the underdevelopment of collective bargaining, especially at industry level, is said to be artificially compensated by tripartite bodies, whose activities somehow emulate a corporatist industrial relations model. Most recently, industrial relations have taken a new turn following the reactivation of tripartism, coupled to the rise to power of a right-wing government with strong statist views, although this is still in its infancy (Czarzasty and Mrozowicki 2018).

In common with other socialist states prior to 1989, collective bargaining in Poland played little role in employment relations, although collective agreements, including industry-level ones, did exist. The reintroduction of the market economy prompted the legislature to promote collective bargaining as a main driver of employment relations (Pisarczyk 2015), which led to the adoption of a set of amendments to the Labour Code (Kodeks pracy), focusing on collective bargaining and collective agreements between 1994 and 1996. The changes evoked high expectations among the social partners and labour lawyers, but disillusionment soon followed (Wratny 1998). The general disappointment stemmed from the fact that virtually no progress could be observed either in quantitative (coverage) or qualitative (content of agreements) terms. The major reasons for this include the weakness of the social partners, complicated conditions concerning withdrawing from collective agreements, including the infamous 'eternity clause' and no options for drafting 'derogation clauses', for differentiating between entitlements for various groups of employees or for concluding an agreement for a selected group of employees.

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1. For a more detailed discussion of capitalism in Central and Eastern Europe see also Bohle and Greskovits (2012), Eyal et al. (1998) and Myant and Drahokoupil (2010).

Table 22.1 Principal characteristics of collective bargaining in Poland

Key features	2000	2017
Actors entitled to collective bargaining	Trade unions, employers/employers' organisations	
Importance of bargaining levels	Single-employer level dominates	
Favourability principle/derogation possibilities	Favourability principle in place/ no possibility to derogate from (cross-)industry agreements and/or law	
Collective bargaining coverage (%)	25	14.7 (2012)/18 (2017)*
Extension mechanism (or functional equivalent)	Extension mechanism (by administrative decision) present, albeit not used	
Trade union density (%)	17.5	12.7
Employers' association rate (%)	20 (2007)	20 (2012)

Notes: \* Collective bargaining coverage: for comparability data from Appendix A1.A is used in both columns. According to the author's own calculations the coverage rate in 2017 was 18 per cent.

Source: Author's elaboration.

As seen clearly in Table 22.1, the main features of the institutional environment of collective bargaining have not changed since 2000; it is the statistical indicators that have deteriorated. As of 2018 collective bargaining in Poland can only be described as being in its death throes: it plays a marginal role, both in terms of the volume of collective agreements and the number of employees covered. Collective bargaining has very little impact on the autonomous regulation of work and employment relations. The de facto absence of collective bargaining seriously hampers the efficiency of the industrial relations system, which is extremely fragmented. Poland's unionisation rate is among the lowest in the EU, at roughly 12 per cent, as longitudinal data series from survey research by the Public Opinion Research Centre (Centrum Badań Opinii Społecznej, CBOS) suggest, although it has remained stable since 2012 and seems consistent with the data in Appendix A1.H (see Table 22.1). A recent module study conducted in 2014 by the national statistics body reveals that unionisation is higher than it used to be, based on survey data only, as 17 per cent of people working on employment contracts belong to trade unions (GUS 2015). Employers' organisation density is also low, at only 20 per cent. Nevertheless, the chapter is not intended to be a 'chronicle of death foretold', as there are still prospects for a reviving impulse, to be provided by law. This, however, could take place only in the form of incremental change (with consecutive amendments to the current Labour Code), following the failure of a very ambitious labour law reform that collapsed in 2018 due to irreconcilable differences among the national social partners, further amplified by acute controversies (albeit in other fields than collective bargaining) concerning some proposed provisions.

## Industrial relations context and principal actors

Industrial relations in Poland are very fragmented. On the employee side, this is because of the shape of the legal environment, which sets a low threshold of ten employees to establish a new union at workplace level, but until 1 January 2019

eliminated (wrongly)<sup>2</sup> numerous categories of people in employment (the self-employed, persons in non-standard employment) from union membership. On the employer side, the main reason is the dominance of small enterprises with fewer than ten employees, which account for 96 per cent of all economic entities and employ about 40 per cent of the workforce in Poland. The ownership factor plays a significant role in explaining the existence of trade unions or the lack thereof: the national survey Working Poles 2007, based on a representative sample of occupationally active adults, indicates that unions are present in 60.9 per cent of all workplaces in the public sector, 8.2 per cent in the domestic private sector and 32.7 per cent in the foreign private sector (Gardawski 2009). Longitudinal data series reveal that union density in Poland has declined substantially since 1989. The process has proceeded at an uneven pace, including two rapid slumps, in the early 1990s and the early 2000s. In the early 1990s, the decline in membership is attributed to economic restructuring and the mass layoffs it entailed, resulting not only in many union members becoming redundant and dropping out of unions, but also generating a general disillusionment with unions not being able or willing to defend working-class interests. In the early 2000s, the main reason for the rapidly accelerating decrease in density is believed to be the entry of NSZZ Solidarność (the Independent Self-governing Trade Union Solidarity) into party politics in 1997.<sup>3</sup>

