

Chapter 30

Conclusion: towards an endgame

Torsten Müller, Kurt Vandaele and Jeremy Waddington

Extensive collective bargaining coverage is an integral feature of a social market economy. Within western Europe, a high coverage rate was established in the period 1950 to 1980, based primarily, although not exclusively, on multi-employer industrial bargaining. The economic policies associated with social market economies were abandoned or downplayed, to different degrees, from the 1980s onwards and neoliberal economic and social agendas adopted. This involved an increasing asymmetry between market-liberalising and market-correcting measures, which, in the field of industrial relations, were aimed at improving employers' capacity to adapt flexibly to changing market conditions; or, as Baccaro and Howell (2017) put it, at expanding employers' discretion to determine wages and other terms and conditions of employment. This is not to argue that neoliberal economic policies had the same effects throughout western Europe, but certainly that trade union organisation and collective bargaining were viewed through a very different lens after 1980. Whereas previously there had been a broad understanding that trade unions and collective bargaining are an integral part of a social market economy, they are now viewed primarily as institutional 'rigidities' that hamper employers' discretion.

The review of western Member States of the European Union (EU) included in this publication indicates a dominant pattern of bargaining decentralisation and, in some cases, the fragmentation of industrial bargaining resulting from the adoption of neoliberal policies. In contrast, in central and eastern Europe collective bargaining was absent before 1990. The perceived imperative of EU membership in central and eastern European countries after 1990 was associated with attempts to establish collective bargaining systems. Although the rhetoric accompanying these processes focused on systems based on industrial bargaining, the results tended to rely on company bargaining and, compared with western Europe, relatively low bargaining coverage. Where (cross-)industrial bargaining was established, in Romania for example, it was relatively short-lived. In some cases, social dialogue rather than collective bargaining prevailed, as neoliberal-oriented states attempted to co-opt nascent labour movements to particular reform agendas. While the pursuit of neoliberal policy agendas certainly limited the development of industrial bargaining in central and eastern European countries, employers' reluctance to engage in such bargaining and/or to establish viable employers' associations compounded their effects.

Within the EU there were thus very different trajectories of change. What is apparent from every one of the country chapters that comprise this publication is that European-level policymakers did nothing to arrest the decline of social market economies in

western Europe. To the contrary, as part of the Troika, consisting of the European Commission, the European Central Bank and the International Monetary Fund, European policymakers accelerated the shift away from the social market economy in Member States particularly hard hit by the financial crisis and the subsequent sovereign debt crisis. Similarly, in central and eastern European countries, European policymakers participated in attempts to create multi-employer bargaining systems, but to no wide-ranging effect. The failure of European-level policymakers to help defend the social market economy in western Europe and to establish institutions to create it in central and eastern European Member States calls into question the viability of EU-level policymaking in the crucial area of collective bargaining, an area that is supposed to distinguish European economies from others elsewhere in the world.

The sections below examine the main developments and long-term trends in the six dimensions of collective bargaining identified by Clegg (1976). The analytical focus is on the broad contours within systems of collective bargaining at country level. Industrial and sectoral variation is thus downplayed. Each bargaining dimension is discussed by reference to the 28 Member States of the EU. If no specific data source is provided, the information provided in the sections below is drawn from the country chapters.

Throughout, cross-references are made to other dimensions to illustrate the interlinkages between dimensions. The level of bargaining, for example, is closely linked to the scope of agreements, as different issues may be dealt with at different levels of bargaining and responsibilities between levels may change over time. The level of bargaining is also linked to the extent of bargaining. More centralised systems tend to be characterised by wider bargaining coverage than decentralised systems based on company-level bargaining. This also means that the coverage of agreements concluded at the various levels can be used as an indicator of the relative importance of different levels. Furthermore, the level of bargaining is linked to the security of bargaining because the 'rules of the game' define the responsibilities of each level and the mode of vertical coordination between the different levels can take different forms. These rules can be based on autonomous regulation by the bargaining parties via collective agreements or on legislation enacted by the state. Because the specific shape of the collective bargaining system is always an expression of the previous or existing power relationships between trade unions, employers and the state, the level of bargaining also depends on the strength and coverage of trade unions and employers' organisations and their strategic preferences.

If there is an overarching argument that draws together material from many of the 28 Member States of the EU it is that the assault on collective bargaining born of the implementation of neoliberal economic and social policies has substantially weakened the regulatory capacity of collective bargaining. Whereas in much of the western European countries private sector wages were once largely taken out of competition by means of multi-employer industrial bargaining, this is no longer the case. In central and eastern European Member States, wages were never taken out of competition. The 'endgame' to which our title refers concerns the rise of unilateral managerial pay setting and increasing wage inequality, reflecting the reduced impact of collective bargaining on Member State economies. Based on the following analysis of the key trends in each

of Clegg's six dimensions, the policy issue addressed in the final section of this chapter is, how can collective bargaining's declining influence be reversed?

Level of bargaining

The level of bargaining refers to the practice of bargaining at different levels, cross-industry, sector, industry and company level, and the relationship between these levels. The latter aspect refers to the various mechanisms of vertical coordination defining the competencies and prerogatives at each level. Because vertical coordination involves a two-way relationship of mutually interdependent bargaining levels, the term 'articulation' is used when referring to this dimension of coordination (Marginson 2015: 98). Similar to the approach adopted throughout, the term 'sectoral bargaining' refers to negotiations that cover one of the following three sectors: manufacturing, public services and private services. Each of these three sectors comprises different industries: manufacturing, for example, includes automobiles, chemicals, ICT, textiles, food and many others.

The level of bargaining is an important analytical dimension when describing the basic architecture of a collective bargaining system. In a nutshell, centralised systems with multi-employer arrangements in which collective bargaining takes place primarily at (cross-) industry level can be distinguished from decentralised single-employer systems within which the company level is the most important place for negotiations. The main trend across Europe since the 1980s is decentralisation, involving a shift from multi-employer to single-employer bargaining arrangements (Visser 2016). While the country chapters confirm the general trend towards more decentralised bargaining arrangements, they also show substantial variation between EU Member States. The analytical focus here is thus, first, on the variation in national developments regarding the intensity and patterns of decentralisation processes; and second, on identifying the different factors that account for national differences.

Decentralisation is understood as the devolution of bargaining competences and regulatory capacity to lower levels. This can involve shifts from cross-industry to industry or company level, or, as is more often the case, from industry-level to company-level bargaining. The regulatory capacity at each level can be measured quantitatively in terms of the number of agreements concluded and/or the coverage each level contributes to total collective bargaining coverage. Regulatory capacity can, however, also be measured qualitatively in terms of the scope of issues dealt with at each level. Decentralisation therefore does not necessarily decrease the regulatory capacity of the collective bargaining system as a whole. In principle, from a quantitative perspective, the decreasing number/coverage of industrial agreements may be compensated by an increase in the number/coverage of company-level agreements, so that the overall coverage stays the same. By the same token, from a qualitative perspective, decentralisation may result in industrial agreements being increasingly relegated to the level of framework agreements that leave the actual determination of wages and other terms and conditions to company-level agreements.

For these reasons decentralisation needs to be distinguished from decollectivisation. Whereas decentralisation may lead to a relative increase of regulatory capacity of lower levels either quantitatively or qualitatively, decollectivisation refers to a process in which the formal devolution of bargaining competences to lower levels results in a decrease of regulatory capacity. Put differently, decollectivisation denotes the general weakening of collective bargaining as a tool to regulate the employment relationship, regardless of the level at which it takes place. Decollectivisation is often associated with the replacement of industrial or company-level collective agreements by unilateral management decision-making or by negotiations between management and individual employees.

Decentralisation can take two different forms: organised or disorganised (Traxler 1995). Organised decentralisation occurs when the devolution of regulatory capacity is guided by some kind of articulation mechanism that defines the terms and conditions under which negotiations at lower levels take place. The mode of articulation determines the degree to which higher-level bargaining parties retain some degree of control over lower-level bargaining processes and the extent to which (cross-)industrial agreements maintain their capacity to prescribe the content and procedure of subsequent negotiations conducted at lower levels (Marginson 2015: 100). There are two principal articulation mechanisms, which can be state-supported or autonomous. First, the favourability principle establishes a clear hierarchy between bargaining levels and between collective agreements and the law. It stipulates that lower-level agreements can only improve the standards set in higher-level agreements and that no collective agreement, regardless of the level at which it is concluded, can undercut legal provisions (OECD 2017: 148). The favourability principle can either be based on law, as in France, Germany, Greece, Portugal, Spain and the central and eastern European countries, or it can be based on collective agreements, as in the Netherlands, the Nordic countries, Ireland and the United Kingdom. Second, strong multi-level trade union representation may ensure close links between trade union structures at higher and lower bargaining levels. The intensity of union links across different bargaining levels is closely linked to the institutional arrangements of employee interest representation. Union links across bargaining levels tend to be more developed in single-channel systems of interest representation than in dual systems of interest representation in which there is a clear division of labour between trade unions at (cross-)industry level and works councils at company level. A third, less common state-supported mode of articulation comprises indexation mechanisms (see Security of bargaining), which can be seen as a functional equivalent to cross-industry agreements in defining the scope of negotiations for lower-level wage bargaining.

In contrast, disorganised decentralisation occurs when lower-level negotiations are detached from higher-level negotiations and the devolution of bargaining competences is not, or only loosely, guided by articulation mechanisms. Disorganised decentralisation therefore often involves the replacement of higher-level agreements by lower-level ones and the weakening or abolition of existing articulation mechanisms. In the following analysis the concepts of decentralisation and modes of articulation will be used to analyse the key trends as regards level of bargaining across the EU28.

Relative importance of bargaining levels: the disappearance of cross-industrial bargaining

The most striking development over the past twenty years has been the disappearance of cross-industrial bargaining in the EU28. While in many countries, such as Austria, Denmark, the Netherlands, Spain and Sweden, cross-industrial wage bargaining was abandoned during the late 1970s or early 1980s (Visser 2016: 12), by 2000 cross-industrial bargaining was still present in seven countries: Belgium, Finland, Greece, Ireland, Romania, Slovakia and Slovenia. Within these seven countries Slovakia was the first to abandon cross-industry bargaining in 2000, when tripartite social dialogue, which had previously generated general agreements with wage stipulations, was relegated to a consultative process. Slovenia was next, in 2008, when the employers entered into a general agreement for the private sector for the last time. In Slovenia since then industry has been the dominant bargaining level in the private sector and cross-industry bargaining is limited to the public sector, where there is still a central platform for collective bargaining. During the crisis, cross-industry bargaining was ended in Greece, Ireland and Romania. In Ireland, this was the result of the employers' decision in 2009 to end social partnership, which dominated Irish industrial relations from 1987 to 2009, and to pull out of centralised wage bargaining. As a consequence, collective bargaining shifted from cross-industry to the sectoral level in the public sector and to the industrial and company level in the private sector. In Greece and Romania, the termination of cross-industrial collective bargaining was the result of legislative changes by the government. Finland is the country in which the cross-industrial level lost its dominant role most recently, in 2016, with the shift from tripartite peak-level incomes policies to bipartite industry-level pattern bargaining. Belgium is the last remaining country in which the cross-industrial level still plays an important role in determining wages and other employment terms and conditions through the Central Economic Council, which calculates the wage norm for the Interprofessional Agreement, that in turn provides the framework for the negotiation of agreements by the joint committees at the industry level. Beneath the surface of this institutional stability in Belgium, however, there are signs that industrial agreements are increasingly becoming framework agreements, leaving the more substantial regulation of employment terms and conditions to the company level.

Another important finding of the country chapters is that, despite the continuing decentralisation trend, multi-employer bargaining systems, involving industrial bargaining to different degrees, are still predominant in the EU28. As Table 30.1, which refers to both the private and the public sector, illustrates, there are clear regional patterns. Of the seven countries in which company-level bargaining dominates, Greece is the only western European country. All the other countries are from central and eastern Europe. By the same token, 11 of the 13 countries in which industrial bargaining dominates are from western Europe. Slovakia and Slovenia are the only central and eastern European countries in this group. As can be seen from Table 30.1, the remaining eight countries are characterised by mixed bargaining regimes, combining industry- and company-level bargaining.

