Wages and collective bargaining: time to deliver on the European Pillar of Social Rights

Introduction

In 2018 the mystery of ‘wageless’ growth was high on the agenda of international institutions such as the European Commission and the OECD. The paradox of ‘wageless’ growth refers to the fact that in spite of relatively favourable economic framework conditions, real wages have not increased accordingly. The widespread perception that crisis management policies, based on a combination of austerity and internal devaluation, have contributed to this sluggish growth in wages means that European citizens increasingly view the EU as a neoliberal ‘machine for divergence, inequalities and social injustice’ (European Parliament 2016: 25). In other words, an increasing number of European citizens – particularly in the countries hardest hit by the crisis and its management – no longer perceive the European integration project as a promise of social progress but as a threat to their personal wellbeing.

The proclamation of the European Pillar of Social Rights (EPSR) in November 2017 can be seen as a response to this growing disenchantment with the European integration project, and a sign of European policymakers’ recognition of the urgent need to strengthen the social dimension in order to restore trust in this project. It is, however, a political imperative that European and national policymakers do not stop at political declarations. After all, the perceived discrepancy between rhetoric and political action is one factor that contributed to the growing disillusionment of many European citizens with ‘the EU’.

Against this background, one key objective of this chapter is to review the extent to which policymakers are living up to the commitments they made in the EPSR as regards ensuring decent wages and supporting collective bargaining. Both are important elements in the political strategy of the European Commission to make a positive contribution to the everyday lives of European citizens. This chapter will therefore review the development of wages, minimum wages and the wage share in the EU28 and will link these with recent developments in collective bargaining systems, strike activities and judicial developments in order to identify the specific measures needed to support collective bargaining and a more dynamic wage growth.

Topics

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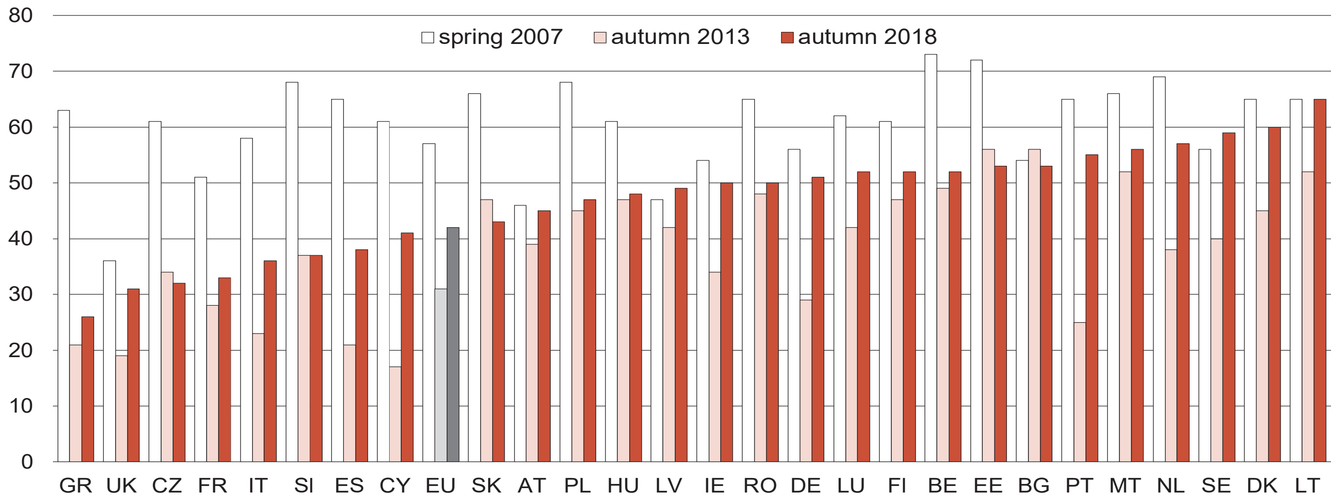
Figure 3.1 Trust in the European Union (percentage of Eurobarometer respondents)



Source: European Commission 2007, 2013, 2018a.

The erosion of trust in the EU

In the field of wages and collective bargaining, the European Pillar of Social Rights (EPSR) contains two important commitments. First of all, Principle 6 is on the right of workers 'to fair wages that provide for a decent living standard' and ensuring 'adequate minimum wages … in a way that provides for the satisfaction of the needs of the worker and his/her family' (European Commission 2017a: 26). Secondly, Principle 8 is a commitment to encourage the two sides of industry to negotiate and conclude collective agreements (European Commission 2017a: 33). These commitments are an important element of a newly emerging European-level narrative in the field of wages and collective bargaining which views a more dynamic wage growth and wage convergence as a prerequisite for more sustainable and inclusive economic growth. This shift in the narrative involves a broader view of the role of wages. Whereas previously wages were primarily viewed as a cost factor, the new narrative acknowledges their important role in boosting internal demand and social cohesion. This broader view of the role of wages also implies that multi-employer collective bargaining and strong trade unions with wage-setting power are recognised for their contribution to achieving the objective of stronger wage growth rather than exclusively viewed as institutional rigidities that impede the market-driven (downward) adjustment of wages (European Commission 2018b).

The commitments made in the EPSR also acknowledge the political role of fair wages and collective bargaining as an integral part of the set of European values that sustain the idea of a 'European Social Model', which suffered heavily during the crisis. The social costs of the crisis management, which was based on a combination of austerity and internal devaluation policies, are one important source of the EU's current legitimacy crisis (Busch *et al.* 2018: 25).

Figure 3.1 illustrates the dramatic erosion of European citizens' trust in the EU between spring 2007, just before the start of the crisis, and autumn 2013, when the social impacts of the crisis and its management were felt most dramatically. According to the Eurobarometer figures, over this period the proportion of people who 'tended to trust' the European Union dropped by 40 or more percentage points in the southern European countries that were not only hardest hit by the crisis but also exposed to the 'reform' measures imposed by the Troika. Spain and Cyprus witnessed the most dramatic decline (-44pp), followed by Greece (-42pp) and Portugal (-40pp). Across the whole EU, the proportion of people who answered that they tend to trust the EU dropped from 57% to less than a third (31%). By autumn 2018, with the subsiding of the crisis and the most acute crisis measures, and in the light of such momentous external challenges as Brexit and the protectionist policies pursued by the US under President Trump, the degree of trust had recovered to a certain extent.

However, there are only three countries in which it recovered to at least the pre-crisis level: Lithuania, Sweden and Latvia. In all the other countries, the level of trust is still below pre-crisis levels. In Greece, the proportion of people who in autumn 2018 answered that they trust the EU is still 37 pp below what the level was in spring 2007. Other countries with a large gap between the spring 2007 and autumn 2018 levels are: Slovenia (-31pp), Czechia (-29pp), Spain (-27pp), Slovakia (-23pp) and Italy (-22pp). Europe-wide, far less than half of the respondents answered that they trust the EU (42%), which is 15 pp below the level in spring 2007.

The reasons for losing trust in the EU are obviously manifold and it would not be fair to only put the blame on the crisis and crisis measures. The fact that in Czechia and Slovakia the level of trust in the EU also dropped dramatically during the past 10 years clearly shows that other forces must be at play because neither country was among those hardest hit by the crisis. Nevertheless, the figures clearly show the need to improve the perception of the EU among its citizens. This is where the EPSR comes into play. According to Commissioner Thyssen, the EPSR 'is designed to make a positive difference in the everyday life of all Europeans' (European Commission 2018c). This reflects the European Commission's recognition that the EU urgently needs to deliver tangible improvements in people's lives by strengthening the social dimension of the European integration project; and implementing the commitments made to fair wages and collective bargaining in the EPSR is one way to do so.

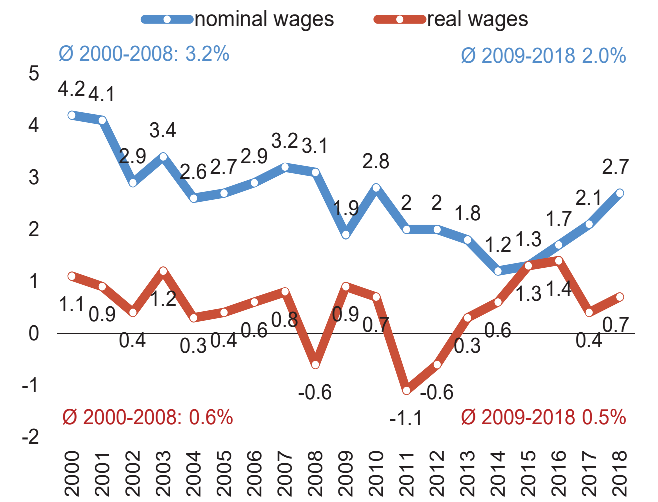
The remainder of this chapter will not only take stock of developments in the field of wages and collective bargaining but it will in particular analyse the extent to which the European Commission and other policymakers have lived up to these commitments and where there is still room for improvement.

Slow real wage recovery

Figure 3.2 shows the development of EU-level nominal and real compensation per employee (which includes social contributions) over time. Nominal wage growth continued to recover in 2018 with a 2.7% increase, returning to pre-crisis levels. However, despite the recent, more dynamic development, the average growth rate for the 2009–2018 period is more than one percentage point lower than the average growth rate in the pre-crisis period. Furthermore, the more dynamic growth of nominal wages did not translate into an equally dynamic growth of real wages. On the contrary, large parts of nominal wage increases were eaten up by the continuing trend of higher inflation so that the subdued development of real wages in 2017 continued in 2018 with a comparatively low increase of 0.7%.

Aggregate EU-level figures only tell part of the story, however, because they mask significant differences between EU Member States. Figure 3.3 therefore shows the country-

Figure 3.2 Development of nominal and real wages over time in the EU28, 2000–2018 (change in percentage compared to previous year)

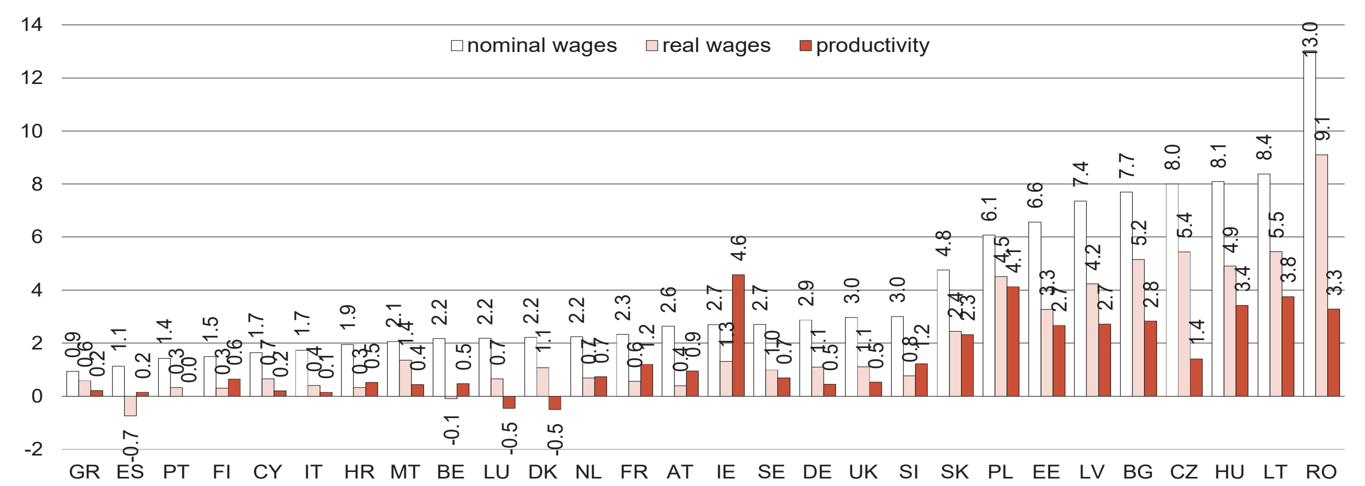


Source: AMECO database (autumn 2018).

specific development of nominal and real wages as well as productivity (measured as changes in gross domestic product per person employed) in 2018. According to the AMECO data, nominal wages grew at a particularly strong rate in central and eastern European countries. With a 13% increase, Romania tops a group of nine central and eastern European countries with a nominal wage growth of roughly 5% and more. This group is followed by another group of countries in which nominal wages grew between 2 and 3%. This group ranges from Slovenia and the United Kingdom with 3% each to Malta with 2.1%. The third group with a nominal wage growth of less than 2% consists mainly of southern European countries and ranges from Croatia (1.9%), Italy (1.7%) and Cyprus (1.7%) to Spain (1.1%) and Greece (0.9%).