There are seven major social partner organisations in Poland, in line with the conditions set by the Act on the Social Dialogue Council and Other Social Dialogue Bodies (*Ustawa o Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego*).<sup>4</sup> They are all entitled to seats on the Social Dialogue Council (*Rada Dialogu Społecznego*, RDS). The RDS is the central tripartite social dialogue body, established in 2015. It replaced the Tripartite Commission for Social and Economic Affairs (*Trójstronna Komisja do spraw Społeczno-Gospodarczych*, TK), which had effectively collapsed in 2013 following the departure of all trade unions in a gesture of protest against unilateral government policies. The RDS has been given more essential prerogatives compared with its predecessor: the TK's aims were limited to 'maintenance of social peace', while the RDS is responsible for conducting dialogue 'aimed at facilitating conditions for socio-economic development, as well as increasing competitiveness and social cohesion'.<sup>5</sup> The

2. Until the end of 2018 the Trade Union Act of 1991 limited the right to join a trade union to employees only. Nevertheless, following the ruling of the Constitutional Court which found such a limitation not only in breach of the Constitution but also in violation of ILO Convention No. 87, the Act was amended in June 2018. At present, the right of association is enjoyed by all 'persons performing paid work', regardless of the legal basis of their working relationship.
3. For a more detailed discussion of the deunionisation process see Gardawski *et al.* (2011).
4. For trade unions, the conditions are as follows: (i) being a national-level trade union or (ii) being a national-level association (federation) of trade unions or (iii) being a national-level inter-union organisation (confederation) with at least 300,000 members that covers entities pursuing operations in at least half of all the sections of the Polish Activities Classification (PKD), although no more than 100,000 members employed in a given PKD section can be counted. For employers' organisations, the conditions are as follows: (i) pursuing operations on a national scale; (ii) member entities employing at least 300,000 people in total; and (iii) member entities pursuing operations in at least half of all the sections of the PKD, although no more than 100,000 employees can be counted for each section.
5. A set of specific prerogatives are assigned to social partners in the (bipartite) RDS, including rights to voice opinions on government draft legal acts, as well as strategic policy documents; prepare jointly agreed draft opinions on future legislative acts and regulations; request a public hearing; present joint queries to ministers; file joint applications requesting the issuance or amendment of a law or other legal act; file motions to the Supreme Court to settle a legal issue; and request a general interpretation of tax regulations in the event of inconsistent application of tax law by the public authorities.

three national-level trade unions represented on the RDS are: NSZZ Solidarność, the All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych, OPZZ) and the Trade Unions Forum (Forum Związków Zawodowych, FZZ). There are also four employers' associations that are considered representative at the national level and thus hold seats on the RDS. These are the Business Centre Club (BCC), the Confederation Lewiatan (Konfederacja Lewiatan), Pracodawcy RP, the Employers of Poland (Pracodawcy Rzeczypospolitej Polskiej) and the Polish Crafts Association (Związek Rzemiosła Polskiego, ZRP). On the employer side, fragmentation is mainly the result, as well as cause, of the collective bargaining incapacity of the employers and their organisations. Employers' organisations are thus de facto business associations, focused mainly on lobbying activities, and their organisational rate is low.

To understand the nature of collective agreements in the Polish legal system and the reluctance of employers to enter negotiations, the definition of 'employer' in Polish labour law must be explained. 'Employer' is defined in Clause 3 of the Labour Code as 'an organisational unit, even if it has no legal personality, or an individual, provided it employs employees'. In other words, Polish law favours the 'managerial' concept of employer over the 'ownership' concept. In practice, it does not matter whether or not the 'employer' owns the enterprise. In small or medium-sized enterprises, usually a single-establishment company, the negative consequences for collective bargaining are usually hypothetical. As a company grows, however, its organisational structure becomes increasingly complex, so 'organisational unit' – which under the law is the 'employer' – could be merely an establishment represented by its top manager, with little or no capacity to decide on matters exceeding day-to-day operations.

In Poland collective bargaining is subject to regulation by Chapter 11 of the Labour Code. In general, the law states that collective agreements regulate the 'content of the employment relationship', which is composed of the mutual rights and obligations of the employer and the employee specified in a contract of employment. To be more accurate, according to the Labour Code, not only can employees be covered by a collective agreement, but also the self-employed (Surdykowska 2017). Regarding collective agreements, the law follows two major principles: first, 'freedom of contract', except for provisions jeopardising the rights of third parties; second, 'favourability', in the sense that collective agreements cannot introduce provisions less favourable for employees than those provided for by law.