Table 30.1 Bargaining regimes and degree/dynamics of (de)centralisation

Country	Bargaining regime	Dominant level	Degree/dynamics of (de)centralisation
Czechia	SEB	Company	Decentralised
Estonia	SEB	Company	Decentralised
Greece	SEB	Company	Disorganised decentralisation turning into decollectivisation
Hungary	SEB	Company	Decentralised
Latvia	SEB	Company	Decentralised
Lithuania	SEB	Company	Decentralised
Poland	SEB	Company	Decentralised
Bulgaria	Mixed	Industry/company	Partially decentralised
Croatia	Mixed	Industry/company	Partially decentralised
Cyprus	Mixed	Industry/company	Disorganised decentralisation in the South; decentralised in the North
Ireland	Mixed	Industry/company	Organised decentralisation
Luxembourg	Mixed	Industry/company	Partially decentralised
Malta	Mixed	Industry/company	Partially decentralised
Romania	Mixed	Industry/company	Disorganised decentralisation
United Kingdom	Mixed	Industry/company	Partially decentralised
Austria	MEB	Industry	Organised decentralisation
Belgium	MEB	Industry	Organised decentralisation
Denmark	MEB	Industry	Organised decentralisation
Finland	MEB	Industry	Organised decentralisation
France	MEB	Industry	Organised decentralisation
Germany	MEB	Industry	Combination of organised und disorganised decentralisation
Italy	MEB	Industry	Organised decentralisation
Netherlands	MEB	Industry	Organised decentralisation
Portugal	MEB	Industry	Disorganised decentralisation turning into decollectivisation
Slovakia	MEB	Industry	Combination of organised and disorganised decentralisation
Slovenia	MEB	Industry	Organised decentralisation
Spain	MEB	Industry	Disorganised decentralisation
Sweden	MEB	Industry	Organised decentralisation

Notes: The categories dealt with in this table refer to both the private and the public sector. 'SEB' stands for single-employer bargaining and 'MEB' for multiple-employer bargaining.

Source: Authors' compilation based on country chapters.

While this kind of categorisation into multi- and single-employer bargaining systems provides a quick overview of the collective bargaining landscape in the EU28, it is simplistic in two respects. First, none of the categories exist in their pure form. This means that in systems in which the company level dominates there is also industrial

bargaining, to some degree. Second, countries within the same category vary substantially vis-à-vis the relative importance of the various bargaining levels.

Even in highly decentralised single-employer systems, exemplified by the Baltic countries and Poland, there are some industry-level agreements. In Czechia, where single-employer bargaining predominates, industrial agreements account for 16 percentage points of the 50 per cent total bargaining coverage. But these industrial agreements are mainly framework agreements that leave the more detailed regulation of the employment relationship to company-level agreements, which, as a result, have a higher regulatory capacity.

Mixed systems combine industrial bargaining, mainly in the public sector, with company-level bargaining in the private sector. Examples of this particular distinction between public and private sector bargaining are Croatia, Cyprus, Malta and the United Kingdom. The United Kingdom is usually grouped in the category of highly decentralised single-employer systems (OECD 2017; Marginson and Welz 2015). This is justified when looking at the private sector, where in 2011 pay was determined by industrial agreements in only 2 per cent of workplaces. In the public sector, by contrast, there is some resilience in industrial bargaining, which determines pay in 43 per cent of workplaces. When grouping the various systems it is therefore important to take into account sectoral and industrial variation of bargaining arrangements.

Unsurprisingly, the countries in which industrial agreements dominate also show great variation regarding the regulatory capacity of the different levels. Concerning pay, two Nordic countries, Denmark and Sweden, are at one pole of the continuum, at which a great deal of autonomy is left to the company level in determining actual pay. In Denmark, industrial agreements define minimum standards, which can be supplemented and topped up by company-level agreements. In Sweden, the ‘industry norm’ defines the ceiling for wage increases, but within this there is ample scope for decentralised wage setting at company level, particularly on the distribution of the wage increase between groups of employees. At the other pole of the continuum is Belgium, where the room for local wage bargaining is more limited because of the dense institutional framework at cross-industry and industry level, which defines the limits for wage increases.

Different patterns of decentralisation

The country chapters confirm the general trend towards decentralised bargaining. They also show that decentralisation can occur at different levels and in different forms. In formerly highly centralised systems, such as Finland, Ireland, Romania, Slovakia and Slovenia, decentralisation means the devolution of regulatory power to the industry level; in the case of Romania, and partly in Ireland, even to the company level. In the remaining multi-employer bargaining systems decentralisation involves the shift of regulatory capacity from the industry to the company level.

Depending on the existing mode of articulation and the nature of its modification, decentralisation is either organised or disorganised. The key characteristic of all cases

of organised decentralisation is that articulation mechanisms stay in place and are modified in a way that opens up scope for derogations at lower levels, while, at the same time, retaining some degree of control for higher-level actors and agreements.

One way to achieve this objective is to loosen up the favourability principle. The primary example of this variant of organised decentralisation is France, where the range of issues for which company-level derogations from industrial agreements are possible has consistently been extended by increasingly undermining the favourability principle. This process started in 2004 when legal changes excluded four areas from downward derogations at company level. Concurrently, the 2004 law introduced far-reaching possibilities for industry-level negotiators to block derogations, so the actual use of derogations remained limited. This changed with the recent so-called Macron Ordinances of 2017, which both widened the range of issues that are excluded from derogations and considerably reduced the possibilities for industry-level actors to block derogations. In practice, the Ordinances abolished the favourability principle and afforded primacy to the company level. Articulation in France is thus no longer based on the state-supported favourability principle, but on the autonomous capacity of trade unions to maintain close links between industry- and company-level union activities. This is increasingly difficult in smaller companies with a weak union presence. Even though legal changes also extended the possibilities for non-union representatives to conclude company-level agreements, the majority of company-level agreements are still signed by union delegates. For the time being decentralisation in France is still organised, but it remains to be seen whether this can be maintained in the light of the Macron Ordinances of 2017, which weakened state support for articulation.

Another way to open up the scope for company-level bargaining is to change the nature of industrial agreements, converting them into less substantive and less specific framework agreements with a reduced capacity to define universally applicable standards (Marginson 2015: 100). Following this route, organised decentralisation can be pursued in the following ways (Ibsen and Keune 2018: 10; Visser 2016):

- concluding *minimum agreements*, which define only minimum standards and leave the more detailed regulation of wages and terms and conditions to company agreements, although they cannot undercut industrial minimum standards;
- concluding *figureless agreements*, which do not specify any wage standard and leave the determination of wages entirely to the company level;
- concluding *corridor agreements*, which define minimum and maximum standards that need to be respected by company-level agreements;
- including *general derogation clauses* in industrial agreements, which delegate the regulation of particular issues to the company level and specify the conditions under which this is possible. The company-level agreement can derogate from standards set in the industrial agreement;
- including *temporary opening or hardship clauses* in industrial agreements, which enable company-level actors to derogate from industrial-level standards if a company is in financial difficulties;
- including *opt-out clauses* in industrial agreements, which enable companies to postpone or even not apply certain parts of the industrial agreement.

Different combinations of the above options have been used in Member States to realise organised decentralisation. In the Netherlands, for instance, there is a combination of opt-out clauses from extended agreements, which they call 'dispensation clauses', and minimum agreements, which, in 2014, accounted for almost 50 per cent of all industrial agreements. In Denmark, a similar solution has been adopted in replacing the normal wage system, in which an industrial agreement determines wages at company level by minimum and figureless agreements. Today, the latter two types of agreement apply to more than 80 per cent of the workers covered by a collective agreement in Denmark. In Germany the use of general derogation clauses, temporary opening clauses and opt-out clauses have, over time, de facto hollowed out the favourability principle. In contrast to France, this did not happen through legislative changes, but was based on collective agreements, which specify the conditions under which derogations from industrial agreements are possible. The option to include opening clauses in industrial agreements has also been used in Austria and Finland, albeit to a much lower extent than in Germany. In these countries, opening clauses are strongly linked to dealing with the economic crisis. By contrast, in Germany the frequent and more general use of opening clauses, for instance, to improve the competitiveness of companies, transformed an initially temporary measure into a permanent institutional feature of the bargaining system.

The key objective of devolving competences to the company level is to increase flexibility for employers, while, at the same time, retaining the regulatory capacity of industrial agreements. The extent to which the latter objective can be achieved is heavily influenced by the more general arrangement of employee interest representation. In this respect, single-channel systems are more supportive than dual-channel systems because company-level interest representation in dual systems is based on works councils, which formally are not trade union structures. In contrast, company-level interest representation in single-channel systems rests on the presence of trade unions in the company or workplace. Denmark is a case in point, where the single channel system, coupled to institutionally supported high union density, facilitates close links between industry- and company-level union structures. This, in turn, ensures that industry-level actors and agreements enjoy a considerable degree of control over company-level bargaining processes, both procedurally and substantively. The examples of Germany and the Netherlands illustrate that this is more difficult in dual-channel systems of interest representation. The devolution of regulatory capacity to the company level means that works councils are increasingly involved in negotiations over wages and working time, which previously, at least formally, was the sole prerogative of trade unions at industry level. Because works councils are not formally trade union structures, articulation between industry and company level essentially rests on the presence of union delegates in works councils. Germany illustrates that maintaining this link is difficult even in traditional industrial union strongholds, such as metalworking and chemicals, but it is even more difficult in sparsely unionised private services.

The lack of strong articulation between bargaining levels and, as a consequence, reliance on state-supported articulation mechanisms, is a characteristic shared by Greece, Portugal, Spain and, to some extent, Romania, where disorganised decentralisation has been the dominant trend. When the state withdrew its support for articulation

mechanisms in these countries there were no autonomous structures in place that could prevent company-level agreements from becoming detached from multi-employer bargaining arrangements. Furthermore, in these countries government introduced legislative changes to this effect under strong pressure from European and international institutions, which made financial support conditional on labour market reforms, including those of the collective bargaining system. These reforms, often imposed in the face of protests from trade unions and employers, include the following measures: first, overturning, suspending or abolishing the favourability principle in order to reverse the existing hierarchy of bargaining levels, thereby giving company-level agreements precedence over industrial agreements, even if this leads to inferior standards; and second, providing active support for company-level negotiations by giving non-union institutions or personnel the possibility to conclude company-level agreements in the absence of unions. In Greece, active support for company-level negotiations also involved lowering the number of people a firm has to employ to be able to negotiate company-level agreements. Similarly, Romania introduced mandatory bargaining in companies with more than 20 employees, combined with tighter representativeness criteria for trade unions as a precondition to negotiate valid collective agreements at both industrial and company level. Where unions do not meet these tighter criteria, employers can negotiate with non-union structures.

The impact of disorganised decentralisation on the regulatory capacity of collective bargaining varies between Member States. Greece has experienced the most far-reaching implications with a contraction of collective agreements at all levels: disorganised decentralisation thus became decollectivisation, with employers increasingly turning to unilateral action or individual negotiations as the preferred mechanisms for regulating the employment relationship. Spain is at the other pole of the continuum. In Spain, the far-reaching formal changes to the bargaining system did not substantially alter the relative importance of industry- and company-level agreements. An important explanatory factor is the employers' limited interest in company-level negotiations. Instead of negotiating more company-level agreements they took advantage of other measures introduced by the 2012 reforms, such as the increased possibilities for temporary derogations and unilateral modification of working conditions (Rocha 2018).

Security of bargaining

Security of bargaining refers to the factors that support negotiations between employers and trade unions to jointly regulate the employment relationship, and, more specifically, determine the bargaining role of trade unions, which can be operationalised in terms of three different dimensions of power resources of trade unions (Lehndorff *et al.* 2018). These can be enhanced or reduced depending on the strategies of the state and employers. The first dimension concerns institutional power resources, which comprise the legal underpinning of the collective bargaining system, including the definition of the 'rules of the game', and the bargaining parties' rights and obligations. More specifically, the institutional dimension also includes the regulation of trade union recognition for bargaining purposes. A second dimension concerns organisational power resources, which include Clegg's original conception of 'union security' in the sense of the support

provided by employers and the state for union organising and promoting and sustaining high membership levels. Because meaningful bargaining also depends on trade unions' capacity to mobilise their membership and to pursue industrial action, organisational power resources include the regulation of strikes. A third dimension concerns societal power resources, which include the ideological and discursive underpinning of collective bargaining (Brandl and Traxler 2011). In all these respects, bargaining security can either promote or obstruct the trade unions' bargaining role, and, in so doing, either enhance or restrict the capacity of employers and the state to determine pay and conditions unilaterally.

Before key developments in security of bargaining are discussed, two caveats should be entered. First, while a change in bargaining security introduced in one country might have a marginal impact, the same change may have a marked impact in another country. Institutional change or instability is thus relative to a country's initial situation vis-à-vis bargaining security. Second, the timeframe considered here is principally the period 2000–2016, but far-reaching changes in bargaining security occurred in an earlier period in several countries. This is obviously the case in the Netherlands, with the Wassenaar Agreement of 1982; the United Kingdom, with extensive legislative measures to restrict trade union activity enacted during the Thatcherite 1980s and early 1990s; Belgium, with the competitiveness law of 1996; and Sweden, with the Industry Agreement in 1997. Similarly, neoliberal principles 'infused' the collective bargaining system from the start in several central and eastern European countries, especially the Baltic states (Bohle and Greskovits 2012).