While the growth of nominal wages picked up again in 2018, real wage growth remained sluggish. In Belgium (-0.1%) and Spain (-0.7%) real wages even decreased. In the other European countries real wages increased modestly, from 0.3% in Croatia, Finland and Portugal to 1.4% in Malta, followed by Ireland (1.3%) and the United Kingdom, Germany and Denmark (all 1.1%). Only the

Figure 3.3 Development of nominal and real wages and productivity in 2018 (change in percentage compared to previous year)



Source: AMECO database (autumn 2018).

above-mentioned group of nine central and eastern European countries witnessed a more substantial real wage growth of 2% or more, which in turn continued the trend of real wage convergence within the EU. Figure 3.3 also illustrates that in 2018 real wage growth in the majority of EU countries exceeded productivity growth. The positive gap between real wage and productivity growth is largest in Romania (5.8%), followed by Czechia (4%) and Bulgaria (2.3%). Real wage growth lagged behind productivity growth in nine countries ranging from Croatia (-0.2%) and Finland (-0.3%) to Belgium, France (-0.6% each), Spain (-0.9%) and Ireland (-3.3%).

The long-lasting impact of the crisis on real wages

The slow recovery of real wages is reflected in the worrying long-term development of real wages. Figure 3.4 presents the development of real wages since 2009 in each of the 28 EU countries. It illustrates that in ten countries real wages are still at or even below the level ten years ago. This group of countries consists of Finland, Belgium, the UK and those southern and eastern European countries that were hardest hit by the crisis and crisis policies based on austerity and internal devaluation. Since the beginning of the crisis, Greece has experienced the most dramatic decline in real wages (-23%) followed by Croatia (-11%) and Cyprus (-7%). The second regional cluster, of very modestly increasing real wages since the beginning of the crisis, comprises almost exclusively northern and western European countries. This group of countries ranges from Sweden (13%), Germany and Malta (11% each) to the Netherlands (3%) and Austria (2%). The only countries in which real wages grew substantively in the 2009–2018 period are the central and eastern European ones. At the top of this group is Bulgaria with an 87% increase, followed by Romania (34%), Poland (30%), Latvia (21%), Lithuania, Slovakia, Estonia (20% each) and Czechia (17%).

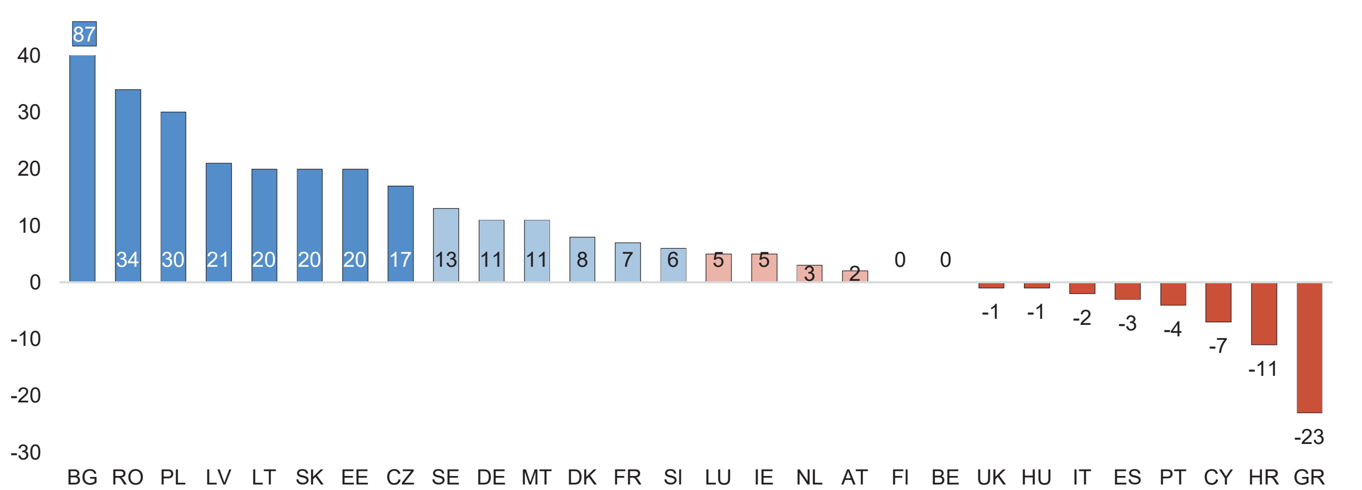
Figure 3.5 compares the development of real compensation per employee with that of productivity since the beginning of the crisis. It shows that between 2009 and 2018 real wages lagged behind productivity in 15 EU countries. This means that in these countries, workers did not receive their fair share of the wealth they helped to generate. The largest gap between real wage and productivity developments is in Ireland (-58 percentage points) followed by Croatia (-16pp), Spain (-15pp) and Greece (-11pp). Finland and Latvia (-1pp each) show the smallest negative gap.

The decoupling of real wage increases from labour productivity growth is reflected in the long-term development of the wage share, as shown in Figure 3.6. In the EU, the wage share – as a measure of the share of the national income accounted for by labour compensation in the form of wages, salaries and other benefits (OECD 2018: 48) – decreased continuously from its peak in the early 1970s to hit an all-time low at the beginning of the 2000s. Because economic downturns tend to affect profits more than wages, the wage share increased during the heyday of the economic and financial crisis but resumed its decreasing tendency after 2013.

As Lübker and Schulten (2018: 11) point out, the reasons for the long-term decline of the wage share and the corresponding shift in income distribution from labour to capital are manifold and include the financialisation of the economy, the liberalisation of capital markets (Stockhammer *et al.* 2018), the deregulation of labour markets (Deakin *et al.* 2014) and the decentralisation of collective bargaining (Checchi and García Peñalosa 2010).

It should be noted that Ireland is a special case because productivity figures are highly distorted by the concentration of the Irish economy and the asymmetrical development in productivity between so-called 'frontier firms' and the rest (Department of Finance 2018). As a consequence, most of Ireland's productivity is due to a small number of mostly foreign-owned firms in highly capital-intensive sectors such as ICT, chemicals and pharmaceuticals, while 'the majority of Irish firms – the type of firms which provide the majority of employment in the State – show declining productivity' (National Competitiveness Council 2018). This means that the wealth generated is very unequally distributed between wages and profits.

Figure 3.4 Development of real wages over time, 2009–2018 (%)



Source: AMECO Database (autumn 2018).

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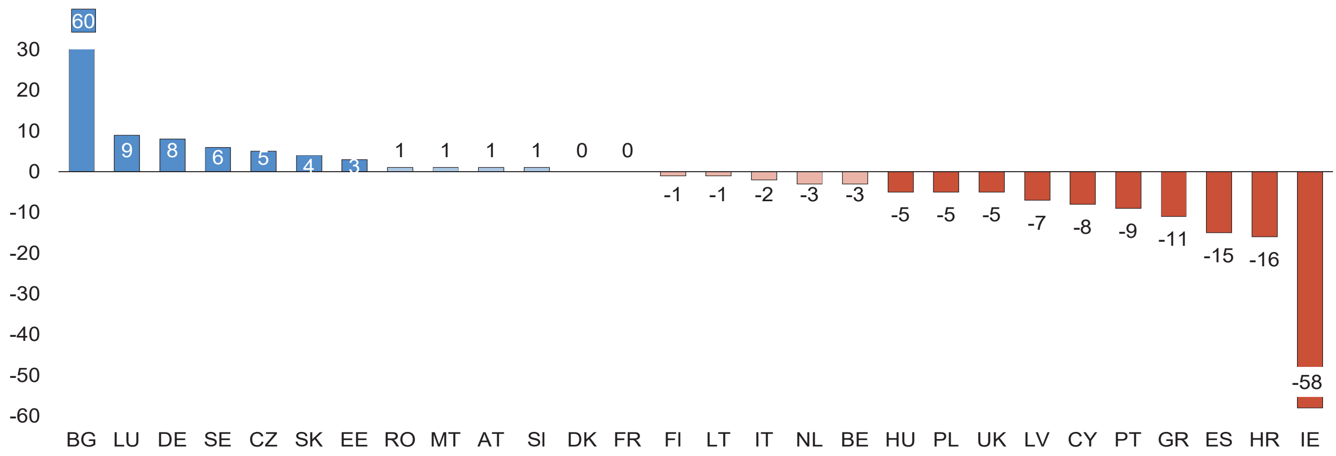
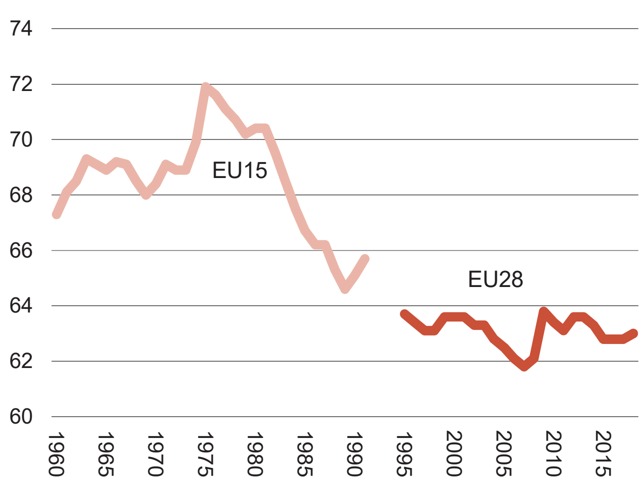
Figure 3.5 Development of real wages and labour productivity per person employed (2009–2018): gap between real wage and labour productivity (percentage points)



Source: AMECO Database (autumn 2018).

Figure 3.6 Long-term development of the wage share, 1960–2018 (wages in percentage of GDP at factor costs in the EU)



Source: AMECO Database (autumn 2018).