The Code does not explicitly define the notion of a 'collective agreement', so the definition is derived from legal rulings and the legal literature, that is, commentaries on the Labour Code. Thus, 'collective agreements' are understood as

normative agreements concluded by social partners: employers or employers' organisations and trade unions, determining the conditions to be met by employment contracts (*normative provisions* of collective agreements), obligations and rights of the parties to the collective agreement (*obligatory provisions* of collective agreements) and other obligations of the employer towards the group of employees (provisions included in the so-called *third part of collective agreements*) (Świątkowski 2016).

In line with the Constitutional Court ruling of 20 January 1988, collective agreements are not normative acts adopted by state bodies, but rather special sources of labour law. Importantly, the Labour Code distinguishes two types of collective agreement: single-employer collective labour agreements (*zakładowy układ zbiorowy pracy*, SECA), to be concluded by employers and representative trade unions, and multi-employer collective labour agreements (*ponadzakładowy układ zbiorowy pracy*, MECA), to be concluded by the appropriate statutory body of a multi-enterprise trade union, acting for the employees, and the appropriate statutory body of an employers' association, acting for the employers, on behalf of the employers united in the association. MECAs are sometimes incorrectly referred to as 'industry-level agreements'.

The picture needs to be supplemented with two more features, which also influence collective bargaining: the peculiar position of public employers and the presence and impact of foreign capital, a factor of significant weight in 'dependent market economies' such as Poland. Thus, in the public sector, the position of employers is often weakened because of their political entanglements. Furthermore, the empirical data do not allow for the formulation of unambiguous conclusions because, on one hand, there seems to be a positive association between foreign ownership and the presence of collective agreements, particularly within the private domestic sector (Gardawski 2009), while on the other hand, there is also evidence that multinational corporations, seen at one time as agents of the 'Europeanisation' of collective bargaining (Gardawski 2007), on entering Poland often follow the path of opportunistic adaptation in the environment of feeble institutions and avoid restraining themselves with collective agreements, even if such behaviour contradicts industrial relations patterns dominant in their home countries (Czarzasty 2014).

## Extent of bargaining

There is no consolidated data source on collective bargaining coverage. Reviewing the major legitimate sources on collective agreements coverage in Poland allows us to establish that, according to Appendix A1.A, collective bargaining coverage is 14.7 per cent in 2012; according to the author's own calculations, based on administrative data from the National Labour Inspectorate (*Państwowa Inspekcja Pracy* or PIP) and the Ministry of Labour on single-employer and multi-employer collective bargaining, respectively, collective bargaining coverage stood at 18 per cent in 2015. Despite slight variations between the data cited, there can be not the slightest doubt that coverage is low.

SECAs dominate, with collective bargaining in large part taking place at the establishment level, which mainly accounts for the overall bargaining coverage. Based on the favourability principle, Poland has adopted a hierarchical bargaining structure; that is, SECAs must not contain provisions less favourable than MECAs.

There is no legal mechanism comparable to a German 'derogation clause', but the law (Clause Labour Code 241/27) allows for the temporary suspension of a collective agreement for up to three years in part or entirely by mutual consent if the employer is experiencing economic difficulties. The law forbids the inclusion in collective agreements

Table 22.2 Single-employer collective agreements (2004–2015)

Year	SECAs	Additional protocols to existing collective agreements*	Accords on application of collective agreements	Number of employees covered
2004	328	2,193	21	166,661
2005	220	1,792	12	119,601
2006	177	1,646	6	68,000
2007	168	1,961	15	121,454
2008	155	1,732	4	62,802
2009	123	1,688	2	62,572
2010	130	1,396	1	172,425
2011	136	1,291	3	49,407
2012	92	1,265	3	61,109
2013	109	1,131	1	43,800
2014	88	1,030	1	43,576
2015	69	909	0	101,473

Note: All figures in rows reported annually; \* additional protocol to existing collective agreements (protokół dodatkowy do układu zbiorowego) is a formal amendment to a collective agreement, the parties are required to notify the labour inspectorate of their conclusion.

Source: PIP.

of regulations less beneficial to employees than general provisions. In other words, the provisions of a collective agreement cannot trim down the entitlements guaranteed by law; for example, the monthly gross wage for a full-time job cannot fall below the national minimum wage level, and cannot violate general rules of law, for instance, by introducing gender-based pay discrimination. Furthermore, the law established the priority of higher level (multi-employer) agreements over lower level (single-employer) agreements, thus the latter can only ‘top up’ the provisions of the former.