Institutional support

The most fundamental way of supporting bargaining security is the constitutional or legal right to freedom of association and bargaining, which essentially provides unions with a bargaining monopoly. This is common practice in the EU28. Even in countries with a long voluntarist tradition, such as Sweden and the United Kingdom, there is legislation endorsing the bargaining role of trade unions. In some countries, the recognition of trade unions for bargaining purposes is linked to certain representativeness criteria. In particular, this applies to countries with a tradition of multi-unionism, such as France, Italy and Spain, and/or strongly developed company-level bargaining, such as Hungary and Poland. In the past twenty years, the legal support for bargaining security via union recognition has been undermined in various ways. One strategy has been to introduce or tighten the representativeness criteria for trade unions as a precondition to bargaining. In Romania, for instance, the Social Dialogue Act of 2011 abolished cross-industry bargaining and excluded small companies from collective bargaining because it required a minimum of 15 employees to form a union. Even in companies with a union presence the representativeness criteria have been severely tightened. Romanian trade unions now need to represent 50 per cent of the workforce to be recognised for negotiations, rather than one-third under the previous legislation.

Another measure that undermined the security of bargaining for trade unions was the extension of negotiation rights for works councils and non-union representation

structures, as occurred in France, Greece, Hungary, Lithuania, Portugal and Romania. In Spain, it was not so much the extension of bargaining rights to non-union bodies, but the allocation of more room for unilateral management determination of employment conditions that undermined bargaining security. Portugal illustrates the importance of a constitutional right to bargaining for trade unions. In Portugal, non-union structures need a union mandate to negotiate agreements at company level. The Troika's attempt to remove this requirement during the crisis failed because it would have been in breach of the Portuguese constitution. In all these countries it is apparent that removing trade unions' bargaining monopoly went hand-in-hand with an increased push for company-level bargaining. As a consequence of the increased decentralisation of bargaining to the company level, the established division of labour between works councils and trade unions has become increasingly blurred. Works councils are increasingly integral to the bargaining process, taking over the bargaining role of unions in some instances because of the weakness of union representation at company level. When management dominates non-union bodies and works councils there is the risk that they will be merely a 'fig leaf' concealing the unilateral settlement of pay and employment terms and conditions, while paying lip service to collective bargaining.

Another form of institutional support for bargaining security is the participation of trade unions in bipartite or tripartite social dialogue, or in the governing or supervisory boards of labour market or social security institutions. Social dialogue institutions can play an important role at the policy level and in regulating employment relations. In particular, this applies to central and eastern European countries, with their shorter traditions of collective bargaining. In Slovakia, until 2000, social dialogue in the tripartite Economic and Social Council led to a general framework agreement, which included provisions on wages. Hungary is another example, where recommendations of the tripartite National Council for the Reconciliation of Interests (OÉT) used to serve as the basis for collective agreements signed subsequently at industry and company level. Over time, however, this function has been downgraded to an advisory role. As a consequence, today social dialogue institutions are largely disconnected from collective bargaining and their impact has, at best, an ad hoc character. Nonetheless, in central and eastern European countries involvement in social dialogue institutions still offers an important channel for influencing government socio-economic policies and enables trade unions to compensate for their lack of bargaining power at lower levels. There is also the danger that trade union involvement in social dialogue institutions will result in 'PR corporatism', in which union participation in tripartite structures is used to legitimise government policies (Bernaciak 2013). This became more prominent during the economic crisis.

Statutory minimum wages are another form of state support for bargaining security. Statutory minimum wages exist in 21 EU Member States. The only exceptions are Austria, Belgium, Cyprus, Denmark, Finland, Italy and Sweden, where minimum wages are negotiated. In some central and eastern European countries, namely Bulgaria, Croatia (until 2008), Estonia, Hungary (until 2011), Poland, Romania (until 2011) and Slovakia, minimum wages were or still are negotiated in a tripartite body at national level. If a tripartite agreement is reached, the resulting minimum wage assumes a statutory character. If the negotiations fail the minimum wage is set unilaterally by the

government (Schulten *et al.* 2015: 330). Statutory minimum wages not only provide a safety net, ensuring minimum wage standards for employees who are not appropriately covered by collective agreements. They also provide an important anchoring function for the whole wage structure. Two examples of this anchoring function are Hungary and France. In Hungary, involvement in the tripartite negotiations on the minimum wage in the OÉT was very important for trade unions because it compensated their weakness in industrial and company-level bargaining. With the degrading of the national tripartite structure to a consultative function, this compensatory role was weakened. The two statutory minimum wage levels for ordinary and skilled workers, however, still play an essential role in ensuring wage security for workers. In France, the development of the statutory minimum wage sets the pace for wage settlements in industrial wage agreements, particularly for low-wage categories. To a certain extent, France's statutory minimum wage can be seen as a functional equivalent to a national framework agreement that sets the pace for subsequent negotiations at industrial level. Overall, statutory minimum wages that apply to all workers compensate for low union density in those industries in which trade unions are too weak to ensure high bargaining coverage as a tool to secure appropriate wages. This was why trade unions in Germany pushed for the introduction of a statutory minimum wage in 2015, having previously rejected the idea of a statutory minimum wage for many years.

Furthermore, in a limited number of small, in population, countries, 'automatic' indexation mechanisms are still in place, which link nominal wage increases to prices of goods and services to maintain purchasing power. Thus, the cost of living adjustment systems are fairly uncontested in the south of Cyprus and Malta, but more so in Belgium and Luxembourg. These countries share, in the context of the European Semester, the same country-specific recommendations from the European Commission in terms of reform of indexation mechanisms. The government temporarily manipulated the index mechanism in Luxembourg in 2012, 2013 and 2014, whereas different arrangements were made within industries. The index mechanism has been hollowed out in Belgium over the years, including a recent suspension for a year, and it continues to be called into question by right-wing populist and neoliberal political parties. At the same time, Belgium, the south of Cyprus and Sweden have introduced a ceiling to wage-setting. This applies to the private sector in Belgium and Sweden, via a wage-norm and an industry-norm, respectively. A framework agreement introduces a ceiling linked to the nominal increase in GDP in the semi-public and public sector in the south of Cyprus. In other countries, such as Italy, Romania and Spain, specific index mechanisms are part of collective agreements.

Organisational support

Organisational support for bargaining is particularly important in countries with a voluntarist tradition of industrial relations, and weak legal support for bargaining security. In these cases, bargaining security depends heavily on trade unions' strength and their capacity to bring employers to the bargaining table. Trade unions' organisational power resources depend heavily on membership levels, and their capacity to mobilise and conduct industrial action. One measure to boost membership levels is trade union

involvement in the administration of the welfare state. A special arrangement of this kind is the so-called ‘Ghent system’, which institutionally embeds unions in the labour market and the welfare state regime, and provides incentives for workers to unionise and to remain a union member. This unemployment insurance system has been weakened by policy changes. Some have affected unemployment benefits, in terms of duration, coverage or eligibility; others have promoted other actors than trade unions to set up their own unemployment funds. Or both have been combined. Thus, a strengthening of unemployment regulation, especially since the beginning of the crisis in 2008, has indirectly affected the quasi-Ghent system in Belgium, resulting in a decline in union membership (Vandaele 2017).

In contrast to Belgium’s compulsory unemployment system, unions in Denmark, Finland and Sweden still have their own unemployment insurance funds that are subsidised by the state, and membership of which is voluntary. Different policy changes affecting the Ghent system in these countries in recent years have, to different degrees, caused de-unionisation, which puts pressure on the voluntary character of the collective bargaining system (Høgedahl and Kongshøj 2017). Finally, bargaining security can also be buttressed at the meso-level. Examples include vocational training and social security funds that are present in a number of countries at the industry level. They are governed on a bi- or tripartite basis, and they provide, for instance, skills-based education and training and supplementary benefits.

The right to take industrial action is, in most countries, implicitly guaranteed by the constitution via freedom of association, or internationally via the European Convention on Human Rights or the Charter of European Basic Rights. While the right to take industrial action was relatively restricted in central and eastern Europe from the start (Welz and Kauppinen 2005), this right has been further curbed in several countries (Xhafa 2017). Strike regulations, however, became more relaxed in the Estonian public sector and more generally in Lithuania, although it remains to be seen what this means in practice. As with union recognition, it is at the implementation level that differences between countries are most marked. Several industries are conceived as ‘essential’, including sometimes a minimum service provision, thereby limiting the use of the strike weapon and undermining trade unions’ countervailing power in the bargaining process. The strictness of ‘peace clauses’ in collective agreements can further explain differences in the use of the strike weapon and its timing. Needless to say, employers’ tactics and strategies also influence how the right to industrial action is exercised in practice. Employers generally enhance bargaining security if they legitimise, commit to and support the setting of employment terms and conditions via collective agreements and do not implement trade union avoidance or busting tactics and strategies. This also entails that employers’ associations provide incentives for full membership of individual companies, because the employers’ association rate is a crucial factor in the extent of bargaining (see Extent of bargaining).

The impact of union recognition can also be seen in bodies for worker representation at the workplace or company level. While in Belgium, for instance, this is the sole prerogative of the trade unions, this is not the case in several other countries, in which non-unionised workers can also be appointed or elected in those bodies, although in

many cases the bodies are still dominated by the unions. In a similar vein, although possible in theory, non-union bodies at the workplace or company level are far less common. Similarly, union prerogatives, such as facility time and regulations protecting against anti-union behaviour by management, particularly the unlawful dismissal of union representatives or shop stewards, also contribute to bargaining security. A difference should be noted, however, regarding the objectives of long-standing bodies and those more recently formed. The International Labour Organization (ILO) promoted dual-channel representation of employees at the company level when the collective bargaining systems were in their infancy in central and eastern European countries (Vaughan-Whitehead 2000). Directive 2002/14/EC on employee information and consultation also encouraged the creation of dual-channel representation in those countries if there was no information and consultation body in place. In these cases, instigated by the ILO and the European Commission, the bodies created have often been a concern for unions in central and eastern European countries, which viewed them as a potential channel for manipulation by management. In practice, however, their incidence is confined to certain industries, and, where they exist, they are often union-dominated.

Ideological and discursive underpinning

Across the EU28, during the period covered here, bargaining security is marked by relative institutional robustness and stability, especially in the EU Member States with a tradition of multi-level collective bargaining. Path-departures and abrupt institutional modifications took place in only a few cases, namely Greece, Hungary, Portugal and Romania, even though bargaining security has been restored, to a certain extent, in the post-crisis period in Greece and Portugal. These four countries are prime examples, however, of the influence of changes in government and/or EU institutions and the ideological underpinning of approaches to collective bargaining. In Portugal, for instance, security of bargaining was weakened by the centre-right governments of 2011–2015, but partially restored under the subsequent new centre-left government. The importance of the ideological underpinning in shaping bargaining security is further illustrated by the intervention of the Troika in countries that required financial support during the economic crisis. The reforms imposed on Greece, Ireland and Portugal were based on a neoliberal economic approach that views multi-employer collective bargaining and trade unions with strong wage-setting power as ‘institutional rigidities’ that impede market-driven economic adjustment processes (Schulten and Müller 2015). As a consequence, decentralising collective bargaining by removing or limiting the favourability principle and promoting measures that result in an overall reduction of trade unions’ wage-setting power, such as more restrictive representativeness criteria for trade unions, were central elements of the ‘employment-friendly’ reforms promoted by the Troika (European Commission 2012: 103–104).

More positive examples of the importance of ideological underpinning are Austria, where multi-employer bargaining depends strongly on the support of both sides of industry for the social partnership approach; Germany, where multi-employer bargaining used to be considered an integral part of the social market economy as the preferred societal

model; and Sweden, where both sides of industry support multi-employer bargaining as a tool to implement a solidaristic and egalitarian wage policy. More recently, however, at least in Austria and Germany, the ideological foundation of multi-employer bargaining has been showing some signs of erosion. In Austria, right-wing and liberal governments have repeatedly attacked the chamber system as the institutional embodiment of social partnership and multi-employer bargaining. In Germany, the employers' retreat from multi-employer bargaining goes hand in hand with stronger support for a neoliberal approach to organising the employment relationship.