All these factors have helped to shift the balance of power from labour to capital and thus decrease the employee side's bargaining power (Lübker and Schulten 2018; Bentolila and Saint-Paul 2003).

Figure 3.7 illustrates that, in spite of its countercyclical behaviour, the wage share has continued to decrease since the beginning of the crisis, in particular in those EU countries which were hard hit and in which a combination of austerity policies and political interventions into national collective bargaining systems had a negative impact on wage dynamics (Schulten and Müller 2015; Müller and Schulten 2019). The extreme case is again Ireland, with a staggering 38% decrease. This can in large part be explained by the dramatic increase in capital income caused by MNCs' relocation of profits for tax avoidance purposes (Lübker and Schulten 2018, Fuest *et al.* 2013). Other countries that reported a strong drop in the wage share include Croatia (-11%), Romania, Malta and Portugal (-7% each), and Cyprus and Spain (-5% each).

The mystery of 'wageless' growth

Against the background of the ongoing economic recovery and expanding employment, many observers have been wondering why wages have not been growing accordingly. This mystery of 'wageless' growth has received considerable attention recently from international institutions such as the European Commission (2018b) and the OECD (2018). Their analyses illustrate that the moderate wage growth of the past five years is much less mysterious than it seems at first sight. The European Commission, for instance, found that in the majority of countries subdued wage growth can largely be explained by so-called 'economic fundamentals' such as low inflation, low trend productivity growth and high unemployment (European Commission 2018b: 88ff). Taking into account these 'economic fundamentals' there are only six countries left to which the mystery of 'wageless' growth applies, i.e. where wage growth was less dynamic than one would have expected in light of these factors. In descending order of the size of the absolute gap between actual and expected wage growth, these six countries are: Ireland, the UK, Portugal, the Netherlands, Cyprus and Croatia (European Commission 2018b: 96).

Additional explanations put forward include the existence of significant labour market reserves (see Chapters 1 and 2), which include people who have given up looking for

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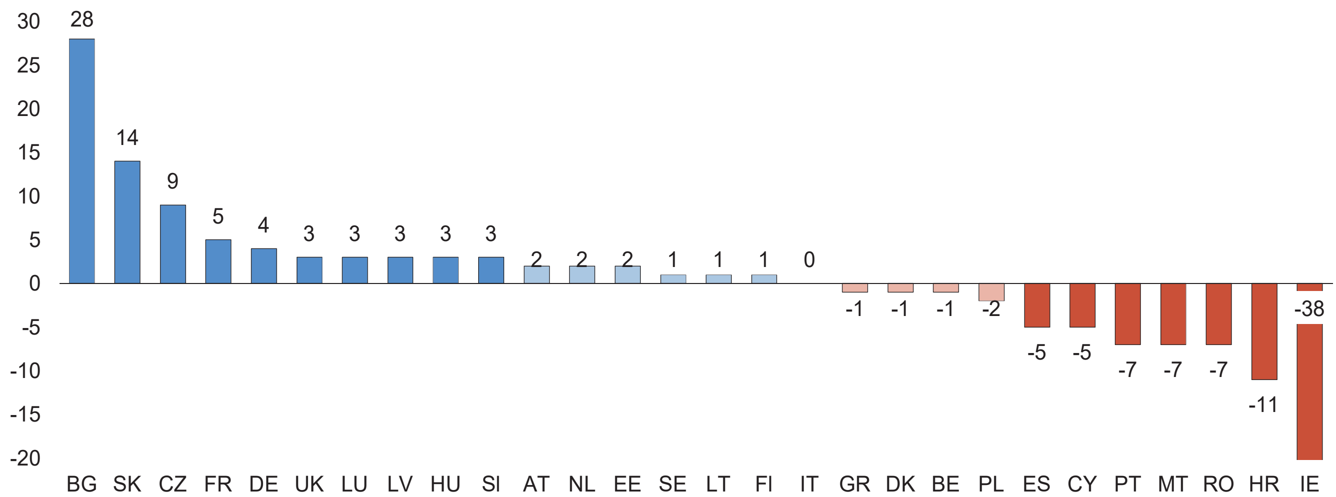
Figure 3.7 Development of the wage share, 2009-2018 (change in percentage)



Source: AMECO Database (autumn 2018).

jobs, and the rising proportion of involuntary part-time workers who would like to work more hours (ECB 2017: 33; European Commission 2018b: 88). This essentially refers to the fact that official unemployment statistics systematically underestimate the extent of underemployment. Another factor that contributed to the recent moderate wage growth is the fact that many of the newly created jobs are precarious in nature (see Chapter 2 of this report for more on this topic), not well paid, and in sectors of the economy characterised by low union density and union bargaining power.

According to the European Commission (2018b), however, institutional factors such as collective bargaining coverage and union density have little impact on wage growth. The Commission's study claims that while changes in collective bargaining coverage and union density 'have a short-term, transitory effect on wage growth' (European Commission 2018b: 101), the actual level of collective bargaining coverage and union density has no long-term effects on wage growth.

This finding is rather surprising in two respects. First, it contradicts the findings of the OECD (2018) that institutional characteristics such as the specific form of the collective bargaining system have an impact on a country's economic and labour market performance. The OECD study contends that coordinated multi-employer bargaining systems based on broad-based collective bargaining parties tend to be associated with higher employment, lower unemployment, reduced wage inequality and higher wages for the workers covered (OECD 2018: 74ff). Second, the Commission's finding on this point contradicts the country-specific recommendations (CSRs) and memorandums of understanding which the Commission (co-)formulated during the crisis years. Thus, in times when the Commission's key objective was to ensure a downward adjustment of wages in order to improve a country's cost competitiveness, changes in the wage bargaining framework played a crucial role. It should be recalled that in the report 'Labour Market Developments in Europe 2012', the implementation of 'employment-friendly' reforms included the following elements: decrease statutory and contractual minimum wages, decrease bargaining coverage, decrease the (automatic) extension of collective agreements, reform the bargaining system to be less centralised (for instance by removing or limiting the favourability principle), and promote measures that result in an overall reduction in the wage-setting power of trade unions (European Commission 2012: 103-104). It therefore seems puzzling that in a context where the aim is for more dynamic wage growth as a central element of achieving sustainable and inclusive growth and making a positive contribution to people's lives, a reversal of the above-mentioned measures in the field of wages and collective bargaining is not on the agenda. If the reduction or freezing of minimum wages and the dismantling of multi-employer bargaining structures is supposed to have restricted wage growth, then the logic follows that a more expansive minimum wage growth and support for multi-employer bargaining structures should help to achieve the new objective of more dynamic wage growth.

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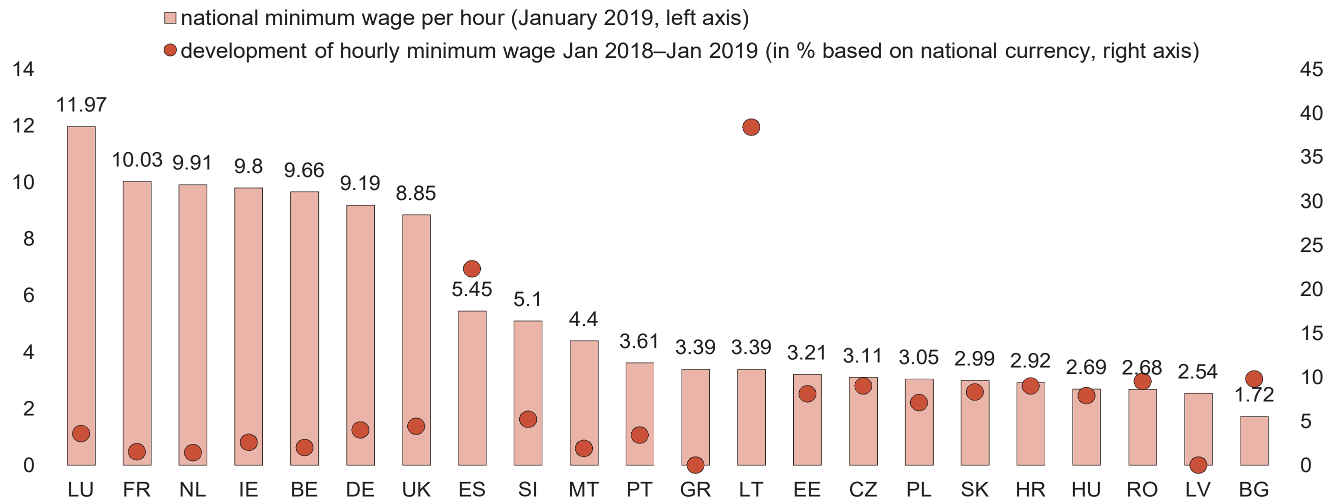
Figure 3.8 National minimum wage per hour, in euros (January 2019)



Source: WSI Minimum Wage Database (WSI 2019).

Sustained minimum wage growth and convergence

Figures 3.8 shows that 2018 was the third successive year in which statutory national minimum wages grew dynamically. In 18 out of the 22 EU countries with a statutory minimum wage, increases were introduced, with effect from 1 January 2019. In the UK and Belgium, minimum wages were increased in April and September 2018 respectively. Greece and Latvia were the only two countries in which they remained at the same level as the year before. At the end of 2018, however, the Greek government decided to increase the minimum wage by more than 10% as of 1 February 2019. This will be the first increase in the minimum wage since it was reduced by 22% in 2012 and frozen thereafter as part of the Troika programmes. As regards nominal minimum wage growth between January 2018 and January 2019, three groups of countries can be distinguished. The first group comprises those 11 countries with a growth rate of 5% or more. This group consists mainly of central and eastern European (CEE) countries and ranges from Lithuania (38.4%) and Spain (22.3%) to Hungary (7.9%), Poland (7.1) and Slovenia (5.2%). The strong increases in CEE countries means that the convergence of minimum wages in the EU continued in 2018.

The countries with the strongest minimum wage increases are in fact those with the lowest absolute minimum wages, which means that this strong growth can partly be explained by statistical base effects. Perhaps the most noteworthy increases are those in Lithuania and Spain. In Lithuania the strong increase is in line with the tripartite council's minimum wage adjustment formula which stipulates that the minimum wage should account for 45-50% of the average wage. The higher minimum wage in Spain was introduced by the new socialist government as part of a general shift towards a more demand-led growth model.

The second group, with increases between 3% and 5%, comprises four countries: the UK (4.4%), Germany (4%), Luxembourg (3.6%) and Portugal (3.4%). In the case of Germany, it is worth mentioning that minimum wages are increased biennially, which means that the recent increase has to be seen in light of the fact that in 2017 minimum wages did not increase at all (Schulten and Lübker 2019). The third group of countries, with a very modest growth rate of less than 3%, consists of Ireland (2.6%), Belgium (2%), Malta (1.9%), France (1.5%) and the Netherlands (1.4%). Taking inflation into account, the modest nominal increases in this third group of countries mean that minimum wage earners suffered real wage losses in the following EU countries: the Netherlands (-0.2%), Belgium (-0.3%), France (-0.6%), Greece (-0.8%) and Latvia (-2.5%) (Schulten and Lübker 2019).