Clause 241/18 paragraph 1 of the Labour Code provides for extending MECAs upon a joint application of the parties submitted to the Minister of Labour. If there is a ‘crucial social interest’ (*ważny interes społeczny*), the Minister of Labour may, by administrative decision, extend such agreements in whole or in part to employees working for employers not bound by the agreement, who undertake economic activity analogous or similar to the activity undertaken by employers subject to the agreement. The decision is arbitrary, and the notion of ‘crucial social interest’ has no legal definition, leaving the government enormous room to manoeuvre. Such a scenario has never manifested itself since 1989. In addition, Clause 241/10(1) of the Labour Code enables parties eligible to conclude collective agreements to apply – entirely or partially – a collective agreement existing elsewhere, which they have not concluded. There is no information about the scope of such extension procedures in practice. Furthermore, Clause 241/9(3) of the Labour Code grants to the parties of a collective agreement a right to allow a trade union which is not a party to the agreement to join in. In the absence of data, however, there is no way to assess the extent of such scenarios in practice.



The low level of unionisation is the main obstacle hampering the development of collective bargaining at enterprise level. Union activity in the field appears to be relatively sluggish, however, as merely 68 per cent engage in the ‘development of collective labour agreements, labour regulations and ethical codes’ (GUS 2015). Employers are generally reluctant to engage in any form of coordination (Wratny 2011). The dominant stance towards trade unions and any form of collective interest representation of labour is hostile or ambivalent at best (Gardawski 2013; Czarzasty 2014). While the gradual shift in the labour market, particularly the shrinking supply of skilled labour, coupled with the steady demand for employees with specific qualifications seen since about 2013, has softened this hard-line position and could help the unions seek new members more effectively, any growth in union density is yet to be seen. As far as collective agreement incidence is considered, however, there is a close relationship between collective agreement saturation and ownership type. A national survey, Working Poles 2007, indicated the existence of a collective agreement at workplace level in unionised companies in 51.5 per cent of public entities, 45.2 per cent of domestic private ones and 59.5 per cent of foreign private ones.

The main reason for the employers’ reluctance to engage in collective bargaining is arguably the difficulty of getting out of self-imposed obligations resulting from complicated procedures envisaged for the dissolution of collective agreements (Gładoch 2016). Specifically, Clause 241/19 of the Labour Code allows for the waiving of collective agreement provisions only when one of the parties to the agreement ceases to exist. If it does not happen, provisions of the collective agreement remain intact, and even formal revocation of the agreement does not matter, because only the conclusion of a new collective agreement will disarm the legal power of the former autonomous regulation. In the case of MECAs, even if a specific employer quits the organisation that is party to the agreement, they are still bound by the agreement. There are well-known cases of employer organisations in vital industries of the economy voluntarily dissolving in order to liberate themselves from the obligations of the MECA they were a party to or to avoid a challenge by industry-level unions to engage in negotiations on a collective agreement. The most eminent such case (2013) involved three employer organisations – the Union of Employers in Heat-and-Power Plants (Związek Pracodawców Elektrociepłowni), the Union of Employers in Electric Power Plants (Związek Pracodawców Elektrowni) and the Union of Employers in Electric Power Distribution (Związek Pracodawców Zakładów Energetycznych) – and affected some 50,000 employees.

An issue of significant weight is the ‘eternity clause’ (*klauzula wieczystości*). Until 2002, by virtue of Clause 241/7 paragraph 4 of the Labour Code, ‘in the event of a resolution of a binding collective agreement until the entry into force of the new agreement the provisions of the former apply, unless the parties agreed in the agreement or by a separate accord a different term for the application of the agreement’. On 18 November 2002 the Constitutional Court ruled that this regulation breached the Constitution. Despite the removal of the measure from the legal system, however, there are still collective agreements in force containing ‘eternity clauses’, under which the agreement will remain binding, even after its dissolution, to the moment the parties agree on a new one. The obstinate presence of such clauses in the legal order, incompatible with the Constitution, has been the subject of heated debate among labour law experts and a

difficult practical problem in the reality of collective employment relations (Korytowska 2013).

## Security of bargaining

Security of bargaining refers to all the factors that determine the unions' bargaining role, such as, in particular, regulations on strikes, union recognition and representativeness criteria. In Poland, trade unions enjoy a legal monopoly on employee representation in collective bargaining. In principle, collective agreements are to be signed on behalf of all employees, but there is a possibility for the parties to deviate from this rule, if two or more collective agreements overlap for a specific employer. For instance, some employees may be covered not only by a SECA but also by a MECA concluded for the occupational group they belong to. In such a case, there is no straight hierarchical relationship between the two agreements (see Muszalski 2017). In practice, this hardly happens nowadays. Collective agreements can be concluded for a definite or indefinite period. They can be dissolved by a unanimous declaration of both parties or at the end of the period for which the agreement was concluded. Agreements can also be terminated by one party, usually with three months' notice. The issue of representativeness for collective bargaining is regulated by the Labour Code.