Extent of bargaining

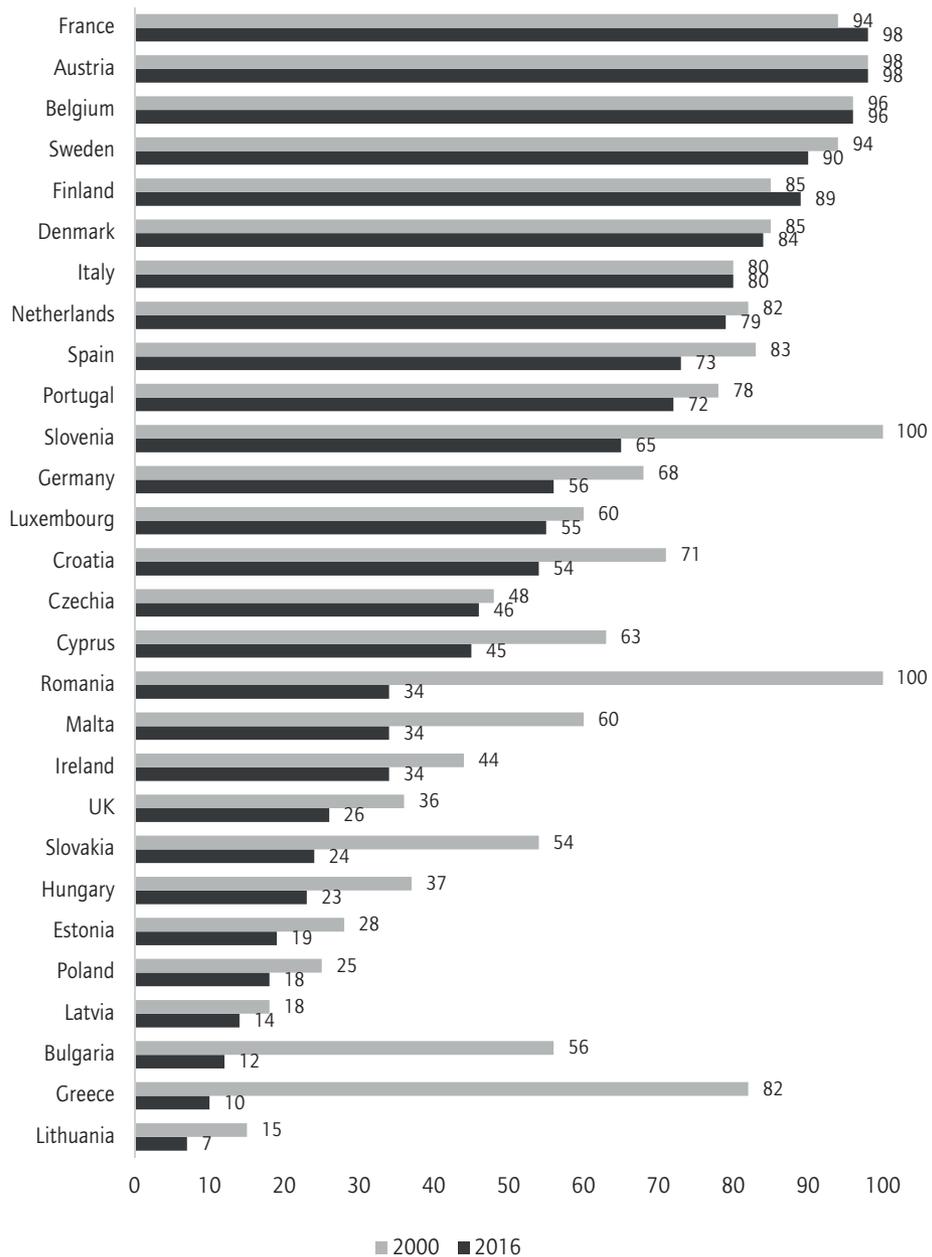
The extent of bargaining measures bargaining coverage, the share of employees covered by a collective agreement. Figure 30.1 illustrates the variation in bargaining coverage across the EU28. It also illustrates that the highest bargaining coverage, the largest extent of bargaining, exists in those countries characterised by multi-employer, or at least mixed, bargaining systems, ranging from France and Austria at the top end to Croatia at the bottom end of this group. In contrast, the coverage of bargaining in the countries characterised by single-employer bargaining is below 50 per cent. This clearly shows a close link between the level and the extent of bargaining. According to calculations based on a sample of 48 OECD countries, the level of bargaining accounts for about three-quarters of the cross-national variation in bargaining coverage (Visser *et al.* 2015: 6).

Every country with high bargaining coverage shares at least one of the following three characteristics: first, legal extension mechanisms, or functional equivalents, that ensure that industrial agreements also apply to companies that did not sign the agreement or are not affiliated to the employers' association signatory to the agreement; second, *erga omnes* practices that extend agreements at company level to all workers of the respective company, regardless of whether or not they are unionised; third, broad-based bargaining parties that ensure wide coverage of collective agreements and are willing to participate in collective bargaining. The latter applies to Denmark and Sweden, where no legal extension mechanism or *erga omnes* rules exist, but high bargaining coverage rests solely on the organisational strength of the two sides of industry. Against this background, it is not surprising that the countries with the highest decline in collective bargaining coverage over the past 20 years, particularly during the economic crisis, were to varying degrees affected by measures that led to the decentralisation of bargaining and/or that suspended or curtailed legal extension mechanisms. In the following the effect and the development of the various factors are analysed in more detail.

Extension mechanisms

Extension mechanisms are an instrument of public policy that applies a collective agreement beyond its signatories. Such mechanisms exist in 22 EU Member States (Visser 2016: 6). The exceptions are Cyprus, Denmark, Italy, Malta, Sweden and the United Kingdom. Malta and the United Kingdom follow the voluntarist Anglo-Saxon

Figure 30.1 Development of collective bargaining coverage (2000 and 2015/2016)



Note: Early figures for Hungary are from 2001 and for Bulgaria, Cyprus, Greece, Latvia, Lithuania and Malta from 2002. Source: Appendix A1.A. Data for Bulgaria and Croatia for 2016 are from Eurofound (2018). The 2016 data for Greece, Malta and Poland are from the respective country chapters. For Romania both figures are from the country chapter. The later data for Hungary, Ireland and Luxembourg are from 2014.

industrial relations tradition. There is great variation, however, in the practical operation of extension mechanisms across Europe. In particular, variation in the frequency of use and the preconditions for extending a collective agreement impact on the extent of bargaining.

Concerning the frequency of use of extension mechanisms, three groups of countries can be distinguished (see Table 30.2). The first comprises those countries in which the extension mechanism is frequently used and the majority of (cross-)industrial agreements, therefore, are generally applicable. This group consists of Belgium, Finland, France, Luxembourg, the Netherlands, Slovenia and Spain, which are all in the top-half of Figure 30.1, illustrating the close link between high coverage and the frequent use of extensions. In 2000, Greece, Portugal and Romania also belonged to this group, but, due to far-reaching changes in the legal requirements for extending collective agreements, which are discussed in more detail below, the frequency of use dropped dramatically, as did coverage: in Greece from 82 per cent in 2002 to 10 per cent in 2016; and in Romania from 100 per cent to 34 per cent. Portugal is a special case because official coverage figures always refer to the ‘stock of agreements’, which are all the agreements that exist, but which may not have been renewed for years and, therefore, have lost their regulatory capacity. The more telling picture in Portugal is the ‘flow of agreements’, which refers to the newly concluded or renewed agreements, whose coverage dropped to 10 per cent in 2014, as a consequence of the legal reforms, and only slowly recovered to 28 per cent in 2016, when less restrictive criteria for the extension of agreements were introduced. Thus, if one takes the ‘flow of agreements’ as the key indicator for collective bargaining coverage rather than the ‘stock of agreements’, the decline in coverage as a consequence of the less frequent use of extensions is as dramatic as in Greece and Romania.

Austria and Italy should be added to the first group of countries as functional equivalents to extension mechanisms ensure high bargaining coverage. In Austria, there is the possibility of extending collective agreements. This option is rarely exercised, however, because on the employer side most industrial agreements are signed by the Chamber of the Economy. Compulsory company membership of the Chamber of the Economy ensures that all agreements signed by the Chamber automatically apply to all companies in the respective industry. A similar chamber system with compulsory membership existed in Slovenia until 2006, when voluntary membership was introduced. As a consequence, membership dropped considerably and employers also used this as an opportunity to terminate agreements. Both factors play an important role in explaining the decline in coverage in Slovenia from 100 per cent in 2000 to 65 per cent in 2016. In Italy, the functional equivalent is the constitutional right to ‘fair remuneration’, which, in case of a dispute, Italian labour courts usually define as the remuneration laid down in the relevant collective agreement (Treu 2016).

The second group of countries in Table 30.2 with ‘limited’ use of extension, are those in which it is limited to a small number of industries, in particular more labour-intensive and domestic-oriented industries with a high number of small and medium-sized enterprises (SMEs), for example, construction (Schulten 2016). This group comprises Bulgaria, Croatia, Czechia, Germany, Ireland, Slovakia and, more recently, Portugal. Finally, the third group of countries in which the legal possibility for extension is ‘rarely’

Table 30.2 Use of extension mechanisms

Country	Criteria	Frequency of use
Belgium	Bargaining parties must be representative	Frequent
Finland	(1) 50% bargaining coverage (2) Agreement must be concluded by representative bargaining parties (3) Agreement must be valid for the whole of Finland	Frequent
France	(1) Representative trade union (30% at last workplace elections) (2) Agreement not opposed by a trade union having received more than 50% of the votes; nor by industrial employers' association representing more than 50% of the employees of affiliated companies	Frequent
Luxembourg	National Conciliation Office must support extension	Frequent
Netherlands	(1) Employers' organisation must cover at least 60% of employees (2) Extension must not conflict with general interest	Frequent
Slovenia	(1) At least one representative trade union and employers' association must sign agreement (2) Employers covered by agreement must cover more than 50% of employees	Frequent
Spain	Signatory parties must represent at least 50% of employees.	Frequent
Bulgaria	Bargaining parties need to be representative	Limited
Croatia	(1) Agreement must be signed by most representative trade union and employers' association (2) Agreement must be in public interest	Limited
Czechia	Signatory must be most representative trade union and employers' association	Limited
Germany	Agreement needs to be in public interest	Limited
Ireland	Court must take into consideration implications for competitiveness and employment levels	Limited
Portugal	Extension must fulfil the principle of equal pay for equal work	Limited
Slovakia	Agreement needs to be representative; i.e. trade unions need to be established in at least 30% of employers affiliated to the signatory employers' association	Limited
Austria	Bargaining coverage of at least 50%	Rare
Estonia	Most representative organisation in the industry must have signed the agreement	Rare
Greece	Employers affiliated to the signatory employers' association must employ at least 51% of employees in the industry	Rare
Latvia	Signatory employers' association must represent at least 50% of employees and generate at least 50% of the turnover in the industry	Rare
Lithuania	Bargaining parties have to specify motives for extension	Rare
Poland	Extension must satisfy 'vital social interest'	Rare
Romania	Signatory employers' association must represent at least 50% of employees	Rare

Source: Appendix A3.

used in practice, comprises the Baltic states, Hungary and Poland, as well as, more recently, Greece and Romania. In these countries, an extended collective agreement is exceptional.

Frequency of use is closely linked to the criteria on which the extension is based, which can be more or less supportive (see Table 30.2 and Appendix A3). In the majority of countries, the extension of collective agreements is based on certain representativeness criteria, which can address either the agreement in question or the signatories of the agreement. In the variant addressing the agreement, the decisive criterion is the coverage of the agreement. In practice, this means that the agreement needs to be representative by meeting a certain coverage threshold, which is usually set at 50 per cent of all the employees in workplaces covered by the agreement, regardless of union membership. Examples of this approach are Austria, Finland, Germany (until 2015), Portugal and Slovenia. The second variant requires representativeness of the signatories of the agreement. In practice, a wide range of criteria is used to determine whether an organisation is representative. One approach is to establish whether the representativeness criteria apply to both sides of industry or only one. As a rule, these criteria apply to both sides of industry, but in Hungary, Latvia, the Netherlands and Romania, for instance, representativeness criteria apply only to the employers' side. In the three central and eastern European countries the signatory employers' organisation has to represent at least 50 per cent of the employees. In the Netherlands the threshold is even higher, at 55–60 per cent. On the trade union side, representativeness is measured either in terms of union density or, as in France and Spain, based on the results of the recent elections to representative structures at company level. In Croatia and Czechia, representativeness of the signatory parties is measured in relative terms. In these two cases, 'the most representative trade union and employers' association' must sign the agreement.

In addition to representativeness criteria some countries have more flexible criteria. In Croatia, Germany and the Netherlands, for example, the extension has to be in the public or general interest. Other countries also apply economic criteria. In Latvia, the signatory employers' associations not only have to represent 50 per cent of the employees, but also generate at least 50 per cent of the turnover in the relevant industry or territory. Another variant is Ireland, where the court that issues extensions needs to take into consideration the potential implications for competitiveness and employment levels (see Table 30.2 and Appendix A3).