Even though minimum wage growth was much more dynamic in those countries with lower absolute minimum wages, the diversity across Europe continues to exist. As regards the absolute level of (statutory) minimum wages, once again three groups of countries can be distinguished. As Figure 3.8 illustrates, the first group of countries, with minimum wages between €8 and €12, is comprised exclusively of western European countries. The leader of the pack is Luxembourg with €11.97, followed by France (€10.03), which for the first time passed the €10 mark, the Netherlands (€9.91), Ireland (€9.80) and Belgium (€9.66). At the bottom of this group are Germany (€9.19) and the UK (€8.85). The figure for the UK is heavily distorted by the devaluation of the British pound vis-à-vis the euro since the Brexit vote in June 2016. Furthermore, another substantial increase which will take effect on 1 April 2019 has already been agreed upon. Based on the average exchange rate of 2018, the UK minimum wage will then rise to €9.28 (Schulten and Lübker 2019).

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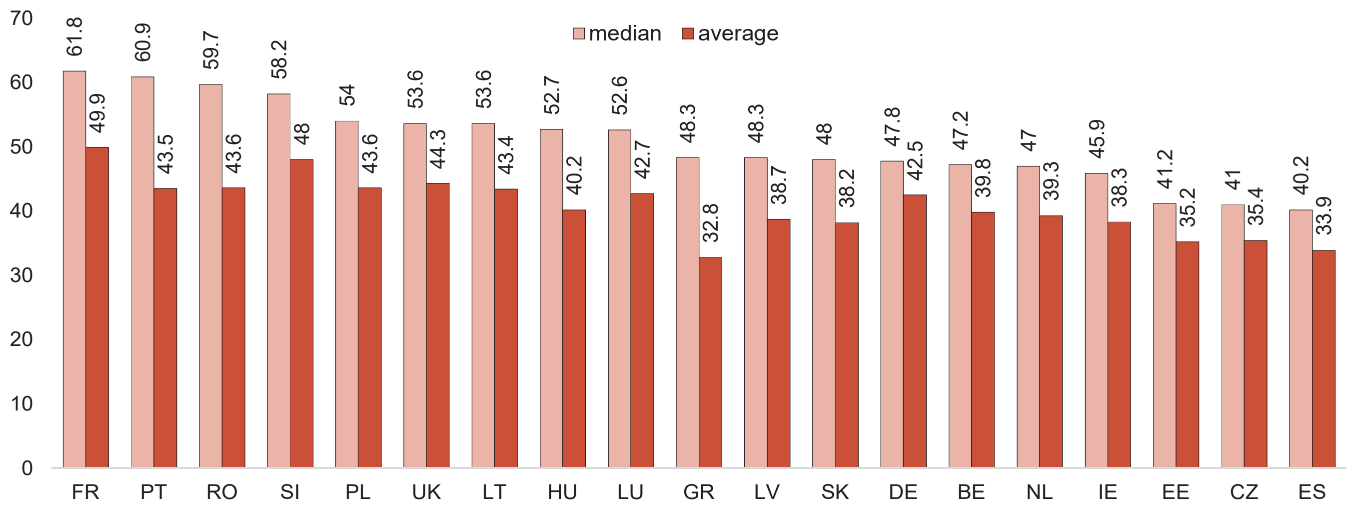
Figure 3.9 Minimum wage as percentage of national full-time median and average wages (2017)



Source: OECD Stat.

The second group, with minimum wages between €4 and €8, is very small and includes only three countries: Spain (€5.45), Slovenia (€5.10) and Malta (€4.40). By far the largest group comprises the 12 mainly central and eastern European countries with minimum wages below €4. This group ranges from Portugal (€3.61) and Greece and Lithuania (€3.39 in both) to Romania (€2.68) and Latvia (€2.54). At the very bottom of the group is Bulgaria with a minimum wage of only €1.72 which, as the WSI minimum wage database illustrates, is closer to the EU neighbouring states of Serbia (€1.77) and Macedonia (€1.63) than to the other EU Member States in the third country group (WSI 2019).

The sustained minimum wage growth is reflected in the increased Kaitz index which measures the minimum wage as a percentage of the national full-time median or average wage. Because the Kaitz index is a relative measure, putting the minimum wage in relation to the overall wage structure, it is more suited for international comparisons than the absolute minimum wage level. Over time, the relationship between the minimum wage and the median wage became the more common measure for the Kaitz index. The median wage is defined as the wage that divides the overall wage structure into two equal segments; i.e. it marks the boundary between the highest paid 50% and the lowest paid 50% of employees. Figure 3.9, which is based on the OECD Earnings Database, shows minimum wages as percentages of both national median and average wages in 2017. Since the OECD data always has a one-year time lag, the most recent minimum wage increases in 2018 and January 2019 are not included.

The EPSR contains a commitment to ensure 'adequate minimum wages ... that provide for the satisfaction of the needs of the worker and his/her family' and that 'in-work poverty shall be prevented' (European Commission 2017b: 27). Even though the EPSR does not specify the meaning of the vague term 'adequate', the reference to the needs of the worker and his/her family implies that minimum wages should be living wages, in the sense that they provide 'more than mere subsistence enabling participation in society and some scope for workers and their families to insure against unforeseen shocks' (Parker *et al.* 2016: 1). This, together with the explicit commitment to the objective of preventing in-work poverty, suggests that in order to achieve these objectives minimum wages should be at least 60% of the national full-time median wage. This can be seen as the 'risk-of-poverty' wage threshold, established with the goal of ensuring that workers are not dependent on the state (through tax credits or in-work benefits) to ensure relief from poverty. This is in line with the European Parliament's Committee on Women's Rights and Gender Equality which, in its opinion on the EPSR, recommends a minimum wage of at least 60% of the national median wage in order to implement the EPSR's commitments (European Parliament 2016: 35).

Figure 3.9 demonstrates that despite the recent minimum wage increases, only France and Portugal are above this 'risk-of-poverty' threshold. In 10 out of the 19 EU countries for which the OECD provides data, the relative level of the minimum wage is even below 50% of the national median wage. Even though these figures clearly illustrate how much there still needs to be done to fulfil the commitments of the EPSR as regards ensuring 'adequate' minimum wages, considerable progress has been made over the past 20 years. The discussion about the failure of minimum wages to ensure a decent living standard has spurred initiatives in various EU countries that have led to above-average minimum wage increases (Schulten and Müller 2019). Increasingly, the 60% threshold has nevertheless served as a benchmark

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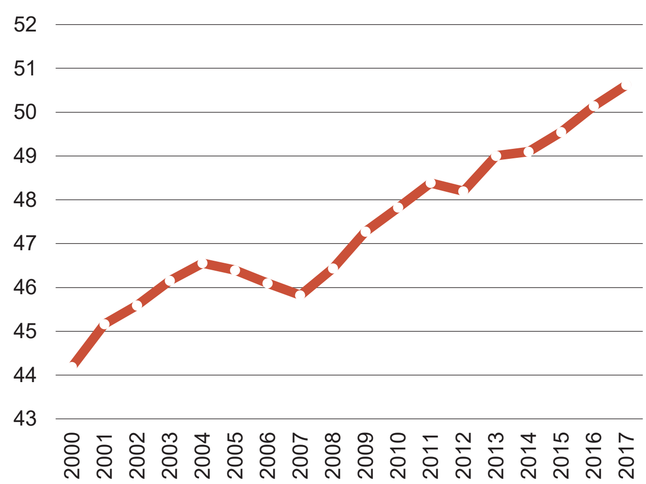
for setting the minimum wage. In the UK, for instance, the national living wage, which is a statutory minimum wage, came into effect on 1 April 2016 with the explicit objective to be raised to 60% of the national median wage by 2020. The most recent minimum wage increase in Spain was explicitly justified as an important step to reach the 60% threshold (Schulten and Lübker 2019), and in Austria, the Austrian Trade Union Confederation (ÖGB) decided at its Congress in 2018 that no wage set in a collective agreement should be below €1,700 per month. This new minimum wage target amounts to approximately 60% of the national median wage (Hofmann and Zuckerstätter 2019).

Figure 3.10, which shows the unweighted EU average of the Kaitz index, illustrates the progress that has been made during the past 20 years. The average Kaitz index in the EU grew from 44.2% in 2000 to 50.6% in 2017. While the continuous growth of the Kaitz index is good news, Figure 3.10 also shows that the 2017 figure is still almost 10% short of the 60% threshold. In order to achieve the 60% target, minimum wages need to continue to grow more dynamically than the overall wages. It should be emphasised, however, that the discussion about the 60% target always needs to be linked with the discussion about strengthening multi-employer bargaining systems, in order to stabilise the whole wage structure. After all, 60% of a very low median wage is still not enough to fulfil the EPSR's commitment to ensure a wage that provides for the satisfaction of the needs of the worker and his/her family.

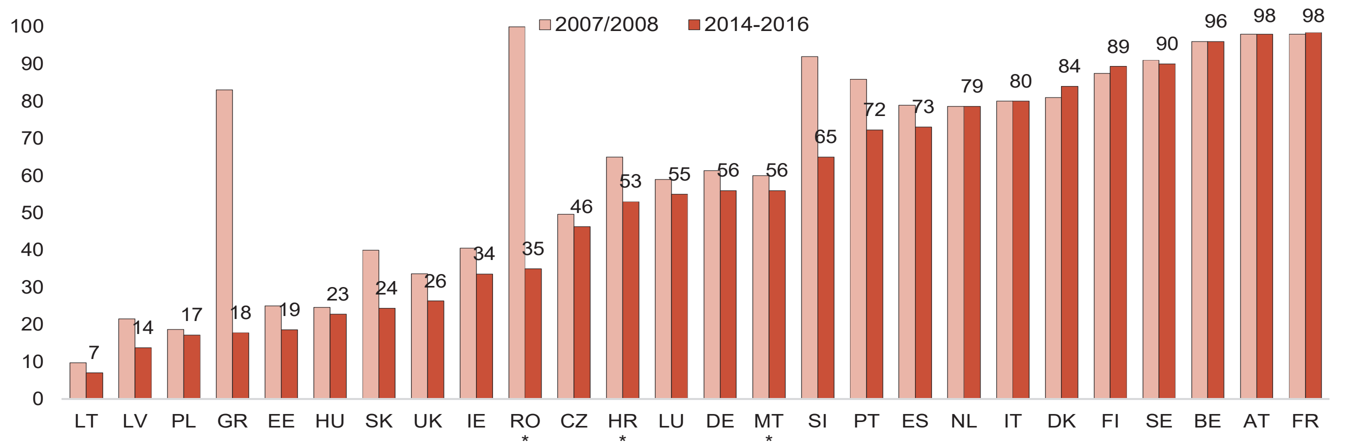
Figure 3.10 Development of the Kaitz index: minimum wage as percentage of median wage for those countries with a statutory minimum wage (annual average, 2000–2017)



Source: Schulten and Lübker 2019.
Note: unweighted average of national Kaitz indices including the following 19 EU countries: Belgium, Czechia, Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom. Until 2004 without Germany and Slovenia, and until 2014 without Germany.