As far as SECAs are concerned, trade unions must meet at least one of the following conditions to be recognised as representative: (i) belong to a supra-enterprise trade union organisation deemed representative (see below) and represent at least 7 per cent of the workforce employed by the employer or (ii) represent at least 10 per cent of the workforce. If no union organisation can fulfil any of the criteria, the largest trade union active in the company is deemed representative and as such has the right to become a party to a single-employer agreement, which happens fairly often. For the negotiation of MECAs Clause 241/17 of the Labour Code defines the following representativeness criteria, of which trade unions have to fulfil at least one: (i) have representative status as defined by the Act on Social Dialogue Council and Other Social Dialogue Institutions (*Ustawa o Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego*); (ii) represent at least 10 per cent of all employees within a formally demarcated domain, though not less than 10,000 members; or (iii) have the highest number of members within the group of employees to be covered by a multi-employer agreement; in other words, be the largest of all the unions concerned. Under Clause 241/14 of the Labour Code, any employers' organisation whose domain is related to that of the representative trade unions at supra-enterprise level is eligible to become a party to a MECA.

Employers have no right to impose a lock out. According to the Act on Collective Disputes Resolution (*Ustawa o rozwiązywaniu sporów zbiorowych*), only trade unions can lawfully engage in strike action. Works councils are not able to call a strike and wildcat strikes initiated by ad hoc groups are illegal. Under Clause 17 of the Act, a strike is to be understood as 'collective abstaining from work by employees with a view to resolving a dispute that has arisen over interests named by Clause 1'. According to Clause 1, those interests include: 'working conditions, wages and social benefits, as well as rights and freedom of association of employees or other groups who enjoy the right

of association'. Effectuating a strike is quite a difficult process in procedural terms. The sequence of events that may eventually lead to a strike are as follows.

- (i) Trade unions address the employer with specific demand(s) related to the collective interests defined by Clause 1. This can be done by any of the establishment-level unions, a joint union representation or an external union acting on a request made by employees at a workplace with no establishment-level organisation. The trade union(s) must inform the employer about entering into a collective dispute if the demands are not met, the employer must be given at least three days to respond and unions can also indicate that, in the event of not meeting the demands, a strike will be called. This may not be done earlier than 14 days from the date of formally addressing the demands.
- (ii) Provided the employer rejects the demands partially or entirely, the collective dispute is deemed to run from the day the demands are formally addressed. In that case, the employer is obliged to engage in negotiations with unions and notify a local labour inspectorate that the collective dispute is taking place.
- (iii) Negotiations can either lead to resolution of the dispute when the parties are obliged to sign an agreement or a failure to reach a settlement when the parties must report discrepancies.
- (iv) If negotiations fail, and the employee party sustains its demands, it may request a mediator to act as an impartial intermediary between the two parties. The mediator must be a certified specialist included on a special list of mediators administered by the Ministry of Labour. The two parties must agree on a specific person to assume the role of mediator within five days; if they fail, the Ministry appoints a person from the list.
- (v) As the mediation procedure commences and the mediator comes to believe there is a need for external expertise (in general, it is paid for by the employer), they may request the employee party to postpone the originally envisaged strike. If at this point the employee party comes to believe the dispute is not likely to be resolved before any of these dates, they have a right to call a warning strike of two hours at the longest.
- (vi) Mediation can lead to resolution of the dispute, in which case the parties are obliged to sign an agreement, or the mediation can fail, in which case the parties must report points of dissension.
- (vii) If mediation fails, the employee party can already exercise their right to strike, but before taking that step, there is still a legal opportunity to seek a consensual resolution, if the employee party agrees to bring the dispute before the College of Social Arbitration (Kolegium Arbitrażu Społecznego), a special body affiliated to the court, chaired by a judge and comprising representatives of both parties in equal numbers (six each). The College takes a decision by majority vote which is binding for both parties.
- (viii) If the College of Social Arbitrage is not involved, the employee party may call a strike, allowing at least five days' notice, provided the decision has been approved by a majority of voters in a strike referendum in which over half of the employees must participate. The Act leaves an option for solidarity strikes, called on behalf of employees whose right to strike is restricted, such as military or police personnel. Furthermore, the Act states that other forms of protest are

permissible, provided they create no risk to human life and health, involve no work stoppage and do not violate the law in general.

## Level of bargaining

Poland's collective bargaining system is extremely decentralised. This is illustrated by the supremacy of SECAs in the total volume of agreements in force, in terms of both number and coverage. By the end of 2015, 8,032 SECAs had been registered, covering nearly 1.8 million workers, of whom slightly above 1 million were employed in the public sector, and nearly 800,000 in the private sector. At the same time, there were 86 MECAs covering 390,000 employees. Even this figure is doubtful, however, as it reflects figures reported in agreements or additional protocols that in most cases do not reflect current employment, mainly in the public sector. Employers' organisations do not promote supra-enterprise collective bargaining, fearing their members will leave in response, while the inability of such organisations to aggregate and represent the collective interests of their constituencies discourages potential members.

