

# Workers' rights, worker mobilisation and workers' voice

## Introduction

In his address to the European Parliament on 14 September 2011, ILO Director-General Juan Somavia declared that 'respect for fundamental principles and rights at work is non-negotiable: not even in times of crisis when questions of fairness abound. This is particularly important in countries having to adopt austerity measures. We cannot use the crisis as an excuse to disregard internationally agreed labour standards.'

This warning is clearly not being heeded. As will be elaborated in the first section of this chapter, the labour reforms proposed or initiated by the EU and the Troika have indeed had detrimental effects on workers' rights and working conditions. The austerity regime has forced a convergence towards deregulation by means of far-reaching liberalisation of working time regulations, atypical employment standards, rules on redundancies and industrial relations structures and processes.

The second part of this chapter examines the consistency of strike activity in Europe; by and large, despite – or indeed because of – the crisis and the impact of the austerity regime, the volume of strikes and their patterns have not greatly changed in past decades. The politicising effects of collective action should not be underestimated.

The third part of this chapter turns to the company level, assessing the degree of convergence or divergence evident in the actual application of EU legislation which was designed to promote a transnational, genuinely European approach to workers' participation. The spread, quality, and development of EWC and SE agreements and actual practice indicate that workers and their representatives increasingly recognise the European company level as a crucial transnational arena in which to come to terms with ever-deepening integration.

### Topics

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## Workers' rights under the austerity regime

Figure 6.1 Announced and/or adopted changes to IR/CB systems and certain aspects of labour law

	AT	BE	BG	CY	CZ	DE	DK	EE	ES	FI	FR	GR	HR	HU	IE	IT	LT	LU	LV	NL	NO	PL	PT	RO	SE	SI	SK	UK
Reform of Industrial relations and collective bargaining systems (incl. decentralisation of CB)		●	●	●				●	●	●	●	●	●	●	●	●		●		●		●	●	●			●	
Changes to individual/ collective dismissal rules		●		●	●			●	●		●	●	●	●		●	●		●	●	●	●	●	●		●	●	●
Changes to working time legislation	●	●			●	●	●		●		●	●		●	●	●	●	●	●	●	●		●	●	●	●	●	●
Changes to rules on atypical contracts	●		●		●	●	●	●	●	●	●		●	●	●	●	●		●	●		●	●	●	●	●	●	●
Creation of new types of contract in particular for youth		●	●		●	●		●	●		●	●	●	●		●	●	●	●	●		●	●	●	●	●	●	●

Source: ETUI own research.

### EU austerity measures: towards less protection for workers

Since the economic crisis gathered pace towards the end of 2008, European public authorities and national legislators have initiated or adopted a range of measures designed to boost enterprise flexibility, including in many cases far-reaching amendments to national labour law. This section outlines the background to, and effects of, these measures on workers' rights and working conditions. Despite variations in the nature and depth of the changes enacted, their origins lie in the starkly deregulatory approach thrust upon them by the austerity regime.

In some cases, general labour law reforms were initiated prior to the economic crisis with the professed aim of 'modernising' labour law. In other countries, such as Hungary, a change of government accelerated drastic changes in labour law, even bypassing participatory consultations with, among others, the social partners (for example in Estonia, Hungary and Slovakia). In other instances – in Spain, Greece, Ireland and

Portugal – these structural reforms have been required or indeed forced upon these member states by the European Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF) – i.e. the so-called 'Troika'. Additionally, the European Union, together with the IMF, has undertaken 'missions' to EU member states experiencing economic difficulties, as well as reviews of the economic programmes of the member states receiving financial support.

Many member states justify the labour law reforms by arguing that enhancing labour market flexibility is one of the best responses to the crisis (European Commission 2010). In some countries, measures are only piecemeal, albeit highly deregulatory (AT, BE), while in others they amount to far-reaching overhauls of the whole labour code (HU).

Four main areas of labour law changes can be identified: working time, atypical employment, rules on redundancy, and industrial relations structures and processes, which affect social dialogue and collective bargaining. These reforms tend to be (more) permanent, putting workers in a more precarious and unprotected situation both in general and in the workplace.

With regard to changes to working time, measures tend to increase the maximum lengths of shift periods, increase the amount of potential overtime hours

to be negotiated into the salary (CZ), extend possibilities for overtime and night work (PL), and change compensation for overtime (PT).

Moves towards more flexible conditions for atypical work include the extension of maximum lengths of fixed-term work contracts (CZ, ES, GR, PL, RO, SI), the extension of the number of permissible renewals (SK, PL), and the creation of 'new' types of less protective contract for target groups (CZ, ES, GR, PL, SK). For the latter, evidence shows that in several member states, these new contracts often offer less protection than do normal employment contracts and/or are targeted at specific groups of workers, such as young people, who are already among the most vulnerable as regards labour market entry, progress and retention (see also Chapter 2).

Changes to redundancy rules in the member states range from lowering the severance pay entitlement (CZ, PL), shortening the periods of notice (SK), adding new justifications for individual dismissals (ES, PT), altering thresholds for simplifying collective redundancy procedures (LT) and simplifying administrative procedures in case of individual dismissal (FR).

# Workers' rights under the austerity regime

**Figure 6.2 European Commission Country-specific recommendations 2012-2013 (social field only)**

		AT	BE	BG	CY	CZ	DE	DK	EE	ES	FI	FR	HU	IT	LT	LU	LV	MT	NL	PL	SE	SI	SK	UK	
Wages	reviewing wage indexation		●		●											●		●							
	reviewing wage-setting system - align with productivity developments		●				●				●	●		●				●			●	●			
EPL	adjusting Employment Protection Legislation							●				●		●	●					●	●	●	●		
Labour Market participation	enhancing participation of women	●				●	●						●	●					●		●			●	●
	enhancing participation older workers, promoting active ageing, LLL	●	●							●		●							●	●			●		
	reducing tax disincentives for second earners						●												●						
Youth employment	facilitating transition school to work by incentives for companies to hire young people									●	●													●	●
	facilitating transition school to work through apprenticeships and work-based learning						●	●	●	●		●		●	●	●	●				●		●	●	●
	reducing school/education 'drop outs'	●					●	●	●	●		●	●			●									●
Pensions	explicit link between pensionable age and life expectancy	●	●		●					●	●								●	●	●	●	●	●	●
	reducing early retirement	●	●	●		●		●			●					●			●	●	●	●			
Vulnerable	ensuring the adequacy and coverage of social protection systems				●				●																
	access to quality social services			●																					
Child poverty	better targeting social assistance			●					●						●		●								
	making child support more effective									●															
Tax	facilitating access to childcare services		●																						●
	shift away from labour, with focus on low income earners	●	●			●	●			●		●	●				●							●	

Source: European Commission Country-specific recommendations 2012-2013; note that GR, IE, PT and RO did not get specific recommendations but were in general recommended to implement their respective Memorandums of Understanding (incl. eventual subsequent supplements).

## The EU doggedly pursues its austerity regime

The pressure for further structural reforms is far from waning. While other Troika institutions, in particular the IMF, have admitted that some of their proposed structural reforms – in particular regarding wages – have not only failed to give the envisaged boost, but have even had adverse effects (Blanchard and Leigh 2013), the European Commission continues to bark up the wrong tree by pressing for further austerity measures.

The European Commission's 'Country Specific Recommendations' for 2012-2013 are a case in point. Explaining that labour market reform needs to be driven by more concrete measures if the EU is to return to growth, create jobs that will raise labour standards, alleviate poverty and ensure more sustainable growth, the Commission insists that its recommendations, as endorsed by European Council Decisions, are to be implemented as a matter of priority (European Commission 2012a; 2012b).

The depth of intervention of these proposed measures is unprecedented. No less than 16 out of 27 member states

are advised to rework their wage-setting systems in order to allow alignment with productivity development and/or to review their wage indexation system. Furthermore, the Commission considers the minimum wages in some countries to be too high, claiming that they pose obstacles to growth and employment (BE, SE).