Trends in collective bargaining and strike activity

Figure 3.11 Collective bargaining coverage before and after the crisis (2007/2008 and 2014–2016) (percentage of workforce)



*pre-crisis data for Croatia, Malta and Romania from 2000.
Sources: OECD collective bargaining database; for Croatia: Bagić (2019); for Malta: Debono and Baldacchino (2019); for Romania: Trif and Paolucci (2019); no data available for this time period for Bulgaria and Cyprus.

Some first national attempts to strengthen bargaining coverage

Principle 8 of the EPSR contains the explicit commitment to encourage the collective bargaining actors 'to negotiate and conclude agreements in matters relevant to them, while respecting their autonomy and the right to collective action' (European Commission 2017a: 33). One way to assess the extent of collective bargaining is the collective bargaining coverage, which indicates the share of employees who are covered by a collective agreement. Figure 3.11 provides an overview of the collective bargaining coverage in the EU Member States before and after the crisis.

Figure 3.11 illustrates that the highest and most stable collective bargaining coverage exists in those countries whose bargaining systems are characterised by multi-employer bargaining, where negotiations mainly take place at sectoral or, in some cases such as Belgium and until recently Finland, even at cross-sectoral level. Further crucial characteristics of extensive collective bargaining systems are, first, the existence of legal extension mechanisms (or functional equivalents) that ensure that collective agreements also apply to companies which did not sign the agreement or which are not members of the employers' federation that signed the agreement; and second, the existence of broad-based bargaining parties like in Denmark and Sweden, where no legal extension mechanism exists and where high bargaining coverage solely rests on the organisational strength of the two bargaining parties. By contrast, the lowest coverage can be found in countries with single-employer bargaining arrangements. This applies in particular to a range of central and eastern European countries, such as the Baltic states, Hungary and Poland, where coverage decreased even though it was already at a fairly low level before the crisis.

Against this background it is not surprising that the countries with the highest drop in collective bargaining coverage during the crisis were all, to varying degrees, exposed to measures that led to the decentralisation of collective bargaining and/or that suspended or curtailed legal extension mechanisms. These countries are: Greece and Romania with a drop of 65 percentage points followed by Slovenia (-27pp), Slovakia (-16pp) and Portugal (-14pp).

In the case of Portugal, the 72% coverage shown in Figure 3.11 is misleading because this figure refers to the stock of agreements; i.e. the collective agreements that still exist but that may not have been renewed for years and have essentially lost their regulatory capacity. The more telling figure in Portugal therefore is the 'flow' of newly concluded or renewed agreements whose coverage dropped to 10% in 2014 and only slowly recovered to 28% in 2016 as a consequence of the less restrictive criteria for the extension of collective agreements that were introduced in 2014 (Campos Lima 2019). If one takes the flow of agreements as the key indicator for collective bargaining coverage in Portugal – rather than the stock of agreements – then the decline is as dramatic as in Greece and Romania.

More recently, attempts have been made in Portugal, Greece and Spain to strengthen collective bargaining coverage by reversing some of the most far-reaching 'reforms' that have been introduced as part of the crisis management. In Portugal, for instance, in May 2017 the newly elected government introduced less restrictive criteria for the extension of collective agreements.

In September 2018, the Greek government re-established collective agreements for some sectors such as banking, fishing, tourism, hospitality and mining. Finally, at the end of 2018, the newly elected government in Spain not only

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Figure 3.12 Country-specific recommendations in the field of wages and collective bargaining (2018/2019)

	Formal Recommendations	Justification
BG	More transparency in minimum wage setting	Lack of transparency jeopardises proper balance between objectives of supporting employment and competitiveness and safeguarding labour income
DE	Create conditions for higher wage growth	
EE	Reduce the gender pay gap	To increase labour market participation of women
FI	Align wages with productivity	Need to improve cost competitiveness
FR	Ensure that minimum wage developments are consistent with job creation and competitiveness	Minimum wage indexation hampers overall wage adjustment to changing conditions with potential negative consequences for competitiveness
HR	Reform public sector wage setting	Lack of coherence in wage setting in public sector impedes equality of treatment and government control over public wage bill
NL	Create conditions for higher wage growth	Support domestic demand and contribute to euro area rebalancing
RO	More transparency in minimum wage setting	
	Informal Recommendations	**Justification**
AT	Address gender pay gap	To reduce the large gender pension gap.
CY	Reform public sector wage setting	Lack of a permanent solution to limit growth of public sector wage bill impedes government strategy of fiscal consolidation
CZ	Address gender pay gap	To improve the employment rate among women
DE	Address gender pay gap	To create incentives to make full use of female labour market potential
FI	Continue with more decentralised bargaining at sectoral and local level	More wage differentiation between firms ensures that real wage increases are in line with productivity and therefore does not harm cost competitiveness
IT	Increase bargaining at firm or territorial level	To improve swift adaptation of wages to local economic conditions
PT	Monitor minimum wage development	Wage compression resulting from minimum wage increases may threaten the skills wage premium and lower incentives for low-skilled workers to invest in education and training

Source: authors' own compilation.

restored the primacy of sectoral agreements over company agreements on issues such as pay and working time but also the validity of collective agreements after expiry.

However, the fact that collective bargaining coverage is still declining in the majority of EU countries illustrates the need for political support in cases where trade unions are not strong enough (any more) to ensure extensive bargaining coverage. In line with the commitment made in the EPSR, European policymakers could support the strengthening of collective bargaining by way of issuing country-specific recommendations that promote multi-employer bargaining, for instance by facilitating the extension of collective agreements and/or by strengthening the favourability principle which ensures the primacy of sectoral agreements over company-level agreements.

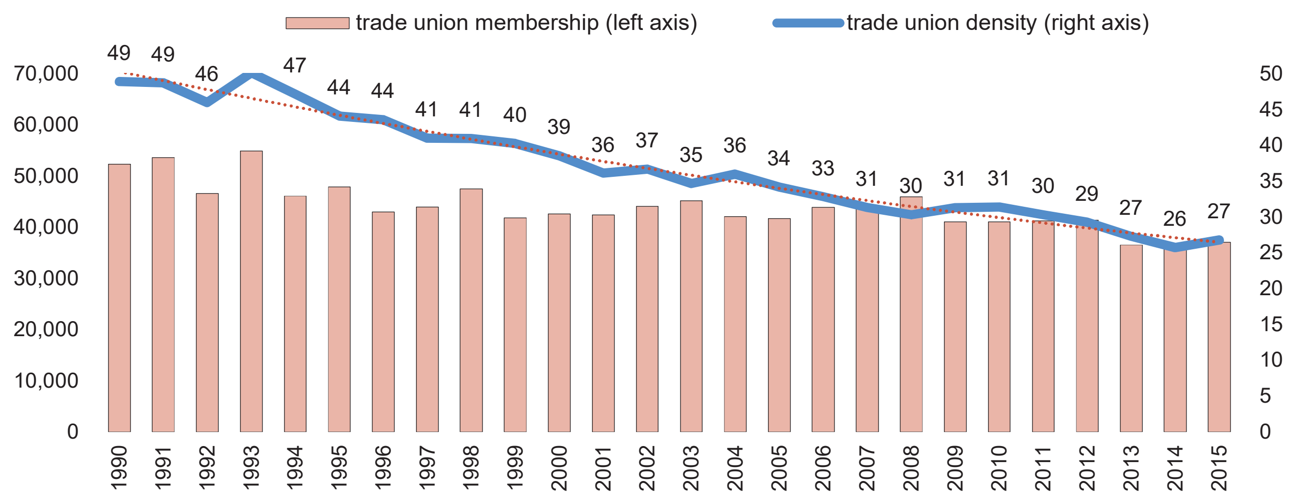
Country-specific recommendations 2018/2019: not yet any evident impact of the EPSR

The 2018 country-specific recommendations (CSRs) were the first real test of how serious the European Commission is about living up to its commitments made in the EPSR in the field of wages and collective bargaining because they were the first set of CSRs that were issued after the Pillar's proclamation in autumn 2017. Against this background, the 2018 CSRs in the field of wages and collective bargaining are ambiguous. On the one hand, they no longer exclusively aim at implementing supply-side oriented policies which exclusively view wages as costs and collective bargaining as an institutional rigidity that needs to be curtailed. One reason for this, however, may be that most of the supply-side 'reforms' have already been implemented so there is neither need nor scope for further supply-side 'reforms' (Crespy and Schmidt 2017). On the other hand, however, neither do the CSRs fully embrace and support the EPSR's commitments.

As has been usual in recent years, the 2018 CSRs can be divided into formal recommendations and 'informal' or 'hidden' recommendations, which means that in addition to the official CSRs there are recommendations that are only to be found in the recitals that precede the actual recommendations (Clauwaert 2018). Given the non-binding character of formal CSRs, there is no real difference between formal and informal recommendations in practice because the effect of both in terms of influencing national policies relies on moral suasion. As regards content, the CSRs (both formal and hidden) can be divided into four

Trends in collective bargaining and strike activity

Figure 3.13 Trade union membership (in millions) and density over time (1990–2015)



Source: OECD administrative data except for Estonia (survey data), and Visser (2016) for Bulgaria, Croatia, Cyprus, Malta and Romania.

standard recommendations concerning: (1) the reform of wage-setting systems, (2) the change of wage policies, (3) the reform of minimum wage-setting and policies, and (4) the reduction of the gender wage gap.

Let's start with the positive aspects. These encompass the recommendations to address the gender pay gap in Austria, Czechia, Germany and Estonia in order to increase female labour market participation and realise women's full labour market potential. By fostering wage convergence between men and women these recommendations can be seen as an attempt to ensure appropriate wages for women. Also positive are the recommendations addressed to Germany and the Netherlands, who were asked to create the conditions for higher wage growth in order to boost internal demand and to contribute to a rebalancing within the euro area.

All the other recommendations more or less follow the Commission's usual supply-side oriented approach which primarily aims at ensuring and improving cost competitiveness. To this end, Finland is asked to align wages with productivity and Croatia is asked to reform public wage-setting to ensure control over the public sector wage bill. Two informal recommendations support a further decentralisation of collective bargaining. Italy is asked to support more bargaining at firm and territorial level in order to improve the swift adaption of wages to local economic conditions; and Finland received the informal recommendation to continue with more decentralised bargaining at sectoral and local level to ensure that wage increases do not harm cost competitiveness.

Similarly, Bulgaria and Romania – the two countries with the lowest absolute minimum wages but the most dynamic minimum wage development during the past years – were asked to increase transparency in minimum wage-setting which can be understood as an invitation to ensure more moderate minimum wage increases. As usual, France, the country with the highest relative minimum wage level, received the formal recommendation to ensure that minimum wage developments are consistent with the objectives of job creation and competitiveness.

To sum up, the 2018 CSRs are more interesting for what they do not include than for what they do. Completely absent in the field of wages and collective bargaining are, for instance, any recommendations supporting the restoration of multi-employer collective bargaining systems that have been dismantled during the crisis years. Also absent are recommendations that live up to the commitment of ensuring fair wages which provide for a decent living standard and adequate minimum wages that satisfy the needs of workers and their families. If this had been the case, those countries with a relative minimum wage level below 60% of the national median wage would have received a recommendation on ensuring a more dynamic minimum wage growth.