In the past, changing the extension mechanism was a popular tool for governments to influence the extent of bargaining. The best example is probably Portugal, where the criteria for the extension mechanism were changed several times, depending on whether the political objective was to boost or to limit the extent of bargaining. Until 2011, Portugal had a system of 'quasi-automatic' extension of collective agreements, without any representativeness criteria. This meant that the Ministry of Labour extended virtually any valid agreement at the request of the signatory party without applying any other criteria (Naumann 2018). Under pressure from the Troika to increase wage flexibility, the government first suspended the issuing of extension ordinances in 2011 and then, one year later, introduced a 50 per cent representativeness threshold for employers' associations. The legal changes in 2012 also laid down that the potential implications for competitiveness had to be taken into consideration for an extension. The resulting dramatic decline in the number of extensions and the criticism of the restrictive criteria from both trade unions and employers prompted another change of

the criteria in 2014. This allowed extensions when employers' associations represented at least 30 per cent of micro, small and medium-sized enterprises. As a consequence of the 2014 reform, the number of extensions recovered from an all-time low of nine extensions in 2013 to 84 in 2017. This is still far below the level of 109 extensions in 2010 before the first reform in 2011, however. Another Portuguese legal change in 2017 removed the representativeness criteria and replaced them with more inclusive criteria based on the constitutional principle of 'equal pay for equal work'. A further example of reforms restricting the use of extensions is Greece where, in 2011, once again under pressure from the Troika, the regime of 'quasi-automatic' extensions was abolished by 'temporarily' suspending the extension mechanism for the duration of the financial support programmes. The same happened in Romania, where in 2011 the automatic extension of industry-level agreements was abolished. The extension of industry-level agreements now requires that the signatory employers' association represents at least 50 per cent of employees.

Germany and the Netherlands went in the other direction, introducing reforms to extension mechanisms aimed at broadening the extent of collective bargaining. In 2009, the Dutch government tightened the rules granting companies an exemption from extension decisions. The new rules envisage that companies must negotiate a valid company-level agreement with a trade union and show 'compelling reasons' why they should be granted an exemption from industry-level standards (Visser 2016: 8). In Germany, the government tried to facilitate the use of extensions by replacing the fairly restrictive threshold of 50 per cent bargaining coverage with the more flexible 'public interest' criterion. The reform did not achieve the intended objective, however, for two main reasons. First, one indicator of the public interest of an extension was that it should be of 'predominant importance'. As the regional labour ministries responsible for issuing extensions still applied the threshold of 50 per cent bargaining coverage to prove the relevance of the agreement and to avoid legal uncertainties, the number of extensions did not change as a consequence of the reform (Schulten 2018: 84). Second, the new law did not change the role of the bipartite collective bargaining committee (Tarifausschuss), which needs to approve extensions by a majority vote. This provides each side of industry with a de facto veto power, which the German employers' association has used to reject a number of applications for an extension (Schulten 2018).

Another approach to lowering bargaining coverage is to reduce a collective agreement's period of validity after expiry (Visser 2016). In Greece, the 2012 reforms reduced this period from six to three months. In Portugal, the validity of agreements after expiry was reduced in two steps, to 18 months in 2009 and one year in 2014. The 2012 reforms in Spain ended the principle of indefinite validity and limited it to one year, as in Portugal.

Strength and approach of bargaining parties

In addition to state support, trade unions and employers' associations with a broad membership base and a supportive attitude towards collective bargaining influence bargaining coverage. In single-employer bargaining, union presence at company level is a key factor determining the extent of bargaining: put simply, without unions

there is no collective bargaining. In multi-employer bargaining systems, however, the employers' rate of coverage seems to be more important than union density. In many countries, for example, the coverage of multi-employer bargaining far exceeds union density. The extreme case is France, with 11 per cent union density and 98 per cent bargaining coverage. By the same token, over the past 20 years, bargaining coverage, as a rule, has proved to be much more stable than union density. This divergence of union density and bargaining coverage is not surprising because in multi-employer bargaining systems employers covered by an industrial agreement make sure that the agreed terms and conditions apply to all workers, including non-unionised workers, to avoid creating an incentive for workers to join a union. The frequent use of extension reinforces this effect. There are only two examples, Denmark and Sweden, where, in the absence of strong state support, high bargaining coverage is based solely on the strength and supportive attitude of trade unions and employers' associations.

This is not to say that union density plays no role in multi-employer bargaining systems. Obviously, strong unions that can force the employers to the bargaining table and can ensure the implementation of collective agreements are an important factor supporting multi-employer bargaining and high coverage. Evidence from the country chapters, however, confirms that the strength of employers' associations is more important than union density as a determinant of the extent of bargaining. Based on an analysis of 25 OECD countries, a much stronger correlation between bargaining coverage and employers' association rate was found than that between coverage and union density (Visser 2013: 16). This is not to argue that strong employers' organisations are the cause of high bargaining coverage, but the two are associated and may be supported by strong state intervention in the form of extension mechanisms. Strong extension mechanisms may be an incentive for companies to affiliate to employers' associations. When employers are covered by an extended industrial agreement, they might as well join the signatory employers' association in order to influence the negotiations (Schulten *et al.* 2015: 393).

In many central and eastern European countries, the weakness and fragmentation of employers' associations and their hostility towards negotiating industrial agreements is an important explanation for the low bargaining coverage. Organisational weakness and a reluctance to negotiate take different forms. In Estonia and Poland, for instance, trade unions in many private sector industries simply lack an industry-level negotiating partner on the employers' side. In Hungary, employers' associations are primarily lobbying organisations and companies are reluctant to join or to authorise them to negotiate industrial agreements. In Czechia, industrial bargaining is particularly limited in industries dominated by foreign multinationals, which prefer to negotiate individually at company level. Finally, in Slovakia employers' associations have increasingly decided to opt out from industrial bargaining because they no longer see any benefits from it. Employers' associations do so by changing their legal status so that they are no longer eligible to sign collective agreements. In Slovakia, the hostility towards collective bargaining goes hand-in-hand with a general tendency on the part of both sides of industry to prefer legal solutions to collective agreements. Such solutions are viewed as easier to implement and as evoking a stronger commitment on the employers' side, lowering the risk of free-riding.

Employers' incremental retreat from multi-employer bargaining is an important factor explaining the fall in bargaining coverage in many, mainly western European, countries that used to have high bargaining coverage. An illustrative case in point is Germany, where employers started to withdraw from collective bargaining after reunification in the 1990s. The employers' retreat from collective bargaining was underpinned by a neoliberal narrative according to which collective bargaining and labour market institutions more generally were viewed as hampering companies' capacity to adjust flexibly to changing market conditions and therefore damage international competitiveness. As a consequence, employers pushed for more flexible arrangements for regulating wages and other terms and conditions. This involved two courses of action. Companies that decided to stay within the multi-employer bargaining system increasingly pushed for a decentralisation of bargaining by including opening clauses in industrial agreements, which became a regular feature after 2000. A substantial number of companies, however, decided to opt out from multi-employer collective bargaining by disaffiliating from employers' associations or, in the case of newly established firms, by not joining employers' associations in the first place. The opt-out option was particularly prevalent in eastern Germany, which employers used as a kind of laboratory to establish new patterns of industrial relations and collective bargaining.

Other examples of employers' retreat from collective bargaining include the United Kingdom where, particularly in newly established workplaces, the employers' refusal to recognise trade unions for collective bargaining purposes contributed to the sharp decline of bargaining coverage from 70 per cent in 1970 to 26 per cent in 2016. In Slovenia, another country that saw bargaining coverage plunge, some employers took advantage of the decision to end compulsory membership in the Chamber of Commerce and Industry in 2006 to quit and terminate agreements to cut costs.

A number of other examples illustrate how employers' persistent support for multi-employer bargaining helped to sustain the extent of bargaining. In Sweden, for instance, employers show no signs of leaving employers' organisations despite similar competitive pressures to those experienced by their German counterparts. After the bargaining round in 2010, the employers' federation in engineering (Teknikföretagen) and in textiles and fashion (Teko) threatened to exit from the 'industry agreement' because it failed to deliver the required wage restraint. In response, the two sides of industry increased the coordinating role of the 'industry agreement', which set the pattern for subsequent negotiations (Dølvik and Marginson 2018). In Portugal, employers supported the recovery of bargaining coverage by signing the tripartite agreement of January 2017, which included a commitment to refrain from any unilateral requests to terminate agreements for a period of 18 months. Similarly, in Spain, despite the new possibilities for company-level bargaining provided by legal changes since 2012, the uptake has been slow. This can be partly explained by the employers' reluctance to discard industrial collective agreements, because, to a certain extent, they provide a level playing field for all companies and help to avoid unfair competition and social dumping (Rocha 2018: 258).

Depth of bargaining

Depth of bargaining refers to the extent to which trade unions and employers are involved in collective bargaining at all levels. Because comparative information on how the employers' side is organised in the bargaining process is very scarce, and in many countries simply not available, the remainder of this section will deal exclusively with internal union processes, focussing on the relationship between the union and its members. More generally, depth of bargaining is prominent in bargaining rounds and may influence the duration of bargaining. It is also linked to the coordination of bargaining, whereby bargaining actors of one bargaining unit can decide on the degree of synchronisation with other units in order to equalise pay and employment terms and conditions (Traxler and Mermet 2003). Put differently, negotiation priorities and objectives within and between unions are coordinated to achieve similar bargaining outcomes in separate company-level negotiations within the same industry or between comparable industries. The depth of bargaining ideally implies a bi-directional process, arising from the democratic ethos that underpins trade unionism. It entails the participation of the lower bargaining levels throughout the bargaining process. Those at lower bargaining levels can be first involved in the formulation of bargaining demands, and in setting the bargaining mandate. Subsequently, those at lower bargaining levels can play a role in the ratification of draft collective agreements, and in the follow-up to agreements, if implemented. Those at lower bargaining levels might also be involved in the negotiation process: in adjusting bargaining demands, refining the bargaining mandate to the negotiation dynamics or participating in industrial action.

While the external regulation of collective bargaining can promote depth of bargaining by facilitating coordination between bargaining levels, it is primarily linked to trade unions' internal organisation and distribution of power, financial capacity and personnel resources. The depth of bargaining touches on questions of trade union governance and democracy, and the relationships, articulation and tensions within the trade unions between full-time officers, 'lay' activists and members. It is probable, however, that multi-employer industrial bargaining is, *ceteris paribus*, likely to confer power within a trade union on the centre, where the personnel directly responsible for the conduct of negotiations are usually located.

With these points in mind, different approaches have been conceptualised for describing and analysing relations between trade unions and their members (Heery and Kelly 1994; Snape and Redman 2004; McAlevey 2016). Three approaches to member–union relations have been identified: they can be labelled the 'professional relationship', the 'participative relationship' and the 'managerial relationship'. Each approach assumes different roles for union members, shop stewards or union representatives, works councillors, full-time union officers and union leadership in achieving union objectives in the collective bargaining process or in other realms of union activity. Power relations between those member categories and personnel categories within the union are different in each approach.

First, a professional relationship assumes that members are passive consumers of union services, although with collective interests and needs. The professional relationship is based on an 'economic exchange' between the union and its members for the purpose of realising immediate gains and benefits. Feedback from, and the participation of, members in union activities are minimal, as it is believed that members lack motivation or necessary

skills, or both. Instead, specialist full-time union officers, often supported by research staff, administer union activities, including collective bargaining. Full-time officers tend to assume the collective interest and needs of the union members. In the professional approach, full-time union officers, as protagonists of expert representation, tend to seek compromises with employers in collective bargaining, while union leadership represents the union vis-à-vis government.

Second, a participative relationship is marked by social relationships as trade union members are considered to be potentially active participants. Although this approach largely depends on staff or leadership for decision-making and problem-solving, it occasionally entails the involvement of union activists, who are supportive of union goals, for the mobilisation of members. A more 'radical' and recent variant of this approach is based on 'deep organizing' (Holgate *et al.* 2018), which is marked by covenantal orientations that are based on shared values and ideological identification between the union and its members. In this bottom-up approach, which tries to put self-organisation at its centre, the base of union activists is ideally widened through engaging and mobilising ordinary union members, although such an approach is more likely to be confined to small radical unions or types of alt-unionism in the US context, where company bargaining predominates, if there is any bargaining at all.

Third, as a response to trade union membership decline, and like the professional relationship, the managerial relationship assumes that union membership is mainly instrumental. The interests and needs of ordinary union members, however, are to be considered opaque in the managerial relationship. The emphasis lies on individual interests and needs, which are not given or cannot be defined by full-time officers and union activists. Therefore, these interests and needs have to be researched via surveys targeting specific member groups. Such surveys are also conducted to set the collective bargaining agenda. Promoting individual or differentiated services and targeting recruitment campaigns on particular groups of non-members are seen as strategies for extending unionism to greenfield industries. Under the aegis of the managerial approach the balance of power in union decision-making shifts from union activists or full-time union officers to union leaders, but also to union specialists and consultants providing advice and support.