Perhaps as a spoonful of sugar intended to help the bitter medicine of its intrusive demands on wage-setting go down, the Commission has also proposed an EU-level tripartite monitoring system for wage-setting. In the light of the strong tradition of social partner autonomy in wage-setting across Europe, this offer may well turn out to be a poisoned chalice for the European trade union movement – although it may still be preferable to be at the table rather than outside the room.

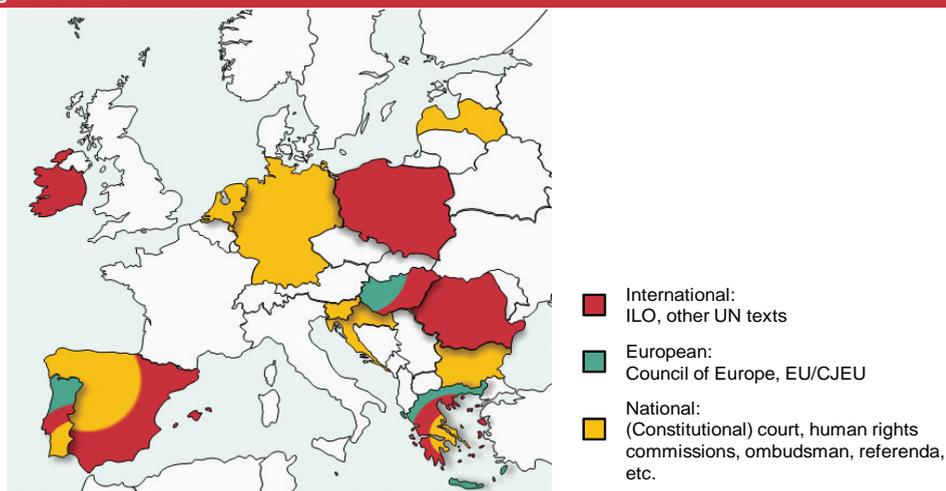
Other member states are advised to adjust their employment protection legislation, in particular to loosen their 'too rigid' regulation of atypical contracts of employment, such as fixed-term, part-time and temporary agency work (CZ, SI, LT). Such further flexibilisation is likely simply to exacerbate the plight of those workers who are already among the most vulnerable. And there remains of course the pressure by the Troika to further implement the reform programmes agreed under the Memorandums of Understanding (ES, GR, IE, PT).

What is known in sporting circles as 'no pain, no gain' thus translates into 'no pain, no rescue' – clearly not an easy position from which member states could resist the proposed reforms, even if in many cases they serve only to worsen workers' protection and social welfare.

As long as DG ECFIN sets the tone, the dogma of liberalisation and flexibilisation of labour markets will remain the tireless mantra. This is clearly shown by the recent DG ECFIN report on 'Labour market developments in Europe 2012' (European Commission 2012c), in which reforms that systematically decrease worker and social rights are deemed to be 'employment-friendly'; such reforms range from measures that decrease notice periods and levels of severance pay, and loosen the limitations to the use of typical contracts, to measures reducing constraints on minimum working time. Also rated 'employment-friendly' are 'measures that decrease statutory and contractual minimum wages (...)' and government interventions that 'decrease the coverage (...) of collective bargaining' and 'result in an overall reduction in the wage-setting power of trade unions' (ibid.; italics as in original).

## Workers' rights under the austerity regime

Figure 6.3 Trade union litigation actions



Source: ETUI own research.

### Trade unions say: 'See you in court!'

Alongside the traditional responses of demonstrations and collective action, trade unions and workers have recently taken a new tack by filing formal legal complaints at national, European and international levels in order to insist on their countries' adherence to fundamental (social) rights instruments.

In November 2012, the ILO Committee of Freedom of Association examined complaints submitted by several Greek trade unions with the support of the International Trade Union Confederation (ITUC) concerning the austerity measures taken within the framework of the international loan mechanism agreed upon with the Troika. The Committee found that the Troika's request to suspend and/or derogate from collective agreements and to decentralise collective bargaining violated ILO Conventions 87 and 98. Spanish trade unions have adopted the same course of defence in relation to measures contravening these Conventions as well as ILO Convention 158 on dismissal protection.

In Greece, Romania, and Hungary, trade unions triggered high-level ILO assistance missions to examine whether

measures introduced or announced are compatible with fundamental labour rights. In other cases trade unions approached the UN, such as the Irish application to the UN Human Rights Council Universal Periodical Review, or the filing by the Portuguese education trade unions of allegations that the measures taken violate ILO/UNESCO Recommendations concerning the Status of Teachers (1966) and of Higher-Education Teaching Personnel (1997).

In two recent cases, the European Committee of Social Rights (ECSR), the main supervisory body of the (Revised) Social Charter of the Council of Europe, examining complaints on austerity measures taken in Greece, concluded that a range of fundamental social rights of the Revised European Social Charter had indeed been violated, such as the right to fair remuneration, the right of young persons to protection, and the right to social security. Five more complaints by Greek trade unions regarding recent pension reforms enacted at the behest of the Troika are still pending. Trade unions in Portugal and Italy are also considering similar complaints to the ECSR. In Hungary, more than 8000 individuals, acting with trade union support, filed cases to the European Court of Human Rights, alleging that recent pension reforms violated the European Convention of Fundamental Rights. On 12 June 2012, the Council of Europe

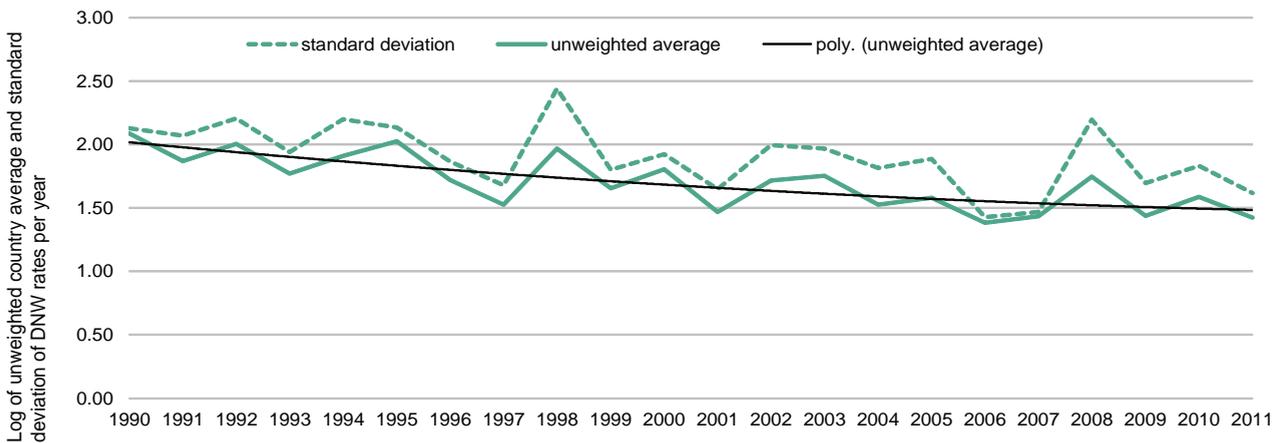
Parliamentary Assembly adopted Resolution 1884 on 'Austerity measures – a danger for democracy and social rights'; a further resolution on the impact of the crisis on the right to collective bargaining is in preparation.

At EU level, and in addition to an increasing number of cases submitted to the CJEU on labour law reforms on fixed-term and part-time work in particular (GHK 2012), Portuguese trade unions in the banking sector have submitted a case to the CJEU contesting the validity of public sector salary cuts against the EU Charter of Fundamental Rights. In 2012, the EP Employment Committee adopted a critical own-initiative study on the enforcement of fundamental workers' rights following the austerity measures introduced in seven countries (FR, GR, IT, NL, HU, SE, UK) (European Parliament 2012).

At national level, trade unions are also increasingly applying to constitutional courts (ES, DE, GR, NL, PT, EE, other (labour) courts (PT), human rights commissions (GR), or are striving to abolish proposed reforms by triggering national referendums (SI).

## Strikes and worker mobilisation in Europe

Figure 6.4 Smoothed values of average country DNW rates, 1990-2011



Source: Eurostat and national statistical offices. See Vandaele (2011).