It is also crucial to recognise that many MECAs are de facto no different from single-employer agreements in terms of both their extent, covering only a very small number of employees, and their content, which is often modest and rarely exceeds the general provisions of the law. The MECA for non-teaching staff in public education, covering school bookkeepers, janitors and kitchen staff, illustrates this point. In their collective agreement, their 'employer', as defined by the Labour Code, is the school or kindergarten, or socio-therapy centre, but public education facilities are legally established and operated by local government, that is by a commune or *gmina* in Polish.

The main driver of the process leading to the conclusion of many such MECAs, culminating between 1995 and 1999, was the desire to compensate non-teachers employed in public education, who were not covered by the Teachers' Charter (Karta Nauczyciela). The Charter, as its name indicates, applies to teachers only, and is a legislative act providing specific entitlements for that occupational group. The act is a 'quasi industrial collective agreement' in functional terms and grants teachers a wide spectrum of entitlements not available to other occupations under the general regime of labour law. For example, municipal housing is guaranteed to teachers employed in rural areas or in towns of up to 5,000 inhabitants. In the countryside those in the former category even have a right to a small piece of farm land as well. Teachers enjoy health benefits under the Charter, including the right to a year's sabbatical on health grounds, on condition the teacher has been employed full-time for at least seven years. Such MECAs were devised as a channel for advancing at least some of the benefits enjoyed by teachers to other staff. As far as their coverage is concerned, some MECAs concluded by local government with non-teachers stand out because even though they are multi-employer agreements in name they cover only a few workers; one agreement concluded in 2002, for example, covers only 20 persons.

There is a consensus on the reasons for the decline of collective bargaining in Poland. Czarnecki (2014: 116–17) writes that

for many years in the labour law literature dysfunctionalities have been highlighted in the Trade Unions Act, with emphasis on the fact that the model of trade unionism the legislation entails has a number of negative consequences for the development of collective bargaining. The problem is the existing regulation, which facilitates trade union influence at the establishment level and thus promotes a so-called establishment-centred trade union movement.

The author concludes that advanced autonomy of company- and establishment-level unions leads to the fragmentation of the labour movement and hinders coordination of collective action. Weak negotiations at the industry level, in turn, make the protection of competition issue irrelevant in enterprise-level bargaining. In other words, employers fear that voluntary adoption of additional obligations towards employees will undermine their competitive edge vis-à-vis their market rivals who stay out of collective agreements.

A concise review of binding, or recently revoked, collective agreements, which can be deemed significant due to their extent, may clarify inter-industrial variations in collective bargaining in Poland. In metal, there was a MECA for employees in the steel industry from 1996 until 2009, which was eventually terminated by the employers' side. The agreement was a unique regulation, first because of its extensive coverage as an industry-level agreement, and second because of its complexity. It had a 'standard' core content covering issues such as working time, basic, variable and extra pay, working safety measures, obligations of the parties in an employment relationship, and conditions of entering into and exiting the employment relationship. It also embraced 'soft' aspects such as social dialogue and communication, professional development, promotion and training, employment policy, with an emphasis on dealing with redundancies, as well as anti-discrimination in employment. Currently, there is still a SECA in ArcelorMittal Poland, covering over 10,000 employees. Interestingly, the agreement's structure is very similar to the former MECA for the industry. With the two other SECAs that are still reportedly in force, the coverage for the industry is estimated at 30–40 per cent. In banking, there are SECAs in major, national banks such as PKO BP, PEKAO SA, Bank Handlowy and Bank Gospodarki Żywnościowej. Approximately 30 per cent of employees in banking are covered by collective agreements.

## Depth of bargaining

Depth of bargaining refers to the involvement of local representatives in the administration of collective agreements. As far as this dimension is concerned, collective agreements in Poland, both SECA and MECA, are fairly shallow, even though the very advanced decentralisation of bargaining appears to favour a deep engagement on the part of local union officers in the administration of agreements. The law grants trade unions a monopoly to negotiate collectively and enter into agreements with employers on behalf of employees. The law also restricts the right to negotiate at supra-enterprise

level to unions deemed representative: according to Clause 241/17 of the Labour Code, only unions that are active at supra-enterprise level are regarded as representative. In the case of SECAs, the administration of agreements is the responsibility of establishment-level unions. If they require particular expertise, such unions may consult their industry-level or national structures, but that depends on the organisational structures and culture of the federation or confederation to which the union is affiliated. With regard to a MECA, the industry-level unions or federations or national-level occupational unions that are party to the agreement are formally responsible for administration, although in practice, the burden falls mainly on the shoulders of workplace officials.

As for the employer side, it is the sole prerogative of the employer as a signatory party to administer SECAs. Administration of MECAs lies in the hand of either employers' organisations that are signatories to the agreement or the specific branch of local government in the case of MECAs for non-teachers in public education. Collective agreements are supposed to be registered, with, respectively, regional labour inspectorates (SECAs) or the Ministry of Labour (MECAs). Any changes to the content of agreements must be made in writing and retain a form of 'additional protocol', which must also be registered in the same way as an agreement.