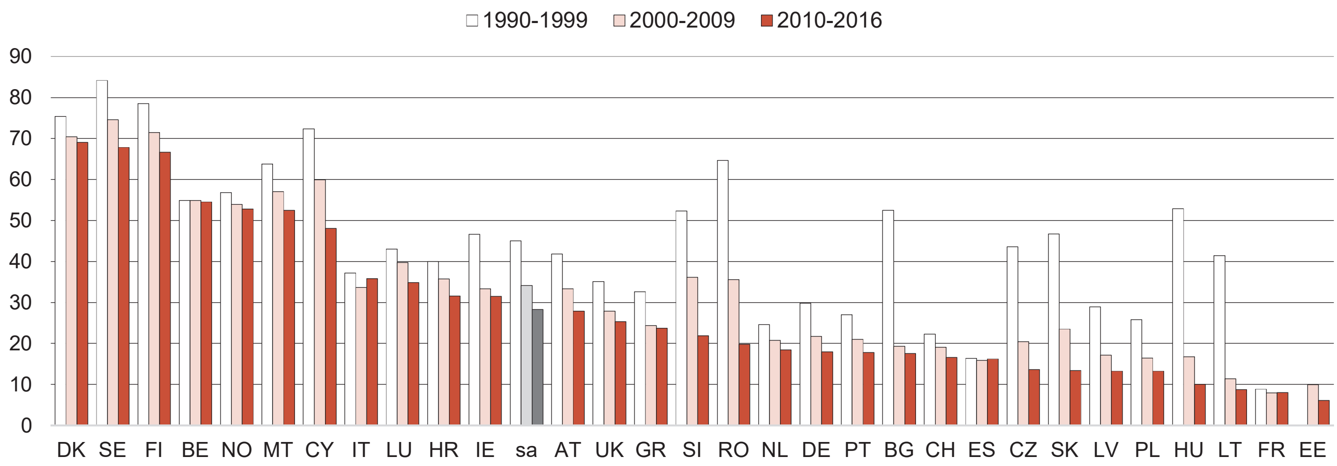
Trade union membership in Europe: bleak prospects

A long-term decline in union membership and density

Institutional support for collective bargaining, for instance via legal extension mechanisms, is only one way to ensure high collective bargaining coverage. The examples of Sweden and Denmark, where there is no legal extension mechanism and where broad-based bargaining parties ensure high coverage, illustrate that trade union density is another important factor. However, the development of union membership in Europe is not very encouraging.

Trends in collective bargaining and strike activity

Figure 3.14 Trade union density per country (1990–1999, 2000–2009 and 2010–2016)



Source: OECD administrative data except for Estonia (survey data), and Visser (2016) for Bulgaria, Croatia, Cyprus, Malta and Romania.
Note: bar graphs sorted by 2010-2016 averages. sa: simple average.

The bar graphs (left-hand scale) in Figure 3.13 depict total trade union membership in the EU28 and Norway and Switzerland from 1990 until 2015 (the latest year for which data is available for most countries). Total union membership has dropped from about 52 million members in 1990 to nearly 37 million members in 2015, which amounts to a decrease of 29.2%. The strongest decline, by 20.1%, occurred in the 1990s, which is largely explained by the drastic and rapid fall in union membership in central and eastern Europe. In general, the 2000s were marked by a slower decrease in membership of 3.6%, but this accelerated again to 9.7% in the 2010–2015 period. Nevertheless, despite this decline, unions have still been able to rely upon a growing (at least until 2009) and relatively high level of social legitimacy, especially among social groups exposed to economic vulnerability like young people and migrant workers (Frangi *et al.* 2017).

The line graph (right-hand scale) in Figure 3.13 shows a slow but almost inexorable decline of union density in Europe, of which the financialisation of the economy is just one of the explanations (Kollmeyer and Peters 2018; Grady and Simms 2018). While, on average, about one out of two workers was unionised in 1990, this proportion had declined to nearly 25% by 2015. This is an aggregated figure masking, for instance, occupational and sectoral variation, and is in fact even lower, as the denominator (the number of wage and salary earners) does not include workers not considered 'relevant' for unions, such as the solo self-employed and workers in the 'shadow economy'.

Persistent country differences

Figure 3.14 compares averages in trade union density in the 1990s, 2000s and the period 2010–2016. The averages demonstrate that union density has declined in most countries in all three periods, especially in the CEE countries. There are a few exceptions, however.

Belgium, Spain and France have a rather stable union density throughout, but the Spanish stability is not the result of union growth but of membership falling at a slower rate than employment. The case of France, with its low unionisation rates, illustrates that workers' power can also be based on their mobilisation capacity (Sullivan 2010). Indeed, in addition to workers' associational power, other power resources and their capabilities to use them (Lévesque and Murray 2010) should be considered when assessing workers' power vis-à-vis employers. Density in Denmark, Norway and Greece (with the last data point in 2013) only slightly deteriorated when the latest period is compared with the 2000s. Union density even increased in Italy in the period 2010–2015, but this is largely due to a decrease in the number of wage and salary earners.

Data on trade union membership corresponds to the number of wage and salary earners that are members of a trade union. 'Non-active' members, like students, the unemployed, pensioners and the self-employed are excluded. Members provide trade unions with financial and other resources. Trade union density is the proportion of union members divided by the total number of wage and salary earners. Union density is thus a simple, though incomplete, measure for comparing the organisational power of trade unions.

All in all, considerable divergence in the level of unionisation remains as a result of the variation in labour-friendly labour market institutions (Schnabel 2013) together with common conceptions about union membership. The Nordic countries and Belgium are still at the top of the 'unionisation league' due to a relatively benevolent institutional setting. While unions' involvement

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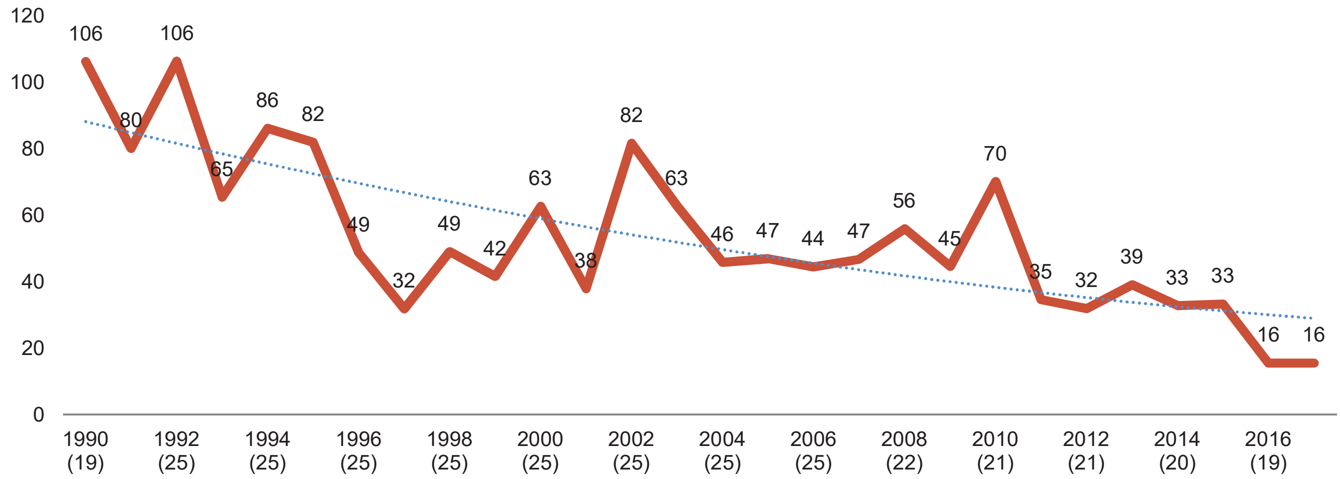
Figure 3.15 Days not worked due to industrial action in Europe per 1,000 employees (weighted average) (1990-2017)



Source: ETUI, based upon data from national statistical offices. For details about the availability and reliability of data, see Dribbusch and Vandaele (2016).
Note: figures in brackets indicate number of countries upon which wa is based on.

in voluntary unemployment insurance schemes (the 'Ghent system') is an important explanation for this (except in the case of Norway) (Høgedahl and Kongshøj 2017), union access to the workplace is also key (Ebbinghaus *et al.* 2011; Ibsen *et al.* 2017). Furthermore, centralised collective bargaining is associated with a higher unionisation level (Rasmussen 2017). At the bottom of the league we find most of the central and eastern European countries; Croatia, Slovenia and Romania have been exceptions, but decline has also started in these countries.

An urgent need for experimentalism

The decline of union membership as a crucial element of trade unions' organisational power resources (Schmalz *et al.* 2018) has led to new debates about organising strategies. What we can see is some convergence in trade union responses, with the promotion of variants of the US-style 'organising model' from the English-speaking world to continental Europe (Ibsen and Tapia 2017). Union agency (and coalitional support from, for instance, community-based organisations) can make a difference, even in very adverse circumstances. The engagement of unions with 'democratic experimentalism' (Murray 2017) seems, however, to be a prerequisite for going beyond the management of union decline, which is often based on a 'toolbox of practices' (Simms and Holgate 2010) inspired by the 'organising model'. Examples of creative network-based mobilising and organising in the platform economy might inspire unions to engage more with such democratic experimentalism (Vandaele 2018). Unions should also not lose sight of their existing members as a source of potential organisational change, but this involves another social relationship between union leadership and the rank and file, based on 'deep organising' (Holgate *et al.* 2018; McAlevey 2016). Apart from a broad strategic vision on the future of unions, a vast shift in resource allocation is needed to overcome representation gaps and to turn successful small-scale, local initiatives into large-scale revitalisation efforts. Since there is a strong association between youth and adult unionisation, there needs to be a more explicit prioritisation of union organising strategies in industries and occupations employing predominantly young workers (Vandaele 2019; Tapia and Turner 2018).