Note: maximum 24 countries included: AT, BE, CH, CY, DE, DK, EE, ES, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SK and UK. For correcting for systematic variances in the official cross-country strike data, the logarithm is used for measuring the overall strike trend.

### Is labour lying low?

In the early 1960s it was predicted that strikes would 'wither away' (Ross and Hartman 1960) in most of the advanced capitalist societies, mainly due to institutional reforms which facilitate dispute settlement. Yet a massive offensive strike wave internationally, with *mai 68* in France and the *autunno caldo* in Italy a year later being its quintessential examples, highlighted the 'resurgence of class conflict' (Crouch and Pizzorno 1978). In the late 1970s and early 1980s, times with high and rising unemployment levels, the strike volume declined substantially in western Europe (Shalev 1992). Later studies on the strike volume in the 1990s and early 2000s found evidence for a continued pattern of declining but still diverging strike rates across western Europe (Edwards and Hyman 1994; Scheuer 2006). This is also the strike picture that was painted up until the first two years of the current recession (Gall 2012; Vandaele 2011). The strike volume continued to decline in western Europe on an even wider scale than before, although less sharply than in the previous decades. Meanwhile, considerable cross-country differences in strike levels remained intact. Equally, in central and eastern Europe, the strike volume stood

at a low level in the 2000s but national strike patterns persisted (Bohle and Greskovits 2012).

Has the strike volume fallen further after the austerity drive of the European governments? In seeking to answer this question here, the most recent data on the strike volume are used. It should be noted here that authorities underestimate the amount of strike activity. The reporting is sometimes inadequate and authorities use different inclusion criteria which can, moreover, change over time. Generally, the strike volume (days not worked (DNW) due to strikes per 1,000 employees) is considered the most reliable indicator for comparing countries over time.

The thick line in Figure 6.4 looks at the overall annual trend in the relative strike volume in at most 24 European countries from 1991 to 2011 – for lack of data, not all countries are included for each year. The strike volume clearly continues a downward trajectory since the 2000s; a stable set of countries for which all strike data is available in every single year – not depicted here – confirms this trend.

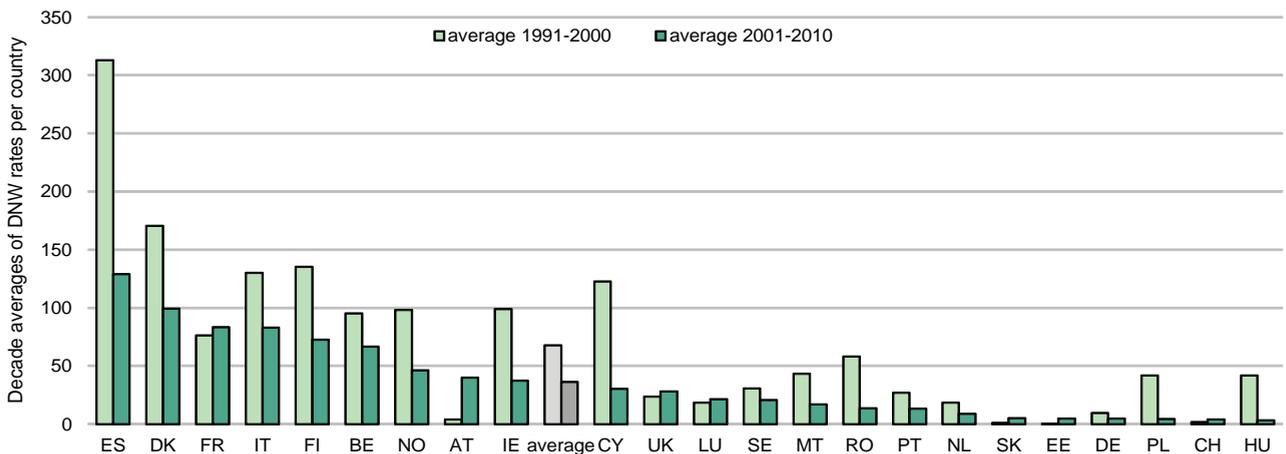
However, the extent of the decline in strike volume should not be overstated. A notorious statistical problem is that official data on strikes often exclude strikes in the public sector and general strikes; this makes the data increasingly less reliable since it is precisely these

kinds of strike which have been on the rise in various European countries in the 2000s (Gall 2012; Hamann *et al.* 2012). Thus, the exclusion of strike action in the public sector and of general strikes from official strike statistics contributes to the further underestimation of the strike phenomenon.

Furthermore, the broken line shows the standard deviation, which measures how far the strike volume of each country is dispersed from the average. The broken line thus depicts the variation between the countries. The broken line of the standard deviation runs largely in parallel with the thick line of the average. This suggests that countries are moving along the same trajectory – labour quiescence – but that there is no outspoken convergence trend. Country variation is still apparent and this variation particularly escalates in case of extraordinary peaks in the strike volume of certain countries.

## Strikes and worker mobilisation in Europe

Figure 6.5 Comparing 1990s to 2000s average of DNW rates per country, unadjusted DNW rates



Source: Eurostat and national statistical offices. See Vandaele (2011).

Note: sorted by 2000s data. CZ, GR, LT, LV and SI are excluded owing to the only partial availability of data.

### Strikes on the rise in France and the UK only

To what extent does labour quiescence vary by country? The bars in Figure 6.5 depict the strike volume in 23 European countries in the 1990s and the following decade. The graphs illustrate that in Norway and in most EU member states, the average strike volume fell further in the 2000s compared to the previous decade.

There are several countries which pose exceptions to the downward trend in strike activity, however. In seven out of 23 countries (Austria, Estonia, France, Luxembourg, Slovenia, Switzerland and the UK) the average strike volume rose in the 2000s compared to the previous decade. There is no data available after 2008 for Luxembourg and Switzerland.

In the cases of Austria, Estonia and Slovakia – all countries with a low strike volume – single union mobilisation events have clearly contributed to this exceptional status. All those mobilisations took place, by coincidence, in 2003. In Austria, unions mobilised against the unilateral government decision to enact a major state pension reform, and there was also an exceptional railway strike

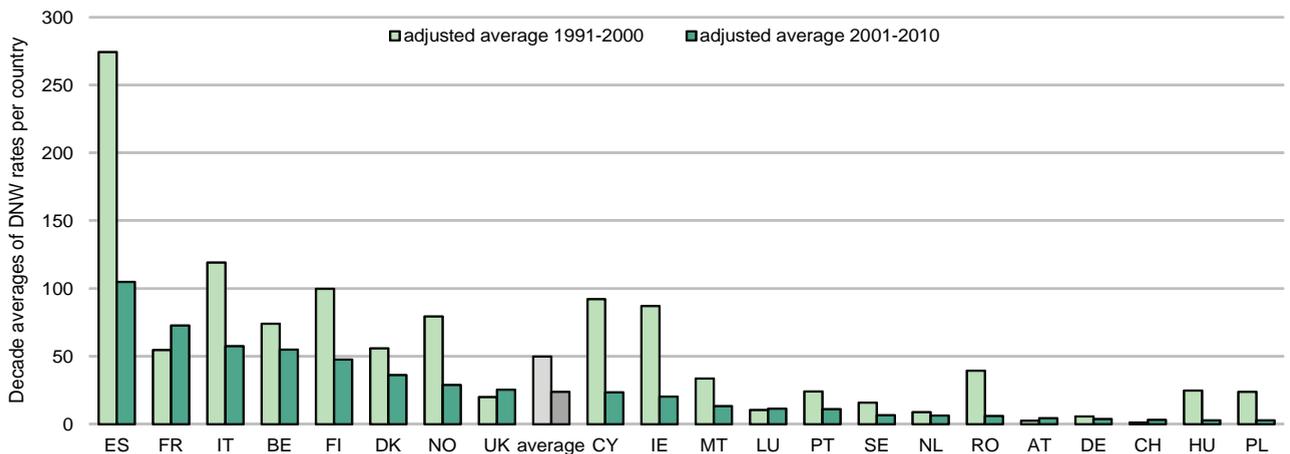
against its restructuring (Adam 2004). Both Estonia and Slovakia saw their first real strikes since they gained independence: Estonian unions protested against the government's public sector wage policy (Kaia Philips 2003), whereas the Slovakian railway union opposed restructuring and closures of regional rail lines (Munková 2003). Once these extraordinary one-off peaks in strike volume are accounted for, however, it is clear that Austria, Estonia and Slovakia confirm the trend of falling strike volumes over time.