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

Degree of control refers, first, to the extent to which collective agreements set the actual terms and conditions of employment and, second, to the different mechanisms of controlling and monitoring the implementation of collective agreements. In Poland, control of collective agreements is limited. For many years, the PIP, which is responsible for registering SECAs, has stated that the content of agreements registered each year is modest and rarely surpasses the general level of provisions guaranteed by labour law. It is symptomatic that the tone has remained stable over the years. In the 2004 Annual Report it is stated that it is 'striking that parties to agreements less and less frequently introduce provisions more beneficial to employees than those secured by the generally binding laws' (Sprawozdanie 2004: 59). Ten years later, the PIP observed that '[a]nalysis of the content of registered collective agreements and the additional protocols confirms the persistent tendency to erase previous favourable arrangements. Parties to agreements introduce amendments in such a way as to ensure that employees are only given minimum rights under the Labour Code and other generally applicable law' (Sprawozdanie 2014: 27).

Strike activity has been very low for nearly three decades in Poland. Unions call for strikes mainly at company level, whereas collective action at industrial level is almost always limited to the public sector. In the absence of open industrial conflict, it is pointless to discuss the role of grievances, disputes and arbitration procedures as means to ensure compliance with collective agreements. As for legal constraints, the law leaves wide autonomy to the parties as regards interpretation of the content: the parties may choose to establish, and subsequently include it in the agreement, a special body (permanent or ad hoc) to deal with any divergent views the parties may have on the agreement or set up interpretation procedures. In 2011 this was recognised by a Supreme Court ruling,



which, nevertheless, stressed that autonomous decisions taken by the parties are not binding in a court of law, should it come to that. In case of conflicting interpretations of an agreement's content, the collective dispute procedure may be activated.

## Scope of bargaining

There is a close link between the existence of a collective agreement and the quality of working conditions and terms of employment (Czarzasty 2014: 174–177). A trade union presence has a favourable impact on the state of labour law observance and fair play on the part of employers vis-à-vis employees (Gardawski 2015).

A closer look at the content of collective agreements enables us to make the following observations. As the PIP asserts, the dominant topics of collective regulation via SECAs are pay and pay-related issues. Considering the overlapping of the dominant issues dealt with by collective agreements and the scope of pay regulations (so-called *regulaminy płac*), it is hardly surprising that the latter are increasingly preferred by employers over the former because processes of introduction, amending and termination of pay regulation are formally less complicated, and a decision on each can be taken by the employer unilaterally. A large proportion of collective agreements fall into the category of 'substantive agreements', as they deal mostly with terms and conditions for individual workers. Procedural agreements per se do not exist, as the issues of discipline, grievances and disputes are regulated by general laws. 'Agreements dealing with qualitative issues' are generally not encountered: only minor references to these issues can be detected in agreements, for instance, issues related to continuous vocational and general training. A typical catalogue of issues regulated by a collective agreement includes: employers' and employees' mutual obligations and entitlements; working time; pay structure, conventional pay, flexible elements of pay including awards, performance bonuses, seniority bonuses, death allowances and rules on determination; workplace safety rules and regulations; and holiday and other forms of leave. Outside the scope of 'typical issues', but covered by collective agreements with relative regularity, are provisions pertaining to collective labour relations and social dialogue.

In order to show the 'added value' of collective agreements for employment relations, it could be useful to examine one of the significant SECAs mentioned above, namely the SECA at ArcelorMittal Poland, whose structure bears a close resemblance to the former MECA in the steel industry. As far as mutual obligations and entitlements are concerned, the agreement states explicitly that the major form of employment arrangement to be used by the employer is a permanent contract. Specific conditions are laid down and amounts of compensation are to be awarded in case of occupational disease, injury or death. What is more, the agreement contains a clause stating the employer's obligation to offer employment to a family member or a guardian providing for a family of any employee who dies or suffers permanent damage to their health in a workplace accident that leaves them incapable of working. Former employees with disabilities incurred due to workplace accidents or occupational disease are entitled to additional regular payments that top up the state disability pension, so the total amount would be equivalent to the monthly wages last received. Through a collective agreement



a company social fund (zakładowy fundusz świadczeń socjalnych, ZFŚS), a major form of occupational welfare in Poland, can be established. In the absence of an agreement, it is established by the employer, and any employer with at least 50 employees on the payroll is required to set up such a fund.<sup>6</sup> As for working time, no entitlements that would surpass the level of Labour Code provisions are included. Pay is the area subject to the most detailed regulation, including pay scales and bonuses.