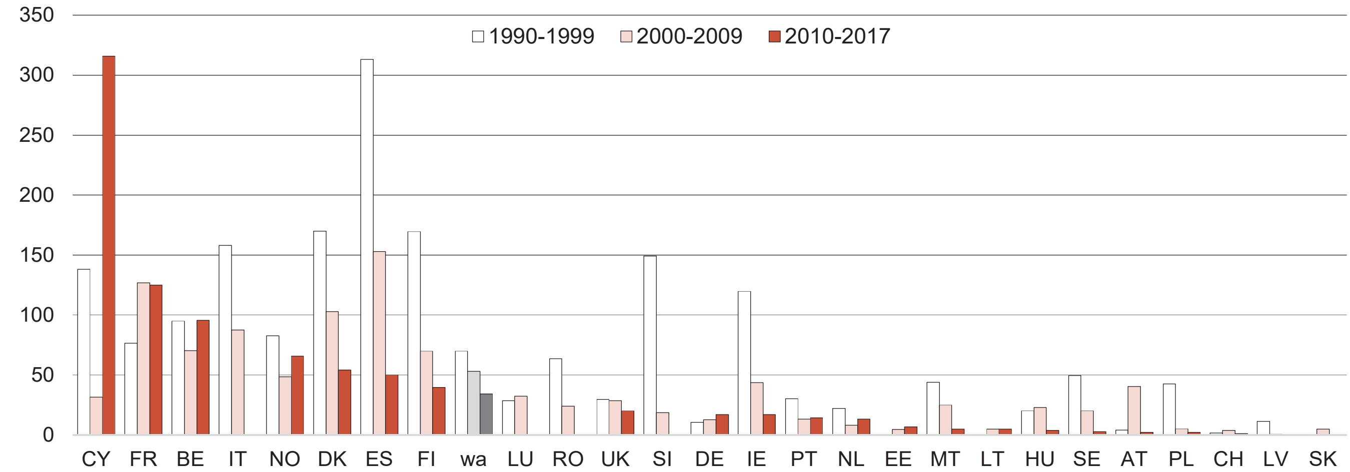
No sign of an upsurge in strike activity (yet)

An overall long-term decline in the strike volume

Strikes and industrial action can be seen as an indicator of the structural power resources of trade unions, defined as the capacity to influence or disrupt processes of production and capital utilisation (Müller and Platzer 2018: 305). The line graph in Figure 3.15 depicts the weighted average of the days not worked due to industrial action per 1,000 employees in most European countries, especially those in western Europe, from 1990 until 2017. It displays a declining trend, with relative peaks in the strike volume in 2002 and 2010. The first peak has been attributed to the recession following the 'dot-com bubble' and the 9/11 terrorist attacks (European Commission 2011: 46), whereas the second peak mainly results from 'national days of action' against pension reforms in France (Ancelovici 2011). Thereafter, the volume falls to a level below 40 days. Data on industrial action are generally underestimated and this is certainly the case for post-2008 developments, as data for some strike-prone countries are lacking and several general strikes linked to anti-austerity protests are ignored (Dribbusch and Vandaele 2016). There are also no data yet for France for the two most recent years of 2016 and 2017; adding this

Trends in collective bargaining and strike activity

Figure 3.16 Days not worked due to industrial action per 1,000 employees (country comparison) (1990–1999, 2000–2009 and 2010–2017)



Source: ETUI, based upon data from national statistical offices. For details about the availability and reliability of data, see Dribbusch and Vandaele (2016).
Note: bar graphs sorted by 2010-2017 averages. wa: weighted average.

data will certainly increase the strike volume. It remains to be seen whether the (at least) two emblematic transnational strike actions in Europe, at Amazon and Ryanair, will lead to a significant reversal in strike activity. In general, the long-term but uneven fall in the strike volume mirrors the shrinking importance of industrial trade unionism, as well as a shift in strike activity towards the private service sectors, especially within transport and logistics, where strikes tend to be shorter, and sometimes smaller, due to their more disruptive capacity (Bordogna and Cella 2002; Vandaele 2016).

A more mixed picture at the national level…

Figure 3.16 compares the average strike volume in the 1990s, 2000s and the 2010–2017 period for all the countries for which (sufficient) data is available. It largely confirms the secular trend in the strike volume, but it also provides a more nuanced picture at the national level. Thus, in several countries, on average, the volume has markedly declined in the two periods following the 1990s. This is the case in Denmark, Spain, Finland, Ireland, Malta, Sweden, Poland and Latvia. Strike activity is virtually absent in most CEE countries.

The picture is more diverse in other countries. Due to an open-ended conflict that erupted in the construction industry in 2013, there has been a remarkable increase in Cyprus, which topped the European 'strike league' in the last period. Over the last two periods the strike volume was fairly stable in France, Portugal and Latvia. Countries with low strike rates like Germany, the Netherlands and Estonia saw a certain increase in the last period compared to the 2000s. For the other countries, no meaningful comparison can be made between the three decades due to a lack of data.

…and persistent country differences

Above all, Figure 3.16 demonstrates the persistence of cross-country differences over time. These differences tend to increase during upswings in industrial action (Brandl and Traxler 2010). In particular, political mass strikes like large-scale strikes in the public sector and general strikes help to explain differences in a country's volume. A quintessential example of this is the exceptional general strike against pension reforms that took place in Austria in 2003. In general, there were more political mass strikes during the crisis, but this is not the case for all countries. This can be accounted for by the following four factors. First, the crisis affected economies differently. Second, as economic hardship provides a context for grievances and feelings of relative deprivation, the protest cycle is linked to the austerity programmes because they made it more likely for blame to be attributed to political authorities (Bermeo and Bertels 2014). Third, besides the timing and severity of the austerity programmes, the organisational cohesion between unions and their institutional access to negotiations with political authorities have also varied, all of which has generated country-specific dynamics of resistance (Ancelovici 2015). Finally, changes in the deployment of the strike weapon over time and across countries (and industries) also reflects its context-dependent character, particularly regarding the legally institutionalised recognition of labour rights (Gentile and Tarrow 2009). In other words, nationally embedded 'action repertoires' go a long way in explaining the sustained cross-national variation in the strike volume and its uneven development (Andretta *et al.* 2016). With the goal of 'achieving more equal political voice' (Kurer *et al.* 2018: 21), trade unions can act as mobilisation machines for political mass strikes or other expressions of workers' dissatisfaction and resistance. The right to strike should be cherished; instead, it is being assaulted by various political authorities and employers across Europe (Xhafa 2016).

The European Social Dialogue in the hands of the CJEU

Another measure of the seriousness of the Commission's commitment to supporting the negotiation of collective agreements is its approach towards social dialogue at European level. In order to demonstrate its support for the European Social Dialogue (ESD), the Commission held a high-level conference in March 2015 to launch a 'new start for social dialogue'. This supportive attitude was then further confirmed in Principle 8 of the EPSR.

The first real test, however, of the seriousness of this commitment to strengthen social dialogue came in December 2015 when the Sectoral Social Dialogue Committee for Central Government Administrators signed a European agreement on the rights of workers and their trade union representatives to be informed and consulted on restructuring, collective redundancies, working time, health and safety and work/life balance issues. The ultimate aim of the agreement is to end discrimination against millions of workers in public administration by ensuring that they enjoy the same information and consultation rights as workers in the private sector (EPSU 2018).

The agreement was submitted to the European Commission with a request to implement it at the EU level by legislative means. As shown in Figure 3.17, Article 155 TFEU provides that in matters falling within the EU social policy competence (which explicitly includes workers' information and consultation rights) the agreement is to be implemented by a Council decision on a directive proposal from the Commission. This procedure therefore constitutes an exception to the usual monopoly the Commission enjoys over the content of legislative proposals, and is in line with Article 17(2) TEU which allows exceptions to the standard procedure where Treaties so provide.

The Sectoral Social Dialogue Committee for Central Government Administrators (SDC CGA) was established in 2007. The trade union side is represented by the Trade Unions' National and European Administration Delegation (TUNED), which consists of the European Public Service Union (EPSU) and the European Confederation of Independent Trade Unions (CESI). The employer side is represented by the European Public Administration Employers (EUPAE).

On 5 March 2018 the Commission decided not to propose to the Council to implement the 'General framework agreement for informing and consulting civil servants and employees of central government administrations' by a directive in line with Article 155(2) TFEU. Because of the Commission's refusal to put forward a legislative proposal implementing a sectoral European framework agreement in EU law, the European Public Service Union (EPSU) decided to legally challenge this decision before the European Court of Justice.

The relevance of this case brought by EPSU against the European Commission (T-310/18 *EPSU and Willem Goudriaan v Commission*) to the future of the ESD cannot be overstated. If the outcome is unfavourable for EPSU, then the ESD will be considerably weakened despite the many recent proclamations by the European Commission to strengthen it.

What is at stake in the case *EPSU and Willem Goudriaan v Commission* is the limitation to the Commission's quasi-monopoly on issuing legislative proposals. In practice, the effectiveness of the ESD depends to a large extent on the power of European trade unions and employers' organisations to act as full authors and 'owners' of a legislative proposal in situations where the correct procedure has been followed and where the agreement concluded is within the scope of the EU social policy competence as set out in Article 153 TFEU. This ensures that, first, the social dialogue parties negotiate in the knowledge that their failure could lead to a possible alternative proposal from the Commission. Second, it also ensures the relevance of the agreement and its ability to change the working conditions of millions of workers across the EU since it will become really binding at the EU level. These factors provide incentives to both sides, workers and employers, to negotiate and reach an agreement.

If one takes away the obligation of the Commission to issue a legislative proposal at the request of the social dialogue parties, this impinges on the essence of the ESD process because the social dialogue parties' role is then reduced to coming up with mere legislative 'suggestions' without any guarantee that they will be presented for a political vote in the Council. The special role that the Treaties have afforded to the social partners in such a case remains unfulfilled. Moreover, the Commission's actions can be seen as a breach of Article 152 TFEU, which obliges the Union, including the Commission, to facilitate dialogue between trade unions and employers. It is exactly this obligation which was recently allegedly reinforced and strengthened by the EPSR.

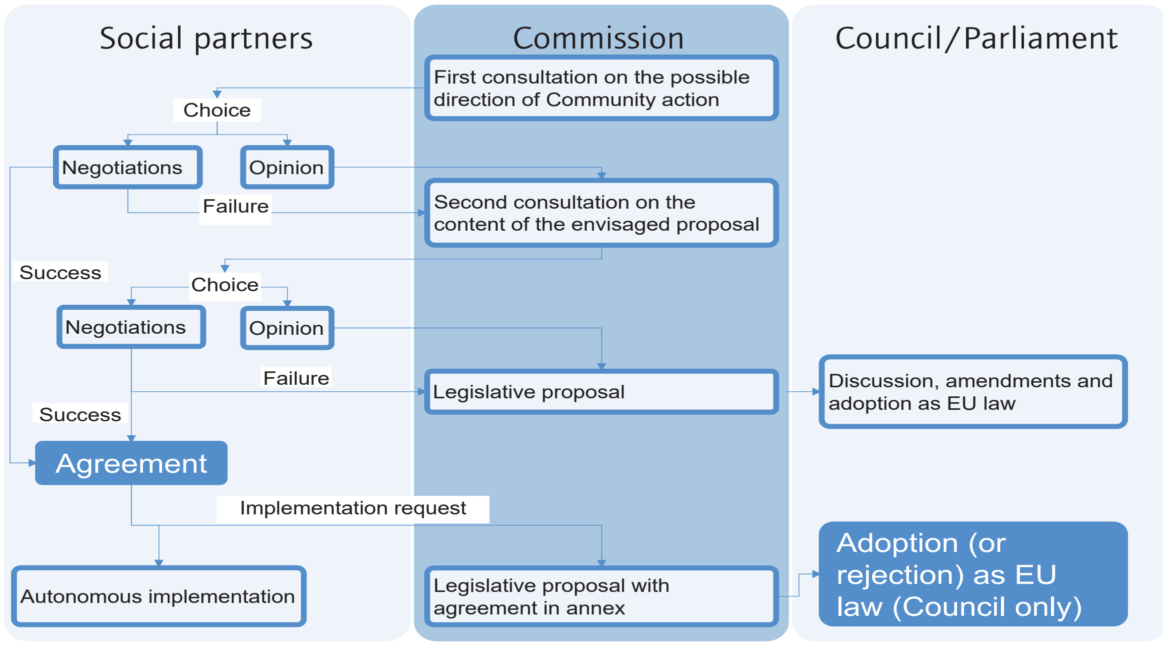
Finally, in line with the principle of institutional balance set out in Article 13(2) TEU, each institution has to act within the limits of powers conferred on it by the Treaties and also practice mutual sincere cooperation. The Commission's refusal could be seen as a significant breach of this principle because its actions undermine the legislative power of the Council which, as the sole legislator under this procedure, is entitled to a political vote over whether or not to turn the agreement into EU law.