All in all, this leaves only France and the UK as true exceptions to the trajectory of 'labour quiescence'. As in Austria, Estonia and Slovakia, mass strikes at the sectoral or national level have undoubtedly contributed to the increase in strike volume in France and the UK. But whereas adjusting for the year with the highest strike volume (by replacing it with the average of that particular decade (cf. European Commission 2011)) makes it clear that the increase in the strike volume in Austria, Estonia and Slovakia can be attributed to one single union mobilisation, this is not entirely the case for France and the UK. The increase of the average strike volume in the 2000s, compared to the previous decade, can also be attributed to the enduring or rediscovered militancy of certain unions in both countries, although radical political unionism is still a minority phenomenon (McIlroy 2012).

That France and the UK should both buck the trend of labour quiescence is quite remarkable, since these two countries' industrial relations systems are very different from one another and their union identity and strike traditions are quite distinctive. The coincidence thus illustrates that strike activity must be understood in its economic, political and institutional context: its meaning changes within time and between countries.

## Strikes and worker mobilisation in Europe

**Figure 6.6** Comparing 1990s to 2000s average of DNW rates per country, adjusted DNW rates



Source: Eurostat and national statistical offices. See Vandaele (2011).

Note: sorted by 2000s data. CZ, GR, LT, LV and SI are excluded due to the only partial availability of data.

### Spain still leading the league

As shown in the previous section, adjusting the volume by replacing the outlier year (i.e. the year with the highest strike volume) with the average of that particular decade makes it possible to better detect the middle-term trend of the strike level around which strike action fluctuates in that particular country. In other words, a more accurate idea of the degree of variation amongst countries can be obtained by comparing the unadjusted with the adjusted strike volume. As the countries are ranked by their average volume in the 2000s to indicate their relative position in the 1990s, the values in Figure 6.6 suggest substantial continuity in the overall strike volume 'ranking' of the countries. At the same time, regardless of the downward trend and the high volatility of strike activity, the cross-country variance is sustained.

Spain has clearly led the European strike 'league table' for the past two decades. However, one should keep in mind that Greece was certainly at the top of the league in the 1990s (Algisakis 1997). Unfortunately, Greece is excluded here, since strike data for Greece are no longer available after 1998. No official reason is

given, but it seems likely that the Greek government is embarrassed at the high strike statistics (Wallace and O'Sullivan 2006).

Denmark, Italy and Finland have also been relatively steadily near the top of the league table in both decades, but in the case of Denmark this is the case in the 2000s only for the unadjusted average.

Visibly France, but to a certain extent also Belgium, have moved to the upper part of the league table of European strike propensity in the 2000s. Norway has remained in the same place, whereas Ireland and Cyprus have moved downwards towards the middle of the league table in the 2000s, having been in the upper part of the table in the previous decade. Most of the other countries that were in the middle or at the bottom of the league table in the 1990s have more or less maintained their positions in the following decade. Romania and particularly Poland are notable exceptions, however, since these two countries have dropped several places in the ranking.

## Strikes and worker mobilisation in Europe

Figure 6.7 Types and characteristics of strikes

Type	Sectors	Workers' power resources	Strike size
Tactical strike	Single branch or sector in private or public services	Workplace bargaining power	Small
Industry-wide strike	Single branch or sector in industry or private or public services	Marketplace bargaining power	Large
Political mass strike	Public sector or all sectors in certain regions or whole economy	Organisational power	Large

Source: authors' typology based on Bordogna and Cella (2002), Gall (2012) and Silver (2003).

### The rise of the mass strike

Besides explanations drawing on common structural socio-economic and political-ideological transformations towards a neo-liberal europeanisation and the impact of enduring organisational and institutional differences (Brandl and Traxler 2010; Piazza 2005), two common trends shed additional light on our understanding of the current strike volume.

First of all, the decline of the strike volume at the aggregate level might hide shifts in strike activity at the sectoral level, particularly the shift from industry towards private services and, especially, public services. This goes hand in hand with a transformation in the logic of strike action (Bordogna and Cella 2002): because the workplace bargaining power of workers in services, although unevenly spread, is associated with greater potential social disruptiveness, they can use the strike weapon more tactically – involving less workers and a shorter duration of strikes. This rather tactical use of the strike weapon might explain why strikes rates in services have not counterbalanced the decline of strike activity in industry – see Figure 6.7.

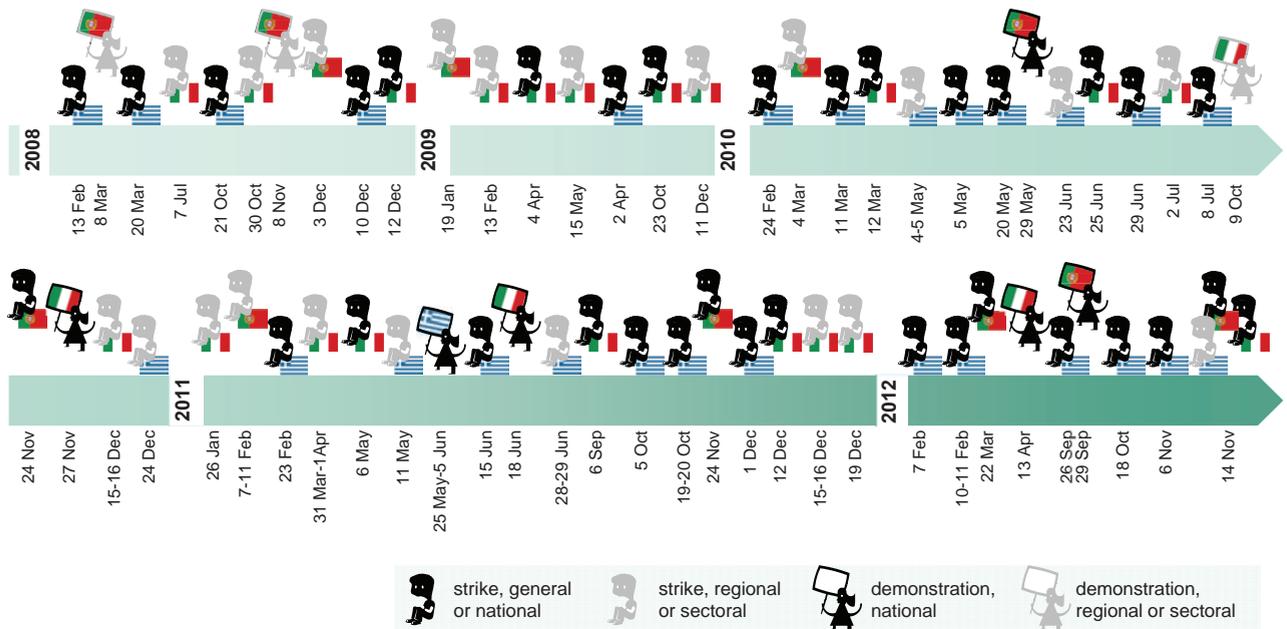
Secondly, general strikes have been on the increase in the last decades (Hamann *et al.* 2012; Gall 2012). Although some other European countries have occasionally seen general strikes in their streets, such strikes tend to be geographically concentrated in the southern part of Europe (including France), albeit to a lesser extent in Portugal; this partly explains the persistent cross-country variation in strike rates. General strikes, mostly against government policy proposals to alter employment protection in particular and labour market policies in general, as well as pensions and other welfare system issues, tend to distort strike volume averages.