Assessing the bargaining depth of the countries studied here, based on these three approaches, it should be underlined that the country chapters focus on the dominant approach of the main trade unions within collective bargaining. It should be acknowledged, however, that variation either between unions, within and between industries, or between union confederations in cases of union pluralism, condition internal formal union procedures and actual practices. Formal union procedures are 'linked to historical traditions, which also shape variations in the practical understanding of union democracy and the structures adopted to achieve it' (Gumbrell-McGormick and Hyman 2019: 101). Understandably, approaches related to collective bargaining can also differ from other union activities. Approaches to member-union relations are dynamic and can thus change over time, and they can be combined, resulting in hybridisation. Finally, assessments of the dominant approach to member-union relations within the framework of collective bargaining are carried out from an expert or observer perspective in most country chapters, as research is largely lacking about this bargaining dimension. In other words, in-depth, country-level

and comparative studies of rulebook decision-making procedures and actual intra-union policymaking on collective bargaining are rare. That said, some general observations can be made about union–member relations in collective bargaining and their consequences for the depth of bargaining.

First, approaches to union–member relations in collective bargaining processes are generally ‘sticky’, as trade unions in only a few countries have changed bargaining rules and routines in the period considered here. The participative approach, with considerable input from below, tends to be dominant in several countries, especially those with a strong and long-term collective bargaining tradition. Although the absolute number of shop stewards or trade union representatives is high, however, a proportion of union members tend to be passive in high-union density countries, such as Belgium, Denmark or Sweden, all ‘Ghent system countries’, and this despite the intentions of the participative approach. Furthermore, the engagement and participation of the rank-and-file in collective bargaining does not exclude the use of surveys, prominent in the managerial approach, or quantitative measures providing a technocratic framework for negotiations, as in the professional approach. The latter approach certainly prevails in a number of countries, mostly in central and eastern Europe, but not always, as the Portuguese case illustrates. Limited rank-and-file involvement in the collective bargaining process can simply reflect bargaining traditions, but can also stem from the fact that some unions, especially in central and eastern Europe, lack personnel and financial resources. Both explanations are interrelated. In any case, the ‘stickiness’ in union–member relations regarding collective bargaining implies that the participatory approach and, to a lesser extent, the professional approach typify the depth of bargaining rather than the managerial approach.

Second, it is important to consider the bargaining level in assessing the depth of bargaining. Thus, the odds that depth of bargaining will increase by shifting from a professional to a participatory approach are higher in decentralised systems of collective bargaining, with smaller bargaining units (Clegg 1976). This is especially noticeable in some countries with multi-employer bargaining systems, such as Denmark and Sweden: while the professional approach is dominant at the industrial level, deeper involvement of rank-and-file members in the bargaining process often prevails at company level. Conversely, in the Irish case, social partnership at the national level overshadowed collective bargaining at lower levels, so that the depth of bargaining was limited. In the same vein, inter-union frictions and intra-union tensions, with a disconnect between the union confederation and its affiliates, are occasionally apparent in centralised bargaining systems. Intra-union divisions based on, for instance, ethno-linguistic dimensions or the distinction in employment statutes between manual and white-collar workers, may further complicate the depth of bargaining. A quintessential example of these different divisions marking trade unions is Belgium. There is also a trade-off between the depth of bargaining and the number of unions involved in the bargaining process. In Croatia, for example, the depth of bargaining becomes weaker if more unions are involved in the negotiations, so that internal procedures do not jeopardise external union relationships and inter-union coordination costs are lowered. Furthermore, the depth of bargaining is also limited if union representation is weak at the company level. Moreover, at company level, not only trade unions and their members set the bargaining agenda: in several countries, works councils or non-union bodies are granted an informal or formal bargaining role (see Security of bargaining). But seeking compromises with

management and sometimes leaning to concession bargaining, works councils and other bodies tend to adopt a professional approach.

Finally, while the managerial approach has gained importance in other fields of trade union activity, notably in organising (Gumbrell-McCormick and Hyman 2003: 95–97), it seems that this is less the case in collective bargaining. In countries in which unions have been influenced by the managerial approach, it is combined with other approaches. Unions in Germany and the Netherlands demonstrate that the depth of bargaining can be less ‘sticky’. German unions have responded to membership decline by shifting from a largely professional approach towards a hybrid approach, borrowing from the participatory and managerial approaches in trying to involve their members and even non-members in the bargaining process. A recent example is IG Metall’s strategy of basing its demands in the 2018 bargaining round on a large-scale survey, in which more than 700,000 employees expressed their bargaining preferences (Schulten 2019: 18). In contrast to Germany, but in a similar context of membership decline, Dutch unions tend towards a more managerial approach, which is also extended towards non-union members. A notable exception is, however, the depth of bargaining in cleaning, where a participatory approach is dominant due to the influence of the ‘organising model’ (Connolly *et al.* 2017; Knotter 2017).

Degree of control of collective agreements

Degree of control refers to the extent to which collective agreements define the employees’ actual terms and conditions. Degree of control therefore concerns three issues. First, the content of agreements in terms of the detail with which they specify mandatory terms and conditions. Second, implementation and monitoring. And third, the various mechanisms for dealing with disputes about the interpretation of an agreement, including mediation and arbitration procedures.

The first issue, the content of collective agreements, is closely linked to the regulatory capacity of collective bargaining (see Extent of bargaining). Whereas extent and coverage concern the number of workers covered by collective agreements and whether collective agreements still exist, degree of control concerns whether, where collective agreements still exist, actual terms and conditions correspond to the terms of the agreement. This question is particularly relevant for industrial agreements. In some countries, such as Croatia and Slovakia, industry-level agreements leave actual wage setting to the company level. Industrial agreements do not strictly define the basic wage in Croatia, whereas in Slovakia they only define minimum standards and do not include specific wage grades. In these cases, the degree of control is necessarily limited. In other countries, however, decentralisation negatively affects the degree of control because industry-level agreements increasingly turn into framework agreements, leaving ample room for derogations or more specific provisions in company-level agreements. The examples discussed in more detail above (see Level of bargaining) include Denmark, with a shift from a normal wage system to a minimum wage system and figureless agreements; Germany, where opening clauses have become a standard feature in industrial collective agreements; and France, Greece, Portugal and Spain, where the

favourability principle was abolished or reversed, so that the company level takes precedence over the industry level.

In the case of organised decentralisation, the devolution of bargaining competences from the industry to the company level should, in principle, not negatively affect the overall degree of control because company-level agreements replace and complement industrial agreements in defining the actual terms and conditions. Evidence from the country chapters illustrates, however, that even in Denmark and Sweden, where the decentralisation of bargaining is marked by strong articulation between the industry and the company level, based on a single-channel system of interest representation and encompassing trade unions and employers' associations, there is a growing trend towards a diversification of wages and terms and conditions. This is even more pronounced in countries with less well-functioning articulation mechanisms or in countries characterised by disorganised decentralisation. Decentralisation, therefore, almost inevitably leads to fragmentation and diversification of wages and terms and conditions, which undermines the most central protective function of collective agreements, which is to take wages and working conditions out of competition.

When assessing the degree of control, the scope of agreements is also an important factor with regard to what kinds of workers are covered by a collective agreement. Often, collective agreements apply only to the 'core' workforce and exclude certain categories of workers. In the southern part of Cyprus, for instance, the degree of control of collective agreements is seriously hampered by the growing proportion of the workforce employed on a temporary basis on fixed-term or service contracts, that is, outside the remit of collective agreements, even though they perform the same tasks as the so-called 'core' workforce. The scope of the agreement, therefore, influences the degree of control not only with regard to the issues covered, but also with regard to the category of workers covered by a collective agreement: that is, whether it is inclusive or exclusive.

The second factor that influences the degree of control of collective agreements is the monitoring of employers' compliance with the agreement. In the majority of EU Member States it is the formal and principal responsibility of the labour inspectorate as a public body to ensure that actual terms and conditions comply with collective agreements and the law. The degree of control exercised by the labour inspectorate will depend, *inter alia*, on its regulation, competences, allocated budget and the room provided for the bargaining actors to influence its discretionary power. Exceptions are those countries with a strong voluntarist industrial relations tradition, such as Denmark, Finland, Sweden and the United Kingdom, where local and workplace trade union structures are responsible for monitoring the implementation of collective agreements. In Denmark and Sweden, there is a separate Working Environment Authority, which carries out inspections of the working environment and working time. To this group of countries one can add the Netherlands, where the law stipulates that it is up to the bargaining parties to control and ensure compliance with the agreement. Many agreements in the Netherlands contain provisions to improve compliance, including the establishment of an inspectorate structure, particularly in those industries with a high risk of non-compliance, namely construction, retail and the temporary agency industry.

The other exceptions are Austria and Germany, where, in the context of the dual system of interest representation, works councils are responsible for monitoring compliance with collective agreements and the law. In dual systems of interest representation, there are two important preconditions for effective implementation of collective agreements and the monitoring of compliance: first, the presence of a works council, and second, well-functioning articulation between company-level works councils and the trade union that negotiated the agreement at industry level. Although the first precondition seems fairly obvious, in Germany only 9 per cent of all establishments, covering 41 per cent of the workforce, have a works council. This representation gap poses a considerable challenge for the effective implementation and monitoring of agreements, in particular in small- and medium-sized enterprises, which are much less likely to have works councils than large companies. The close link between works councils and trade unions is important because German works councils are only responsible for monitoring compliance; they have no right to enforce collective agreements, for instance, by taking the company to court. This is because rights based on collective agreements are individual rights. In the case of non-compliance only the individual employee can take the company to court. This is where the trade union undertakes an important role because it provides important advice to works councils, as well as legal support and protection for individual employees. As a rule, this even covers legal costs.

Thus, the key to ensuring compliance with collective agreements, and therefore a high degree of control, is the presence of workplace employee representation structures, regardless of whether these are works councils in dual systems of interest representation or union structures in the case of single-channel systems. Even in those countries where a public labour inspectorate monitors collective agreements, the presence of union structures is important because, in practice, the labour inspectorate depends strongly on the information provided by company-level union structures in order to take action. These two points suggest that the degree of control is likely to be less developed where unionisation or the rate of coverage of works councils is low.

The third element that determines the degree of control comprises dispute resolution mechanisms to deal with conflicts concerning the interpretation of an agreement. All countries covered in this publication have staged dispute resolution mechanisms of some kind, which normally range from conciliation, mediation and arbitration to court action (Purcell 2010). Conciliation and mediation are often used synonymously with reference to the involvement of a third party with the aim of facilitating and encouraging a common understanding among the parties involved. Arbitration, as a rule, refers to the involvement of a third party responsible for hearing the case and eventually taking a binding decision. In most cases, a dispute must have gone through a process of mediation and/or arbitration before it passes to a court.

The specific form of these dispute resolution mechanisms varies considerably across the EU Member States, depending on the national industrial relations tradition. In the Nordic countries, for instance, with their strong voluntarist tradition, collective agreements define the procedures of a staged process of negotiations for the bargaining parties, which start at workplace level. If no solution is found, the matter is referred to the industry or even cross-industry level, before, if a solution has still not been found, the

dispute is settled by the industrial arbitration tribunal or the labour court as a last resort. In other countries with a voluntarist tradition, such as the United Kingdom and Ireland, the bargaining parties are also encouraged to find a solution through negotiations, but the process is supported by independent statutory bodies: the Advisory, Conciliation and Arbitration Service in the United Kingdom and the Workplace Relations Commission in Ireland. In other countries, the two sides of industry set up special bodies. In Croatia, for instance, the two sides try to resolve disputes through negotiations, either by the standing body for monitoring and interpreting collective agreements or an ad hoc bargaining committee. Similar bipartite structures to deal with disputes concerning the interpretation of collective agreements have been set up in Belgium, Germany and Luxembourg. Another way of involving the two sides of industry in the handling of disputes are labour disputes commissions, which exist in Estonia, Latvia and Lithuania. In Lithuania, for instance, the labour dispute commissions comprise an equal number of employer and employee representatives. The labour dispute commission hears all cases involving collective industrial labour disputes about compliance with labour regulations. All cases must pass through the labour disputes commission before they can be considered by a court.

Recent reforms of dispute settlement procedures have had different objectives. Conferring legal status on the industrial arbitration system in Denmark in 2008 was aimed at strengthening and improving the system and, therefore, strengthening the degree of control of collective agreements. The same objective underpinned the introduction of a conciliation procedure in Latvia in 2008 (Voss *et al.* 2015: 26). Other reforms, however, considerably weakened the degree of control. The most far-reaching reform of the arbitration system took place in Greece as a consequence of the requirements imposed on the Greek government by the Troika as part of the financial rescue programme. In 2010, the government first extended the principle of unilateral recourse to arbitration, which previously existed only for the employee side, to the employer side. In 2012, the government abolished the principle of unilateral recourse by making arbitration conditional on the consent of both sides, which essentially provided the employers with a veto on arbitration. The government also restricted the scope of arbitration awards to the basic wage. Subsequently, the Council of State invalidated these arbitration reforms as unconstitutional and restored the previous legislative framework. The parliament, however, responded by creating a burdensome and time-consuming process, thus successfully restraining the restorative effect of the Council of State's decision. This policy achieved its intended effect as there was a dramatic drop in arbitration decisions between 2010 and 2016.