Pay is also the subject of the central-level negotiations within the tripartite structures. In practice, the only statutory condition for wage bargaining is the minimum wage. It is a prerogative of the tripartite RDS (see Industrial relations context and principal actors) to determine the minimum wage level, based on the government's annual proposal. The decision is to be taken unanimously by the social partners and the government. The process is as follows. The figure originally proposed by the government must not be less than the current minimum wage, adjusted to the Consumer Price Index forecast for the next year. If the current minimum wage is below 50 per cent of the national average wage, the proposed minimum wage must be increased by two-thirds of the percentage growth in GDP forecast for the following year.<sup>7</sup> If the RDS fails to reach consensus, the government makes the decision unilaterally, although the minimum wage decreed cannot fall below the level set by the original proposal.

## Conclusions

As of 2018 collective bargaining in Poland appears to be on its last legs. In summing up the key characteristics of the collective bargaining system in line with Clegg's framework, we can state the following. Collective bargaining coverage is very low (18 per cent), the system is very decentralised, employers are reluctant to engage in collective bargaining and to sign collective agreements, claiming that they fear detrimental consequences for their competitiveness and that it might prove difficult to get out of obligations in the future. Where there are collective agreements (at establishment level), the involvement of local union officers is high, simply because trade unions hold a legal monopoly on collective bargaining, although the effectiveness and scope of collective bargaining is low (as reflected in the content, which in most cases merely repeats the letter of the law).

New prospects for a revival of the autonomous regulation of labour relations opened up after the double electoral victory, at both the presidential and the parliamentary elections, of the right-wing 'Law and Justice' party (Prawo i Sprawiedliwość party, PiS) in 2015. A very ambitious project of developing a two-part labour Code, divided into individual and collective sections, to replace the 1974 regulation was launched in late 2016. The 'collective labour code' is particularly relevant for the discussion here

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6. This statement is slightly oversimplified: formally, there are exceptions named by the law that allow employers meeting the employment threshold to avoid establishing a social fund. Employers holding the legal status of national budgetary units and local budgetary units (public entities that are neither enterprises nor parts of the administration) are obliged to establish a social fund, regardless of how many employees they have. Detailed discussion of this would go beyond the scope of this chapter, however.

7. The minimum wage has remained below 50 per cent of national average pay, despite continuous pressure from national-level trade unions over the years, dating back to negotiations on the anti-crisis package in 2009. Currently, the minimum wage represents 47 per cent of average pay.

because it is supposed to provide the legal foundations for collective bargaining. The Labour Law Codification Committee (Komisja Kodyfikacyjna Prawa Pracy), the expert body charged with drafting the two parts concluded its work in March 2018. The end result has stirred up many controversies, however, for example, concerning proposed regulations on working time granting excessive control to employers, enhanced employment protection or extreme limitations on freelance work. In April 2018 the Minister of Labour declared that the government would not deliver the draft labour codes to the parliament for legislative review; instead an incremental strategy is to be attempted: some (uncontroversial) provisions of the drafts are to be extracted and presented to the parliament as amendments to the current labour code.<sup>8</sup> Thus, while we cannot say with absolute certainty that the demise of collective bargaining is inevitable, neither can we predict its revival any time soon.

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8. Despite a general failure of the reform, it might useful to recapitulate major proposed provisions regarding collective bargaining: (i) a derogation mechanism was to be introduced. In SECA less favourable measures could be included than in MECA unless the parties to the latter explicitly rule out such an option; (ii) bargaining rounds were to be introduced, agreements were to be signed for 36 months and automatically prolonged for another 12 months, unless one of the parties objects; (iii) following dissolution of an agreement, its provisions remain binding for the next 12 months, with the exception of pay regulations, which remain binding for 18 months; (iv) the range of entities entitled to enter into a MECA was to be extended to cover not only employer organisations, government ministers and local government, but also 'groups of employers', economic chambers and craft chambers; (v) employers with at least 50 employees on the payroll with no collective agreement must initiate negotiations with a proposal comprising, at least, provisions on pay, equal treatment and professional development.

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## Abbreviations

BCC	Business Centre Club
CBOS	Centrum Badania Opinii Społecznej (Public Opinion Research Centre)
FZZ	Forum Związków Zawodowych (Trade Union Forum)
GUS	Główny Urząd Statystyczny (Central Statistical Office)
MECA	Multi-employer collective labour agreement
OPZZ	Ogólnopolskie Porozumienie Związków Zawodowych (All-Poland Alliance of Trade Unions)
PIP	Państwowa Inspekcja Pracy (National Labour Inspectorate)
PKD	Polska Klasyfikacja Działalności (Polish Classification of Activities)
RDS	Rada Dialogu Społecznego (Social Dialogue Council)
SECA	Single-employer collective labour agreement
TK	Trójstronna Komisja do spraw Społeczno-Gospodarczych (Tripartite Commission for Social and Economic Affairs)
ZFŚS	Zakładowy fundusz świadczeń socjalnych (company social fund)
ZRP	Związek Rzemiosła Polskiego (Polish Crafts Association)



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

### **Volume II**

Edited by  
Torsten Müller, Kurt Vandaele and Jeremy Waddington

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

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

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