As illustrated in Figures 6.5 and 6.6, the difference between the unadjusted and adjusted ten-year average strike volume of certain countries is likely to be explained by the impact of a small number of mass strikes. Similarly, other types of mass strike – either a short strike involving a large number of workers or a long strike by a relatively small number of workers – are also likely to have a strong impact on the average strike volume. For that reason, a distinction is made between industry-wide strikes and political mass strikes (Gall 2012) – see Figure 6.7. Industry-wide strikes are strikes within a single economic branch or sector, whether in the private or public sector, which have as their primary objective the imposition of economic costs

on the employer to enforce the workers' demands. Political mass strikes are either generalised public sector strikes or generalised strikes for the whole economy or certain regions, the purpose of which is to put pressure on the government to concede and compromise. Certainly, political mass strikes have been more directly associated with responses to the European sovereign debt crisis and the workers' protest against the austerity regimes of European governments.

## Strikes and worker mobilisation in Europe

Figure 6.8 Political mass strikes since 2008 in Italy, Greece and Portugal, 2008-2012



Source: authors' compilation based on [www.bbc.co.uk](http://www.bbc.co.uk), EIROOnline, ETUI Collective Bargaining Newsletter and Planet Labor.

### General strikes: embarrassment among authorities?

It is worthwhile to investigate whether there has been an overall rise in (political) mass strikes in Europe since the onset of the recession in 2007/2008 by looking at annual developments in the strike volume (Godard 2011); it also enables a closer look beyond the year 2010. There are also historical reasons for doing this, since strikes have shown a strong tendency to occur in waves in the past (Kelly 1998).

There is, however, no generally agreed definition of a 'strike wave'. The definition used here is that the strike volume should exceed the mean of the preceding five years by at least 50 per cent (Shorter and Tilly 1974). The (relative) strike participation would be an alternative and perhaps more valuable measure for grasping workers' willingness to act, but the currently available data do not

provide enough information for such an analysis for all countries.

However, it must be noted that there is no data at all available for important crisis-hit countries. This is the case for Greece but data is also missing for the most recent years for Italy and Portugal. The Greek, Italian and Portuguese authorities are apparently embarrassed by recent strike statistics; one can suspect that the public outcry against the austerity measures provides a compelling disincentive for systematically collecting or publicising this data.

However, despite the lack of systematic data, societal conflict and strikes are apparently enduring tactics, even in times of austerity. There is little doubt that political mass strikes in Greece, Italy and Portugal have affected the respective strike volume to such an extent that they meet the criteria for being considered strike waves – see Figure 6.8. Important company strikes against restructuring decisions, such as the Italian strike 2009 in response to closure of the Fiat plant in Termini Imerese, or the 2011 steel workers' strike at the Hellenic Halyvourgia plant in Aspropyrgos in Greece add to the strike volume.

Furthermore, in some other countries, such as Belgium, the Czech Republic or Slovenia, the authorities seem equally to have lost interest in collecting strike data, although alternative sources are, luckily, sometimes available. Likewise, it should be noted that strike statistics for the majority of EU member states have no longer been updated since 2008 by Eurostat, the Directorate-General of the European Commission responsible for issuing statistics (so that national statistical offices have to be contacted directly).

## Strikes and worker mobilisation in Europe

Figure 6.9 Accounting for strike waves in Europe excepting Greece since 2008

	Industry-wide strikes	Political mass strikes
Single-employer bargaining	2008: HU, LV, LT and PL 2009: MT	2009: EE and IE 2011: CY and UK
Multi-employer bargaining	2008: DK and NL 2010: FI and NO	2010: FR 2011: BE

Source: Eurostat and national statistical offices. See Vandaele (2011). Author's calculation.

Note: no calculation possible for CZ, GR, LU, PT and SI; years missing for FR (2011), HU (2010-11), IT (2010-11), LV (2010-11), LT (2011), RO (2010-11), SK (2011) and CH (2009-2011).

### The resurgence of the political mass strike

For analysing possible strike waves, a more detailed analysis of the quantitative data or other sources serves to categorise the wave or at least the main strikes producing the wave, such as industry-wide strikes or political mass strikes. A further distinction is made between single- and multi-employer bargaining systems, since collective bargaining systems tend to influence strike patterns (Clegg 1976).

Figure 6.9 provides an overview of countries where a strike wave has occurred since 2008. According to the definition used here (strike volume exceeds the mean of the preceding five years by at least 50%), six waves took place in 2008, and three waves have been discerned every year since 2009. Yet, some waves must be seen as an arithmetical artefact in some relatively low-strike countries, such as Malta (Rizzo 2011) and the Netherlands (Grunell 2011). The 2008 strike waves in Lithuania and Poland were largely the result of various teachers' strike over a pay increase and other demands (Blaziene 2010) and of several strikes in public sector, particularly in the education and postal services

sectors (Sroka and Sula 2010). But it is also sometimes difficult to attribute a wave to one single strike, such as those which took place in Hungary (Neumann *et al.* 2010) and Latvia (Karnite 2010).

Furthermore, industry-wide strikes tend to be located in the multi-employer bargaining systems of Nordic Europe. The other waves are undoubtedly caused by political mass strikes, mostly affecting the public sector. Typical examples are the general strikes and demonstrations in opposition to the government's pension reform plans in France in 2010 (Jean 2010), and the general strike over a similar issue which hit its neighbour Belgium the following year (Gracos 2012).

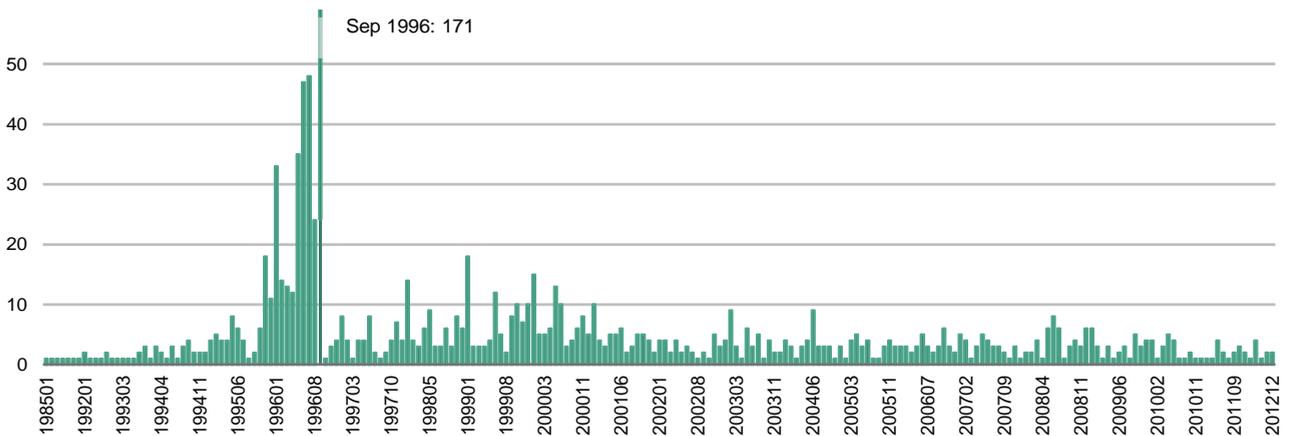
Turning to the single-employer bargaining systems, where industry-wide strikes are almost by definition less likely, the occurrence of political mass strikes is not precluded. Although strike action is overall largely negligible in Estonia, the union protest in June 2009 against the content and implementation of the new Employment Contracts Act caused a very modest (mathematical) strike wave; more importantly, however, the strike was held despite the fact that the employers contended that it was illegal (Nurmela and Osila 2009). The 2009 strike wave in Ireland can be clearly attributed to a 24-hour national public service strike held in protest at the government's pay cuts (Dobbins 2011). In the UK, the two large public sector unions coordinated strikes over

public service pension reform in June and November 2011, the latter being the largest strike for thirty years according to the Trades Union Congress (Hall 2011; 2012). In that same year, in Cyprus, the public servants' strike (against a two-year pay-freeze and austerity measures) was the first massive public service strike in ten years.