Assessing the development of the degree of control of collective agreements more generally, the country chapters illustrate a decreasing trend. One reason is the reforms leading to the decentralisation of collective bargaining. The country chapters also demonstrate, however, that in a range of countries government policies have reduced the degree of control by explicitly restricting monitoring and conflict resolution institutions, the original intention of which was to ensure or increase the degree of control of collective agreements. Besides Greece, there is Hungary, where there was no established grievance procedure in the first place, and the government targeted the trade unions' capacity to monitor compliance. The 2012 Labour Code not only transferred the right

to monitor working conditions from trade unions to works councils, but also curbed the labour inspectorates' scope of action. Furthermore, in 2015 the government reorganised the labour inspectorate and introduced waivers on fines, especially in SMEs. Similarly, cuts in the resources available to the labour inspectorate in Portugal, coupled with the increasing weakness of trade unions at the workplace level, particularly in SMEs, made it more difficult to detect illegal practices that circumvent collective agreements. These measures to reduce the degree of control of collective agreements can be seen as part of a broader strategy to shift the balance of power in favour of employers and to extend their scope of action.

Scope of agreements

The scope of collective agreements, or the range of items set by collective bargaining, is marked by issues of quality and quantity. Quality refers to the actual substance of collective agreements, which is influenced primarily by the balance of power between the trade union(s) and the employer or employer associations. Quantity may be defined by the regulatory framework, which provides the space for employment terms and conditions subjected to collective bargaining and demarcates managerial prerogatives. Extension mechanisms can increase the scope of collective agreements, however, especially in countries in which the employers' association organisation rate is weak, or where union density is low, as in central and eastern Europe. Moreover, although with notable differences between central and eastern European countries, the turmoil and uncertainty associated with the fall of the communist regimes demanded stability in employment relations through legal minimum standards set during or after the transition (Bohle and Greskovits 2012). This has curtailed the scope for collective agreements from the very start in most central and eastern European countries. This situation contrasts with that of much of western Europe, where, historically, grassroots dynamics and cross-class coalition-building have generally prompted collective bargaining systems based on corporatist arrangements or voluntarism (Berger and Compston 2002; Crouch 1993).

Nevertheless, in the period considered here, the scope of collective bargaining is marked by contraction. The decline in the extent of bargaining is associated with a reduction in the scope of bargaining in several countries. Thus, low bargaining coverage implies that collective agreements are less significant in determining pay and terms and conditions. In this sense, collective agreements, conceptually, are far less a public good. They are increasingly a private good, regulating the pay and employment terms and conditions of unionised companies. A 'bargaining drought' has been pronounced throughout the private sector in the United Kingdom, and in most central and eastern European countries employment terms and conditions tend to be laid down by law. Likewise, while union presence tends to be stronger in the public sector, the scope of bargaining is generally more limited as genuine collective bargaining is restricted to certain occupations or industries. In some countries, collective bargaining has also almost ground to a halt, limiting the replacement of new agreements, so that there has been no widening of the scope of bargaining. Countries with strong bargaining traditions can be considered islands in a sea in which collective bargaining is sinking. Even in some

of these countries, increased derogation possibilities for individual companies have made inroads in the scope of bargaining. The scope of bargaining is also influenced or overruled by state 'intervention' affecting the autonomy of trade unions, employers and employers' associations, and the capacity of these organisations to regulate pay and employment terms and conditions. Moreover, processes of labour market segmentation and fragmentation, and increasing employment precarity, undermine the scope of bargaining if trade unions are unable to adapt their governance structures and strategies to promote inclusive solidarity through comprehensive collective agreements (Doellgast *et al.* 2018).

Turning to the quality dimension of the scope of bargaining, three main dimensions come to the fore in terms of the range of issues tackled by collective agreements. First, even if collective bargaining occurs, the bargaining agenda may be hollowed out in several countries. While the United Kingdom is characterised by a narrowing of the bargaining agenda, in various central and eastern European countries collective agreements merely reiterate legal minimum standards of employment terms and conditions, such as industry-level agreements in Czechia and Slovakia. Likewise, innovative agreements that create managerial obligations and new rights for workers seem far less common or even absent in countries where company bargaining is dominant. Nevertheless, while such agreements are associated with higher bargaining levels, today's collective agreements at the industrial level tend to set only minimum employment terms and conditions in those industries in which organised decentralisation is the order of the day. These agreements provide a negotiating framework for bargaining at the company level, with the result that the actual scope of bargaining becomes more tangible at this level. Collective agreements with little substance at the industrial level are thus considered a signal to start bargaining at the company level in multi-employer bargaining systems. This indicates that the range of issues in collective agreements is linked to bargaining level and degree of decentralisation.

At the company level, or in single-employer bargaining systems, concluding agreements that only enumerate legal minimum standards, of the kind concluded in many central and eastern European countries, is at least a guarantee that management will respect and not bypass standards. These agreements can also be a tactical way for trade unions to sustain the bargaining relationship with management. Unions hope then to conclude better agreements if the economic context changes and 'makes it possible'. The same reasons also explain the trade-off that is made in concession bargaining: collective agreements are concluded that temporarily lower employment terms and conditions in exchange for maintaining employment levels. Similarly, the scope of bargaining has not widened in some crisis-hit southern European countries, as the renewal of collective agreements has come to a standstill because of the economic crisis. The 2008 crisis and its aftermath has provided an 'ideal' context for concession bargaining, which has often been encouraged by new regulations on wage-setting and labour market flexibilisation. Concession bargaining is not strictly confined to the crisis context, however. Various new regulatory initiatives for changing employment terms and conditions are part of long-term tendencies before the crisis, and they at least confirm, but more likely reinforce them. Thus, wage setting was every so often marked by modest wage increases before 2008. Likewise, the further managerially-dominated flexibilisation of working

hours in terms of numbers and organisation has accentuated pre-crisis tendencies (Pisarczyk 2017). It remains to be seen, from a workers' perspective, whether the quality dimension of the scope of bargaining will recover when, or if, the economy picks up.

A second dimension of the quality of the scope of bargaining confirms earlier findings concerning a broadening of the scope of collective agreements to include more qualitative issues, such as gender equality and work–life balance. This development is most marked in industries with strong bargaining traditions, but is not found in all countries. Collective agreements dealing with qualitative items, for example, are nearly absent from Poland. Nevertheless, qualitative issues reflect a shift in union interests that is primarily linked to changing member composition and preferences, of which the increased importance of women among union members is a key factor. More family-friendly work arrangements and progress in work–life balance are often a response to more intensive working-time arrangements and the advancement of flexible types of work organisation linked to efforts to reduce labour costs. The economic crisis, however, seems to have curtailed progress on the work–life balance agenda (Kresal 2017). Equally, the broadening of collective agreements to include more qualitative items also follows from unions' bargaining strategies in pursuit of negotiating flexibility, whereby wage moderation or restraint is tolerated if compensated by employment terms and conditions of a qualitative character.

A third qualitative dimension of the scope of bargaining concerns the objectives of collective bargaining. While the main goals of collective bargaining are essentially to equalise workers' pay and employment terms and conditions within a bargaining unit, this aim has been downgraded in several countries by systems within which individual workers can choose options à-la-carte. Although such 'cafeteria' formulae demonstrate that collective bargaining can go hand in hand with individualisation of the employment relationship, they require trade unions to maintain a degree of control over collective agreements. This leaves it open whether pay flexibilisation via individualised benefits is not a Faustian bargain for trade unions, especially 'given traditional assumptions that solidarity requires the standardisation of conditions and rewards across the workforce as a whole' (Gumbrell-McCormick and Hyman 2003: 108). The individualisation of pay is particularly evident in performance-related and 'merit-based' pay systems, driven by human resource policies reflecting management preferences. Performance-based management systems exemplify how company financial results and, more generally, macroeconomic performance influence bargaining scope in general.

Key trends and policy pointers

A quick glance at the titles of the various country chapters of this publication illustrates the dire straits of collective bargaining in Europe. Stability and resilience are the most positive developments referred to in the titles of, for example, the chapters on Belgium, Croatia and Italy. The titles of most of the other chapters contain some kind of reference to erosion, decentralisation or fragmentation. If there is one feature shared by almost all countries covered in this publication it is that over the past 20 years the regulatory capacity of collective bargaining has decreased, albeit to varying degrees; and that in

most cases policymakers at European and national level have played an active role in advancing this development. This active role also includes what lawyers would call a ‘failure to render assistance’.

Baccaro and Howell (2017) depict this development as a universal long-term trajectory of neoliberal transformation. Despite continuing institutional differences across European countries, the result of this neoliberal transformation is a convergence in institutional functioning leading to an increase in employers’ discretion over determining wages and other terms and conditions of employment. The apodictic and universal nature of this assessment has been challenged by Dølvik and Marginson (2018), whose analysis of collective bargaining developments in northern European countries illustrates that the incremental adaptations made to wage regulation arrangements are aimed principally at stabilising, rather than undermining such arrangements and are therefore at odds with Baccaro and Howell’s thesis of a universal neoliberal trajectory. Based on the northern European experience, Dølvik and Marginson (2018) see ‘a trajectory of continued and perhaps sharpened divergence in European industrial relations’ (2018: 423).

The findings of the country chapters suggest an intermediate position. While we agree with much of Baccaro and Howell’s general analysis of a strong influence of state-supported neoliberal policies in collective bargaining arrangements, which have tilted the balance of power even further to the advantage of employers, the country chapters provide only limited evidence for their universal character. By the same token, while Dølvik and Marginson’s analysis provides important empirical evidence to refute the universal character of Baccaro and Howell’s assertion of a neoliberal trajectory, their exclusive focus on northern European countries entails a risk of downplaying the danger that neoliberal-minded policymaking poses to the regulatory capacity of collective bargaining.

The analysis of developments in 28 countries almost by definition excludes identifying a universal trend that applies to all of these countries. Each EU Member State has its own distinctive industrial relations tradition and institutional and political framework conditions, which have shaped the direction and extent of change in the past 20 years in various ways. First, certain framework conditions and constellations of actors are more prone to pursue or fall in with neoliberal policies than others. Second, where neoliberal policies have been pursued, in some countries there were stronger countervailing forces limiting the impact of attempts to change bargaining institutions in a neoliberal direction. Third, as a consequence of the first two dynamics, countries are at very different stages in the neoliberal trajectory.

More concretely, this means that there are a range of mega-trends, such as intensified international competition, financialisation, the structural economic shift from manufacturing to services and the weakness or absence of classic social democratic governments, as traditional allies of labour and trade unions. These inherently shift the balance of power between trade unions and employers even further in favour of the latter and so increase the pressure to change collective bargaining systems in a manner consistent with the neoliberal policy agenda, which increases employers’ discretion. The neoliberal pressure resulting from these dynamics is more or less the

same for all countries. National collective bargaining systems, however, do not have the same capacity to resist. In countries with strong and highly coordinated multi-employer bargaining systems, strong trade union movements with a robust presence at the company level, broad-based employers' associations that support multi-employer bargaining and governments that refrain from actively undermining bargaining security, the countervailing forces to neoliberal changes are much stronger. The strength of these countervailing forces differs across time and within countries, depending on the specific power constellation of industrial relations actors and their interests and strategies. This applies, in particular, to the role of the state, whose approach to collective bargaining is closely linked to the political orientation of the current government. It is against this background that the country chapters confirm the general neoliberal trajectory of undermining the regulatory capacity of collective bargaining (Baccaro and Howell 2017), while also illustrating that the extent of these dynamics differs considerably across the 28 EU Member States. This, in turn, confirms an increased divergence in collective bargaining across Europe (Dølvik and Marginson 2018). Bearing this in mind, the objectives of the remainder of this section are, first, to identify the factors that account for different extents to which the regulatory capacity of collective bargaining has declined across the EU28 and, second, to address the key policy issue of how we can reverse this diminution of the significance of collective bargaining as a tool to jointly regulate the employment relationship.

Accounting for differences

The regulatory capacity of collective bargaining is influenced mainly by the extent of bargaining, referring to the proportion of the workforce covered by collective agreements, and the degree of control, referring to the effective implementation, monitoring and enforcement of collective agreements, which, in turn, ensures that the terms of agreements are actually complied with. Concerning the extent of bargaining, the crucial factor that accounts for differences in the decline of the regulatory capacity of collective bargaining across Europe is the strength of multi-employer bargaining. In those countries in which bargaining coverage has diminished, the decline of multi-employer bargaining has, as a rule, been actively promoted by an increasing push from European and national policymakers and/or employers towards decentralisation. This involves a gradual increase in the significance of company-level bargaining and unilateral decision-making by employers. In contrast, those countries in which bargaining coverage has remained fairly stable over time are characterised by stability in multi-employer bargaining. Government measures that actively undermine multi-employer bargaining include far-reaching changes to the institutional set-up, such as the outright abolition of (cross-)industrial bargaining; the weakening of articulation mechanisms, such as the abolition or reversal of the favourability principle; and the introduction of more restrictive criteria for the extension of collective agreements.