To conclude, the evidence shows that political mass strikes are no longer dormant in single-employer bargaining systems; almost everywhere, they were prompted by the governments' austerity measures. Although the effectiveness of the mass strikes in terms of alleviating the austerity packages has been largely questioned in the mainstream media, participation in strikes and collective action in general may change 'the ways in which people think about the economy, about the role of governments and markets and about their own interests, as employees, consumers and citizens' (Kelly 2012:26).

## Workers' voice at company level

Figure 6.10 Agreements establishing EWC bodies, per month (1985-2012)



Source: European Trade Union Institute, EWC database ([www.ecwdb.eu](http://www.ecwdb.eu)), January 2013.

### EWCs still proliferating

The idea that the increasing europeanisation of multinationals' activities must be accompanied by a parallel europeanisation of workers' participation is over 40 years old. It was in the 1970s that the first proposals for employee representation at the European level via supervisory boards and/or European Works Councils were introduced (Jagodzinski 2013). For decades, European legislators grappled in vain with the dilemma of accommodating the very diverse range of national workers' participation arrangements in a single piece of legislation. Meanwhile, it was not until the late 1980s that the first pioneer voluntary agreements and informal practices aimed at closing the gap between interest representation at the national levels and the European level were launched.

The adoption of the EWC Directive in 1994 turned the option of voluntarily negotiating company-specific arrangements into a right which was firmly embedded in a legal framework. It is here that the EWC success story began. The prospect of binding rules governing the negotiation and operation of such arrangements fostered a surge

of negotiations to establish 'voluntary' EWCs before the new legislation took effect on 22 September 1996: 397 new bodies were established in 1996 (and 171 in September 1996 alone). The condition that such so-called Article 13 EWCs would be exempt from the requirements of Directive 94/45/EC provided a powerful incentive to set up EWCs before its entry into force.

Since the EWC Directive took effect in 1996, the establishment of EWCs has continued unabated (Figure 6.10). With occasional peaks (e.g. in consequence of the extension of the EWC Directive to the UK in 1999) the establishment of new EWCs has been maintained at a steady pace throughout the 2000s (see also ETUC and ETUI 2011: 92). By January 2013, a total of 1020 EWCs were known to be in place (European Trade Union Institute, EWC database, 11/2012). Nearly two decades after being founded, the so-called voluntary or pre-Directive (Article 13) EWC Agreements still make up 43% of the total, compared with 49% of post-directive (Article 6) bodies (*ibid.*) As more and more EWCs are established following the procedure laid down in Article 6 of the EWC Directive, this proportion will steadily decrease.

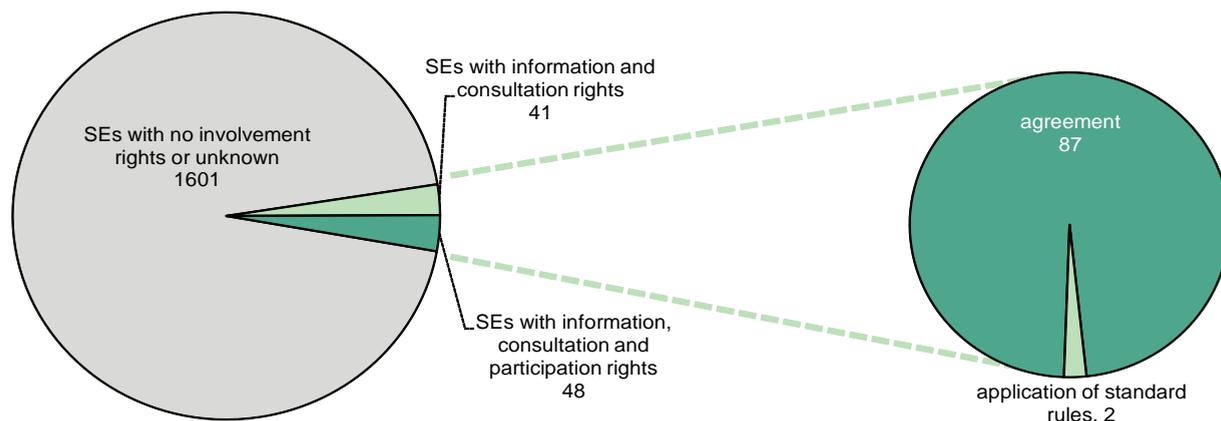
As the above data demonstrate, binding legislation which allows company-level negotiation partners to find tailor-made solutions to accommodate their internal diversity, while at the same

time ensuring a robust basis for those negotiations by the provision of rules for their negotiation and operation, has fostered the impressive spread of EWCs across all countries and sectors. The Recast EWC Directive of 2009 further refined several elements of this recipe for success (Jagodzinski 2009), and preliminary evidence suggests that the employees of smaller and medium-sized companies operating on a European scale will increasingly take advantage of the opportunities provided by the EWC legislation.

Over the past two decades, the EWC legislation has fostered the emergence of a genuinely European institution for the information and consultation of employee representatives on transnational matters in a way which is suited to building a bridge between workers' representation at the local and national levels in a total of at least 1020 companies – plus at least a further 61 currently in negotiation.

## Workers' voice at company level

Figure 6.11 Worker involvement and the European Company (SE)



Source: ETUI (2013).

### SE Directive: a patchy record

Since October 2004, companies have had the possibility to incorporate as a European Company (SE) in one of the 30 EEA member states. The original idea of the SE project was to promote integration and convergence by creating uniform European rather than national rules. In the end, however, the compromise finally agreed gave rise, instead, to 30 different national SE legislations.

With regard to employee involvement, the EU also failed to define a single European model applicable to all SEs. Although the SE Directive (2001/86/EC) aims to safeguard existing participation rights at board level and to ensure information and consultation procedures at transnational level, it adopts the approach found in the EWC legislation: it lays down a negotiation procedure and a set of fallback provisions which apply only if management and employee representatives fail to reach agreement.

Looking back on a decade of practical experience with SEs (see also Cremers *et al.* 2013), it seems that the SE Directive has cemented or at least contributed to divergence rather than fostering convergence in matters of worker participation:

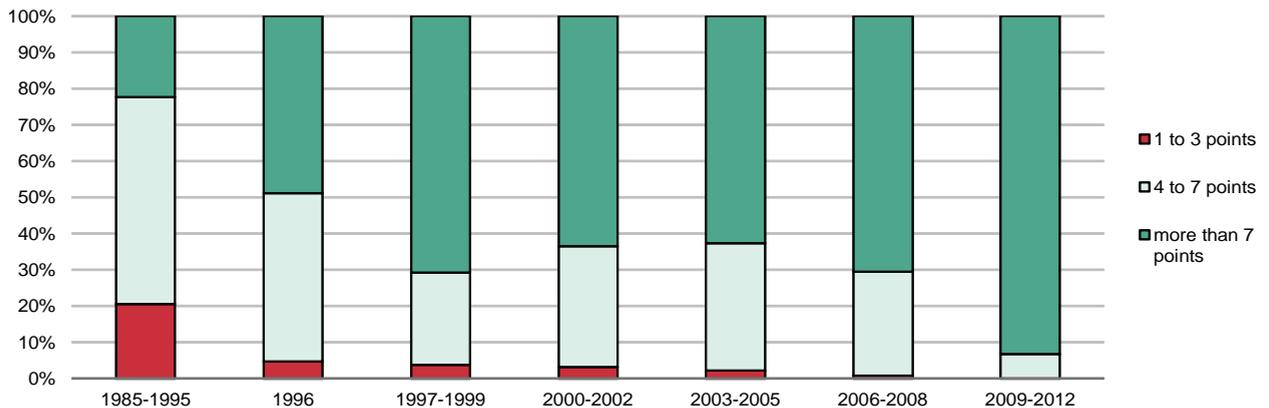
1. The geographical distribution of SEs is strikingly uneven: 81% of the 1601 SEs registered by 1 January 2013 are concentrated in either the Czech Republic (66%, see also Cremers and Carlson 2013) or Germany (15%). The remaining 19% have been set up in as many as 23 EEA member states, suggesting that the SE Directive has failed to meet its target of providing a genuinely European corporate form widely embraced in the EEA.
2. Employee involvement in SEs has also clearly become the exception rather than the norm. Of the 1601 existing SEs, a scant 89 are known to have provided for employee involvement (see also ETUC and ETUI 2012: 108). 41 of these 89 SEs have agreed transnational information and consultation rights by means of an EWC-type Representative Body or a procedure for informing and consulting the workforce in the absence of a standing body. In the remaining 48 SEs, the workforce is additionally represented on the SE's administrative or supervisory board. In all these cases, participation rights had already existed before the company acquired SE status, thus illustrating the impact of path dependency in relation to arrangements within SEs. In 87 SEs, the negotiating parties have signed an agreement (only two companies applied the fallback provisions). The

overwhelming predominance of such tailor-made agreements almost by definition increases heterogeneity (Keller and Werner 2012). However, as is the case for EWCs, the negotiated solutions found tend to converge around the fallback provisions, albeit with significant outliers.

3. The SE Directive sows the seeds of divergence even within countries. SEs have started to make use of their flexibility with regard to corporate governance by departing from established (national) traditions. In the Netherlands, for example, about half of the registered SEs have opted for a monistic board system (with no separate supervisory board), an arrangement which had been hitherto unknown in Dutch corporate governance. Given the primacy of negotiations, the SE legislation also opens the door to permanently undermining existing national standards. Specific employee-involvement models installed – in particular as regards (board-level) participation rights – will remain in place even, for example, after employee thresholds enshrined in national law have been surpassed (Stollt and Kluge 2011).

## Workers' voice at company level

Figure 6.12 Agreements establishing EWC bodies, per month (1985-2012)



Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), January 2013.

Note: Point System: for agenda items: 0.5 point per agenda item listed in fallback provisions; 1 point for items going beyond fallback provisions.

For other issues: 1 point for: provision of translation and interpretation; at least one regular meeting per year, the right to extraordinary meetings upon request, and access to experts.

### The EWC Directive: a blueprint for negotiations

The first European Works Councils (EWCs) were based on voluntary initiatives by workers' representatives and the managements of multinational companies (MNCs) in the 1980s and early 1990s. While these EWC pioneers forged ahead, each defining their own particular approach in order to meet the company's specific needs, cultures, and structures, European legislators were still grappling with the task of coming up with a 'one-size-fits-all' solution. The breakthrough finally found at the European level was to ensure the primacy of negotiated, tailor-made solutions, while at the same time guaranteeing that certain standards be upheld in the event that negotiations fail.

Whether or not this was intentional, the fallback provisions contained in the EWC Directive thus amount to a basic blueprint for EWC agreements towards which EWCs have steadily converged (Figure 6.12). The variability of company profiles and the influence of highly diverse national systems and traditions of industrial relations have given rise to very wide-ranging practice. Nonetheless,

over the years, the basic architecture of rights and the practical arrangements found in EWCs have become increasingly similar. In other words, while all but 23 EWCs are based on agreements rather than the application of the fallback provisions, they have nonetheless increasingly adopted the provisions laid out in the fallback rules. Figure 6.12 illustrates this remarkable convergence by attributing points for the fulfilment of the provisions contained in the Directive's fallback regulations.

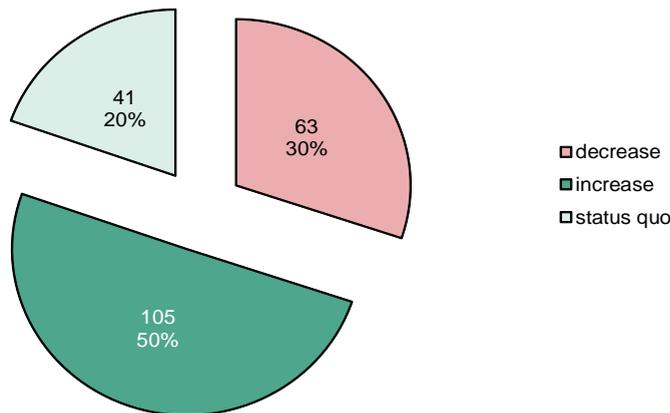
It is clearly visible that over the course of time, the Directive's EWC blueprint (i.e. the fallback provisions laid down in the Annex) has been increasingly applied in negotiated agreements. Compared to the 1985-95 period, the share of agreements in force in 1996 which fulfilled all (or nearly all) basic provisions of the Directive (green field) rose from 23% to 49%, while the share of lowest-standard agreements in the respective periods dropped from above 20% to approximately 5%. Between 1997 and 1999, the share of high-standard agreements rose even further and remained roughly consistent until 2009, when the new recast Directive on EWCs (2009/38/EC) was adopted. For the final period, even before the entry into force of the new legislation in 2011, the share of highest-standard agreements rose again from 71% to 93%, meaning that close to all newly signed agreements follow the

Directive's lead. Remarkably, in the most recent period since 2009, there are no agreements meeting the lowest standard, and the share of medium-quality agreements has shrunk to a marginal 7%.

The above data demonstrates that the existence of fallback provisions has clearly strengthened employee representatives' position in negotiations, enabling them to effectively 'bargain in the shadow of the law' (Bercusson 1992: 185). It also suggests a very strong learning effect: successive generations of negotiators have not only learned from mistakes made but have also built upon the successes of their colleagues in other companies. Without a robust fallback position, it is highly unlikely that such a steady improvement would have been achievable across the board; it is also proof of the responsibility that rests with the EU legislators in defining such standards.

## Workers' voice at company level

Figure 6.13 Evolution in minimum competences



Source: European Trade Union Institute, EWC database ([www.ewcdb.eu](http://www.ewcdb.eu)), January 2013.

## Renegotiating EWCs: learning by doing

Drawing upon the recently completed analysis of all EWC agreements collected in the ETUI database, it is possible to take an even closer look at the development of standards within a single EWC over the years. By looking at the set of 209 EWCs for which both the original installation agreement as well as its renegotiated versions are available, and by comparing changes in their quality (again by means of weighted components of the agreements; see Figure 6.12 for details), one can examine more closely the convergence or divergence of contractual standards of operation for EWCs.

Figure 6.13 shows that, out of the analysed cases, 50% of EWCs (or 105 cases) managed to improve their agreements, for example by extending their area of competence, securing the right to extraordinary meetings upon request, or gaining adequate access to translation, interpretation, and expertise.

20% of the tested agreements (or 41 cases) retained their formal status quo; this, however, does not necessarily mean that their practice did not improve. In

many cases, the standards set in the initial agreement may well have been considered sufficiently well-defined for the successful operation of the EWC in question, while informal standards and practice evolved further without being reflected in the formal agreements. Moreover, in many cases (especially in Nordic MNCs), an EWC agreement is regarded as a contract designed to cover no more than the basic essentials; it represents merely the formal proof of establishment, and has no ambition to record all the practical arrangements, facilities and guarantees for EWC members, unlike the formal and exhaustive nature of agreements that are based in other (national) standards or cultures of worker representation rules.

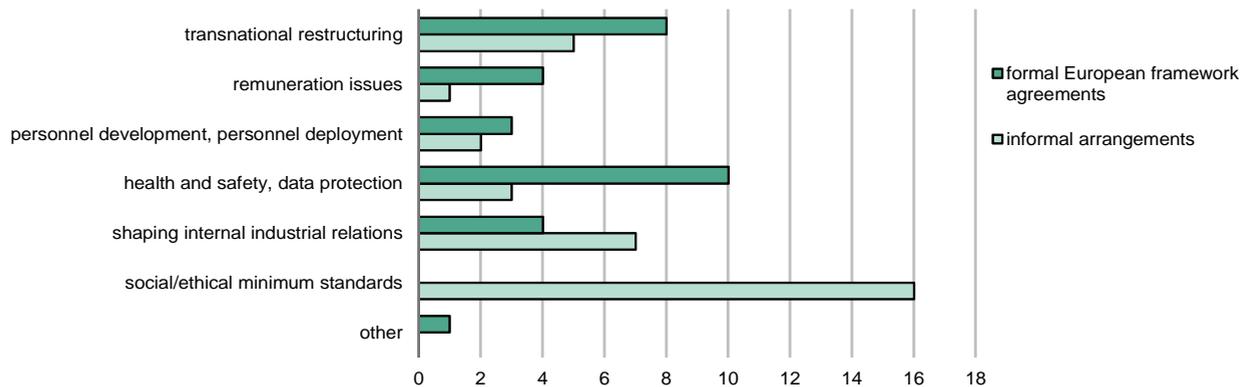
Finally, in 30% of cases (or 63 instances), a newer agreement scored fewer points than did its original version. While this group deserves further investigation, one explanation is that some of the EWCs in this category were taken over by another company whose EWC met lower standards (in total, 11 cases of those 63 were involved in a merger, acquisition or a spin-off). Without the right of renegotiation accorded by the 2009 Recast EWC Directive, it was the lower of the two standards which was applied more or less automatically for the new EWC. A further explanation might be that the catalogue of topics to be dealt with by the EWC was reduced to reflect the actual needs of the EWC in practice:

experience may have shown that focussing more thoroughly on a shorter list of issues was more effective in meeting the needs of the EWC than dealing more superficially with the original and more wide-ranging catalogue.