Another important factor underpinning multi-employer bargaining is the organisational strength of the bargaining parties. Here, the state has also intervened in a restrictive manner by reducing the security of bargaining. This has involved measures that affect trade unions' institutional power resources, such as tightening up representativeness

criteria as a precondition for union recognition for bargaining purposes; making it easier for non-union representation structures to negotiate company-level agreements; and, particularly in central and eastern European countries, degrading the regulatory role of tripartite social dialogue institutions. Other state measures aimed at reducing bargaining security by undermining trade unions' organisational power resources include policy measures and continued political pressure to weaken the Ghent system in Belgium and the Nordic countries; curbing the right to strike, particularly in the public sector, as one of the few remaining union strongholds; and, most dramatically in the United Kingdom, enacting legislation to restrict the capacity of trade unions to organise in expanding sectors of the economy.

In addition to government policies designed to undermine the strength of multi-employer bargaining, the weakness of employers' organisations and their lack of or waning support for multi-employer bargaining have contributed to reducing the regulatory capacity of collective bargaining. In central and eastern European countries, the weakness and fragmentation of employers' associations, the disinclination of many companies to join an employers' association and the refusal of employers' associations to negotiate with trade unions are important explanations of the absence of multi-employer bargaining. Similarly, in western European countries, the employers' incremental retreat from multi-employer bargaining arrangements has also contributed to the decline in bargaining coverage. Furthermore, in those western European countries in which bargaining coverage has remained comparatively high, such as the Nordic countries, Belgium, France, Italy, the Netherlands and Spain, the employers' association rate has also remained high and they have retained their broadly supportive attitude towards multi-employer bargaining. In France, Italy and Spain this can be seen in the limited uptake of the newly created opportunities for negotiations at company level (Pedersini 2018: 293).

The degree of control of agreements is the second main factor that influences the regulatory capacity of collective bargaining. Three issues account for differences in the extent of any decrease in such capacity. First, the scope of agreements, referring to the issues covered in collective agreements. Second, trade union presence at the workplace or, in dual systems of interest representation, close articulation between company-level representation structures, such as works councils, and trade unions at industry level. Third, the existence of effectively functioning mediation and arbitration mechanisms to resolve disputes concerning the interpretation of agreements in a way that ensures a level playing field and constrains the employers' capacity to disregard collective agreements by acting unilaterally.

Developments in the scope of agreements may limit the regulatory capacity of collective bargaining in different ways. One trend is a contraction of the bargaining agenda. Particularly in central and eastern European countries, the importance of legislation in setting terms and conditions has increased at the expense of collective agreements. In some countries, collective agreements merely reiterate the legal minimum standards. Another development, more common in countries with a long tradition of multi-employer bargaining, is a broadening of the bargaining agenda by addressing more qualitative issues, such as gender equality and work–life balance in response to changed preferences

of the workforce. Often, however, this broadening is coupled with a hollowing out of the content of industrial agreements, which increasingly become framework agreements that leave the more specific regulation of the terms and conditions to the company level. Furthermore, in many cases, the inclusion of qualitative issues is linked to increasing the choices of individual employees: for instance, whether they prefer wage increases or more time-off. Overall, these changes in the scope of bargaining have led to increased individualisation and diversification of terms and conditions. This does not necessarily mean a diminution of the regulatory capacity of collective agreements, as long as the unions can ensure that the increased flexibility at the company level is embedded in and guided by the framework set out in the industrial agreement.

Increased individualisation and diversification highlight the importance of the presence of trade unions at the company level and/or close articulation between company-level representation structures and industrial union structures. Throughout the country chapters, this issue emerges as one of the crucial preconditions for ensuring a high degree of control of collective agreements. Trade unions or company-level representation structures with close links to trade unions are the central actor in detecting cases of employers' failure to comply with collective agreements. Even in countries in which the monitoring of agreements is officially the responsibility of a public body, such as the labour inspectorate, the latter often relies on the information provided by workplace unionists to take corrective action. Where the state more generally pursues an approach of reducing the regulatory capacity of collective bargaining, it has tackled the extent of bargaining and the degree of control, for instance, by making it more difficult for trade unions to trigger arbitration; by shifting the responsibility of monitoring collective agreements at company level from trade unions to non-union structures; or by cutting the resources available to labour inspectorates.

The difference in the extent of the decline of regulatory capacity over the past 20 years, ranging from minimal in the Nordic countries to extensive in countries such as Greece and Romania, is accounted for by the presence or absence and the strength of the combined effect of the various factors mentioned above, which influence the extent of bargaining and the degree of control of collective agreements. The different country-specific shapes and combinations of these factors have made some countries move far along the neoliberal trajectory, while others have shown more resilience. This, in turn, has further increased the divergence of collective bargaining arrangements in Europe.

Where do we go from here?

The key policy issue emerging from the reduced significance of collective bargaining as a regulatory tool concerns how this trend can be reversed. The analysis of the key drivers of the continuing erosion of collective bargaining's regulatory capacity shows that an encompassing strategy, first and foremost, needs to strengthen the extent of bargaining and the degree of control of collective agreements. Such an approach needs to include the strengthening of collective bargaining 'from below', focusing on the development of more encompassing bargaining parties with a stronger membership base; and the

strengthening of collective bargaining ‘from above’, focusing on the mobilisation of political and societal support for collective bargaining (Müller and Schulten 2018).

Strengthening collective bargaining from below requires that trade unions develop their organisational power resources in particular by reversing the decline of union density. A broader membership base not only increases their legitimacy in the political arena, but also increases their potential to force employers to the negotiating table. In recent years, trade unions across Europe have made progress in developing new organising strategies to become more attractive for workers in traditionally weakly unionised labour market segments, such as private services and the new economy, and in attracting traditionally underrepresented groups of employees, such as young workers (Bernaciak and Kahancová 2017; Vandaele 2018a, 2018b). Strengthening collective bargaining from below involves developing a stronger trade union presence within companies and at the workplace. The analysis of the driving forces of the erosion of collective bargaining illustrates that a strong union presence at the workplace is an essential prerequisite for a close articulation underpinning multi-employer bargaining and for a high degree of control that ensures proper implementation and monitoring of collective agreements. It should be acknowledged, however, that trade union membership is lower now than at any other time since 1950, despite the enormous resources devoted to organising in some countries. It remains to be seen whether the long-term decline in unionisation can be reversed by union activity alone or requires the assistance of the state in promoting unionisation. If it is the latter, as seems likely, a significant shift away from the neoliberal agenda is required among policymakers.

Any strategy to strengthen collective bargaining from below also requires support from the employers’ side: in particular, in the form of broad-based employers’ associations, which encourage wider bargaining coverage. The support of employers requires the development of comprehensive organisational structures, coupled with a more supportive attitude towards multi-employer bargaining, halting the incremental retreat from multi-employer bargaining arrangements. This also requires that employers’ associations more decisively advocate the advantages of multi-employer collective bargaining in taking wages and working conditions out of competition and in providing an institutionalised process for resolving conflicts of interest (Visser 2016: 2). The strategy of offering selective membership, pursued for example by employers’ associations in Germany, permitting affiliated companies *de facto* to choose to opt out of collective agreements, may help to improve membership levels, but do little to improve the extent of bargaining.

While strengthening collective bargaining from below is an important element in the overall approach to reverse the decline of collective bargaining, all the measures described are time- and resource-intensive, particularly on the trade union side. Furthermore, the current position of trade unions in some countries and industries is so weak that improving the regulatory capacity of collective bargaining will not be possible without the support of the state, strengthening collective bargaining from above. In short, the state’s active undermining of multi-employer collective bargaining over the past 20 years will have to be reversed.

The country chapters illustrate some initiatives by national governments to support multi-employer bargaining. These include recent attempts in Greece, Portugal and Spain to reverse some of the most far-reaching ‘reforms’ that have been introduced in the guise of ‘crisis management’. Further examples are the introduction of a new law for the ‘strengthening of collective bargaining autonomy’ in Germany in 2015 and the start in 2017 of an European Social Fund project to establish industry-level bargaining in five industries in Latvia. While these initiatives are all helpful in supporting multi-employer bargaining in individual countries, a more broad-based revitalisation across the EU28 requires stronger political support from the European level.

In the past 20 years, European institutions, such as the Commission and the European Central Bank, were among the most fervent supporters of a neoliberal transformation of collective bargaining. As part of the Troika and by issuing country-specific recommendations at the end of the annual European Semester process, they advocated decentralisation and a shift from multi- to single-employer bargaining, on the grounds that this would enable companies to swiftly adapt to changing economic circumstances. More recently, however, there have been indications of a change in the European-level narrative in the field of wages and collective bargaining. The new narrative no longer views wages merely as cost factor that needs to be reduced at all costs, but explicitly acknowledges the important role of wages in boosting internal demand and in advancing social cohesion. This broader view of wages also implies that multi-employer bargaining and strong trade unions should be recognised as central to achieving the objective of more dynamic wage growth (European Commission 2018). This view of wages and collective bargaining is part of a broader acknowledgment of the need to strengthen the social dimension of the EU. The most visible sign of this re-orientation is the adoption of the European Pillar of Social Rights (EPSR), Principle 8 of which includes an explicit commitment to encourage the two sides of industry to conclude collective agreements (European Commission 2017: 33). A look at actual practice, however, shows that, to date, European policymakers have failed to live up to the rhetorical commitments made in the EPSR as regards support for collective bargaining. The clearest evidence of this failure is the 2018/2019 country-specific recommendations, which continue to promote the decentralisation of collective bargaining. In the recitals, Italy was asked to support more bargaining at firm level in order to improve the swift adaption of wages to local economic conditions; while Finland received the informal recommendation to continue with more decentralised bargaining at industrial and local level to ensure that wage increases do not harm cost competitiveness (Müller *et al.* 2019: 58).

While these examples illustrate yet another wasted opportunity to contribute to a reversal of the long-term assault on collective bargaining, in principle all the tools needed to reverse the trend at European level are present. In the past, European policymakers have used three tools to change national collective bargaining arrangements along neoliberal lines (Müller and Schulten 2019). First, the Troika made the provision of financial assistance conditional on the implementation of neoliberal structural reforms. Second, at the end of the European Semester, the annual cycle of macroeconomic coordination in the EU, the European Commission issued non-binding country-specific recommendations. Third, the European Commission sought to dominate public discourse on the causes of the crisis in an effort to persuade the broader public that

there is no alternative to austerity and neoliberal structural reforms, including the decentralisation of collective bargaining, as a solution to the crisis.

With the exception of the Troika mechanism all the tools to intervene in national bargaining arrangements are still in place. What works in one direction to foster neoliberal change will also work in the other direction to reverse it. If European policymakers are serious about supporting strong collective bargaining institutions this should be reflected in the measures proposed in country-specific recommendations associated with the European Semester. Concrete measures to strengthen multi-employer collective bargaining could include the introduction or strengthening of existing extension mechanisms, the strengthening of the favourability principle and the introduction of collective bargaining clauses in the rules on public procurement, stating that contracts can be awarded only to contractors who respect the right to collective bargaining and collective agreements. In order to support Member States in building the structures needed for multi-employer bargaining, the EU could, furthermore, introduce a fund specifically dedicated to this purpose.

The fact that, at the time of writing in April 2019, this sounds utopian illustrates the scale of the task ahead for all progressive forces in the EU that support strong collective bargaining arrangements. Furthermore, developments at European and national level are interdependent. Developments at European level are strongly influenced by political constellations at national level. With centre-right governments in the majority of EU Member States at present it is difficult to mobilise political support for reversing neoliberal reforms at the European level. National governments propose the commissioners. In addition, as members of the European Council, national governments also play a decisive role in the European-level polity. This situation illustrates that the reversal of the decline of collective bargaining requires a multi-level approach, including measures at local, national and European level. The rhetorical commitment made by the European Commission and the various national governments in the EPSR to support collective bargaining and its strong link with the European Semester as an implementation tool, gives the EPSR the potential to provide a European impetus to developments at national level. In this sense the EPSR could be a strategic move in the endgame of collective bargaining in Europe.

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All links were checked on 25 April 2019.

Abbreviations

EPSR	European Pillar of Social Rights
ILO	International Labour Organization
OÉT	Országos Érdekegyeztető Tanács (National Council for the Reconciliation of Interests)