All in all, the data demonstrate a process of continual improvement of contractual arrangements for EWCs. There is an evident convergence towards higher EWC standards both within individual EWCs as well as across the board.

## Workers' voice at company level

Figure 6.14 Subjects of informal arrangements and formal European framework agreements reached by EWCs



Source: Müller *et al.* 2013 (forthcoming).

## Negotiating off the record?

EWCs were originally intended as fora for information and consultation about issues or measures with transnational implications. EWCs function as a transnational bridge between national worker participation arrangements but, as a rule, the main locus of negotiation remains the local or national level.

In many cases, however, the growing europeanisation and indeed global integration of companies' activities has given rise to new instruments of negotiated regulation (Hauser-Ditz *et al.* 2010; Rüb *et al.* 2013). In the absence of a legal framework, European company-level framework agreements have been concluded on a growing scale (119 agreements between 2000 and 2011) (Rüb *et al.* 2013). This development has been paid close attention by trade unions, policy makers and academics alike (EMF 2006; European Commission 2008; Jagodzinski 2012).

Exploratory research conducted in the metalworking sector, however, has also revealed the striking emergence, over the past five years, of informal arrangements between EWCs and transnational management that seek to

harmonise company policy on a wide range of issues, chiefly transnational restructuring, remuneration, health and safety policies, and shaping industrial relations arrangements within the company (Müller *et al.* 2013).

Unlike framework agreements which have been negotiated with EWCs and/or trade unions, such informal arrangements agreed between EWCs and management are not laid down in formal agreement texts, but instead are documented in the minutes of meetings, or letters of understanding, or in some cases are agreed only verbally.

As can be seen in Figure 6.13, both formal framework agreements and informal arrangements struck in the metalworking sector cover roughly the same spectrum of subjects. However, informal arrangements more frequently cover key issues which are normally within the remit of trade unions or local works councils, such as restructuring, remuneration and the protection of health and safety. Most importantly, trade unions may have not been a party to the negotiation of such arrangements with the EWCs, which raises far-reaching questions about both the political impact and the legal status of such arrangements.

While such arrangements, which serve to define standards or harmonise approaches within the company, may not have a legal status, they nonetheless have important practical and political

implications for the activities and room for manoeuvre of employee representatives and trade unions at the local or national level. The procedures, measures, or benefits agreed transnationally between the EWC and central management may well confront local unions or employee representatives with a 'deal concluded' that they are powerless to influence, whether legally or politically.

That such regulatory impulses should operate in a top-down direction is evidence of the fact that there is obviously a need to harmonise company policy and employee representatives' strategies on a growing range of issues. This phenomenon deserves close attention by trade unions, since its potential impact on collective bargaining and interest representation at the local level should not be underestimated.

## Conclusions

### Heed the warnings, take responsibility

This chapter has taken a closer look at the dramatic impact of, and responses to, labour law reforms introduced under the European austerity regime. The analysis of strikes in Europe reveals that, even when seen across a span of two decades, the propensity to worker mobilisation has retained its basic patterns. Turning to the company level, the chapter has examined the contribution of EU legislation and practice towards a growing europeanisation of company-level workers' participation.

In the climate of anxiety caused by the crisis, the deregulation of labour law has been cast as inevitable – and yet the unprecedented depth and scale of the reforms across Europe suggest a degree of opportunism at work as well. What we are witnessing is a forced convergence towards deregulation of labour markets across the EU.

Two aspects deserve critical attention. The first is that the reforms are being foisted upon the member states with little or no regard for a (European or national) democratic underpinning for the reform process itself. The coercive strategy pursued by the EU, the ECB and the IMF is particularly worrying: even where they have no policy-making authority, these institutions have ruthlessly made aid dependent upon the fulfilment of their demands – thereby indirectly wielding regulatory authority where none has ever been granted. They have obviously overstepped their mark. Indeed, in some cases it is doubtful whether some of these rules and contracts are compatible with European Directives, in particular those on fixed-term and part-time work. In this respect, it is particularly heartening to see trade unions pursuing a new strategy to defend workers' rights by going to court to force member states to abide by the commitments they have made to uphold international labour standards, for example.

Secondly, the insistence upon a stark one-size-fits-all strategy of deregulation and flexibilisation, which puts workers' rights under such severe pressure, undermines the acceptance of Europe's economic and political integration. Such flexibilisation erodes workers' security at a time when they need it most. Measures which make working time longer and even more erratic, which erode protective rules on atypical work and collective redundancies, and which change industrial relations structures and processes, cut to the very root of labour security and workers' rights. Furthermore, such reforms exacerbate the position of vulnerable or precarious workers in particular.

Warnings against this austerity course are getting louder. The warnings take many different forms: they are expressed in the decisions of various international, European, and national legal institutions; they are the root cause of growing nervousness in national elections across Europe; and, lastly, they can clearly be heard on the streets and in the workplace.

It is clear that the austerity policies and the lack of genuine democratic participation are adding fuel to the fire of disillusionment about European integration among the general public. The more Europe's citizens feel they are being squeezed, the greater is the threat to the European project as such.

The impact of 'Europe' on the company level looks slightly less bleak. Social progress and important steps towards the development of genuinely European workers' voice in companies have been achieved – but only thanks to minimum standards laid down in European legislation and the pioneering spirit of the actors involved. Overall, however, problematic variation in the standards actually implemented remains. The SE Directive, originally established with the aim of creating a single European company law standard, in effect serves not only to cement existing diversity but has also increased heterogeneity both between as well as within member states; more worryingly, the application of the SE legislation has actually opened the door to erode or

bypass national standards entirely. We are thus a long way away from a transparent and uniform European system of information, consultation and board-level worker representation which is regulated by minimum standards set by law, rather than being open to negotiation. While the Recast EWC Directive has closed some of its predecessor's more damaging loopholes, the SE Directive still lags behind, and new legislative proposals threaten to lead to even more fragmentation.

What is more promising however, has been the actual experience of employee representatives and trade unions. Responding to a compelling process of europeanisation within companies, they have taken up the instruments available to them and pushed for the development of credible European institutions of industrial democracy. The steady increase in the establishment of new EWCs and the continuous improvement in the content of the agreements themselves testify to this. The convergence of the rights and obligations at company level around the standards which are defined in the fallback provisions of the EWC and SE legislation, however, makes it very clear that robust minimum standards are essential. Workers' rights must be enshrined in, and secured by, law. This is an enormous responsibility resting on the shoulders of European policy-makers. The more recent development of EWCs engaging in cross-border negotiations and reaching informal arrangements with central management in a legal vacuum calls for vigilance, however. Insofar as such developments have an impact – whether intended or not – on local bargaining rights, they must be governed by a system which ensures that the relevant actors and bargaining parties are able to play their democratically legitimated roles.

The EU Commission, the ECB and the IMF would do well to re-think their strategy. The need now is for clear-sighted strategies for growth, rather than ruthless austerity. What is required of these institutions is a resolute shouldering of their responsibility to achieve a Europe which meets the needs and concerns of its citizens.