The judgment on this case can be expected towards the end of 2019, and it remains to be seen whether the CJEU will choose to save or bury the European Social Dialogue. Regardless of the CJEU judgement, however, the political damage is already done because the Commission's refusal to implement the framework agreement sends the unmistakable signal that the commitments made in the EPSR have not yet been acted upon by the European Commission.

Increased scrutiny under EU law

The above-mentioned case, *EPSU and Willem Goudriaan v Commission*, is not the only one in the broader field of collective bargaining. In 2018 numerous collective agreements were scrutinised before the CJEU and their compatibility with EU law was repeatedly questioned. Furthermore, in several cases brought by trade unions, the CJEU ended up ruling in favour of the opponent. Therefore, the overall picture of outcomes of CJEU cases for the trade unions is somewhat bleak.

Figure 3.17 Consultation and negotiation procedure in accordance with Articles 154 and 155 TFEU



Source: authors' own compilation based on European Commission (2016: 7).

For example, in the case C-385/17 *Torsten Hein*, the German federal law on annual leave provided that statutory payment for annual leave must be calculated on the basis of average earnings during a reference period. However, the law also allowed to derogate from this provision in collective agreements. In the construction sector the collective bargaining parties had agreed that the calculation of remuneration for annual leave should be based on the gross wages during the reference period. Unfortunately, while this provision was beneficial for most workers, for the applicant in the case, a person with a disability, this meant a lower level of remuneration. This was so because he had had periods of short-time working and the reduced wages received during those periods were considered when calculating remuneration for annual leave.

The applicant questioned the compatibility of the respective collective agreement provisions of the Working Time Directive (2003/88/EC) which establishes minimum standards in the field. The CJEU ruled that these provisions were incompatible with the directive since as a result of their application the worker in question received remuneration for annual leave that was lower than the normal remuneration which he receives during periods of work. Despite the situation being 'horizontal' (between two private parties) and the supposed lack of 'horizontal direct effect' of directives, the national court was ordered to interpret the national law in line with the directive.

Similarly, in the Case C-312/17 *Surjit Singh Bedi*, the validity of several provisions of the collective agreement on social security for persons employed by armed forces stationed in Germany was in question. This agreement provided that the right to a 'bridging assistance' following a job loss ceases to exist once the worker is entitled to early payment of a retirement pension. Again, the CJEU considered the provisions in question to be incompatible with EU law, namely Article 2(2) of the Equal Treatment Directive (2000/78/EC) on the prohibition to discriminate based on age.

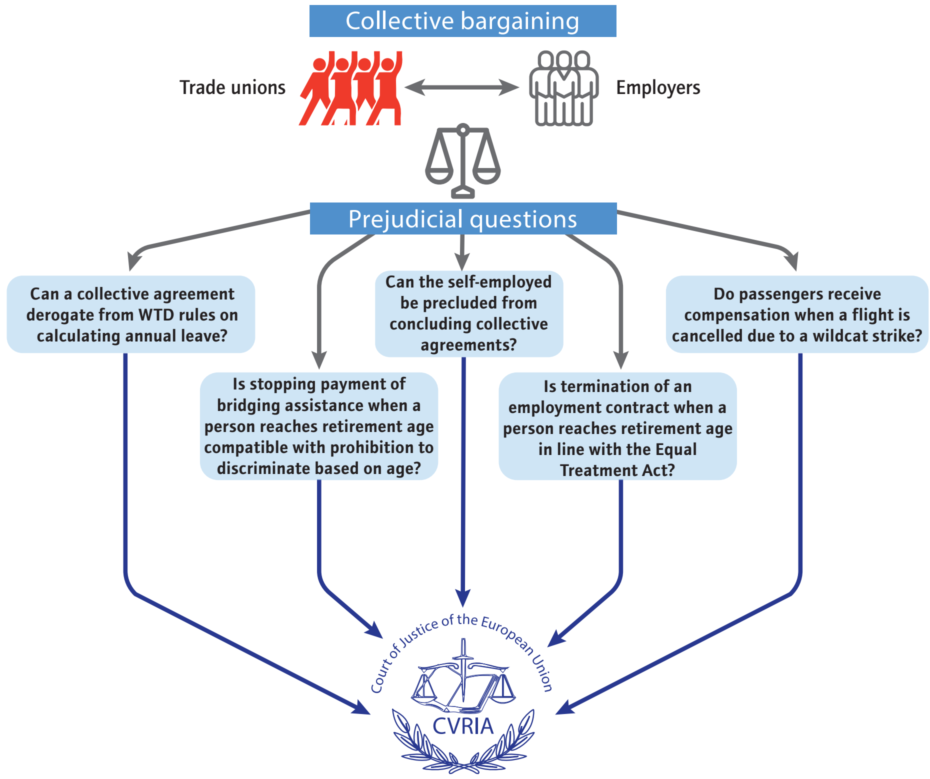
In contrast, in C-46/17 *Hubertus John*, where the applicant argued that rules in the collective agreement providing that an employment contract is terminated on the date on which a teacher reaches qualifying age for his/her retirement pension breached the requirements of EU law, the CJEU considered these rules to be in line with EU law: in particular with the Equal Treatment Directive but also the Fixed-term Work Directive (1999/70/EC).

Two other cases that were of relevance for trade unions in 2018 were C-64/16 *Associação Sindical* and the joined cases C-195/17 *Krüsemann and Others et al.*

In the first case the trade union of Portuguese judges had brought an action challenging the compatibility of the temporary reduction of the remuneration of judges (triggered by the EU's imposed conditions for granting financial assistance to the country in question) with the principle of judicial independence. The Court, however, ruled that general salary-reduction measures, which concern a broader spectrum of workers in the public sector than just judges, do not breach EU law.

In happier news, in *Krüsemann and Others* the CJEU importantly found that passengers have a right to compensation for cancelled or long delayed flights even if the delays and cancellations are caused by a 'wildcat strike'. The CJEU ruled that the airline company cannot rely on the exemption of 'extraordinary circumstances' in such a situation and has to pay compensation in full. This is very welcome since, first, it makes the strike action much

Figure 3.18 Case law on trade union rights



Source: authors' own compilation.

more effective, and second, it mitigates the negative effects on customers which might cause ill feelings towards the striking workers.

Overall, these cases indicate that EU law requirements that go beyond national implementation measures are becoming increasingly relevant for the bargaining parties. Accordingly, in some instances the validity of collective bargaining outcomes might hinge on their compatibility with EU law measures. This means that during negotiations, trade unions, especially at cross-sectoral and sectoral level, have to be prepared to assess such compatibility in order to ensure that agreements are later not struck down by courts.

Varying outcomes before the ECSR and ECtHR

The outcomes for trade unions before the European Committee of Social Rights (ECSR) and the European Court of Human Rights (ECtHR) when it comes to the right to collective bargaining and the right to strike have varied.

In fact, in three out of four cases involving trade union rights in 2018 where the ECSR ruled on the merits of the case, the outcome was unfavourable for the trade union. First, in *EUROMIL v Ireland* (complaint No. 112/2014) the committee found that not affording proper trade union rights to the defence force representatives is compatible with the European Social Charter. Second, the Committee also found no breach in the case *EUROFEDOP v Greece* (complaint No. 115/2015) where the EUROFEDOP had challenged the length of compulsory service required of medical doctors in the armed forces as being too lengthy, and the compensation that must be paid by doctors that leave as excessive. Third, in the case *ICTU v Ireland*, the ECSR considered that a decision of the Irish Competition Authority prohibiting certain workers deemed self-employed from concluding collective agreements, which was challenged on the basis of Article 6 of the European Social Charter (the right to bargain collectively), was perfectly in line with the Charter.

The only case in 2018 where a trade union achieved a partial success before the ECSR was in the case *FO v France* (complaint No. 118/2015) where the trade union successfully challenged the prohibition of the designation of an insurer by the two sides of industry. The ECSR ruled that this prohibition breaches Article 6(2) ESC.

Trade unions achieved better outcomes before the ECtHR. In *Ognevenko v Russia* (application No. 44873/09) the applicant had challenged his dismissal, which was partly based on his participation in a strike. The ECtHR found this to be in breach of Article 11 ECHR (the right to freedom of assembly and association). The ECtHR also found a breach of the same article in the *United Civil Aviation Trade Union and Csorba v Hungary* (application No 27585/13) where the Hungarian authorities had prohibited a strike demonstration on a road (the part of it not used by traffic) on the grounds that the planned demonstration would endanger traffic and render an airport inaccessible.

In sum, trade unions and collective bargaining practices and outcomes are coming under increased scrutiny under European law and before European courts and quasi-judicial bodies, where their compatibility with the law is being questioned. The outcomes of these cases increasingly vary, with such long-time allies of the trade unions as the ECSR ruling less often in their favour.

Conclusions

The European integration project is under strain, with pressure coming from various directions. In addition to the debt, euro and migration crises, Europe is still faced with a social crisis. One indicator of this social crisis is the steadily increasing proportion of workers who cannot make a living from what they earn. The widespread perception that the EU crisis management based on austerity and internal devaluation contributed to this development, or at least did little to fix it, has led to a dramatic erosion of trust in the EU. Anti-European populist parties across the continent are exploiting this sentiment and successfully disseminating their Eurosceptic attitude which perceives the EU as an elite project that merely serves the interests of business and disregards the social interests of its citizens. Against this background, supporting a more dynamic wage growth and collective bargaining (as the key tool that can deliver the former) is part of the new European 'social question' that goes to the very heart of the European integration project.

The strong emphasis the Juncker Commission has placed on strengthening the social dimension, culminating in the proclamation of the EPSR in Autumn 2017, indicates that European policymakers are well aware of the need to deliver tangible results in the improvement of the day-to-day lives of European citizens. The fact that support for 'fair wages', 'adequate minimum wages' and 'collective bargaining' is included in the EPSR under Principles 6 and 8 further demonstrates the Commission's acknowledgment that the discussion of these issues should no longer be restricted to the narrow confines of whether or not they impinge on a country's cost competitiveness. It explicitly acknowledges the social dimension of wages and collective bargaining in fostering social cohesion, both from a geographical perspective by striving for wage convergence between west and east and north and south and from a class perspective by redistributing income from capital to labour with a particular focus on supporting those workers who struggle to make a living from what they earn.

European policymakers are failing to live up to the commitments made in the EPSR

The key focus of this year's chapter on wages and collective bargaining, therefore, has been an assessment of the extent to which European institutions have been supporting a more dynamic wage growth and multi-employer bargaining as part of the set of values on which the notion of a 'Social Europe' is based. More specifically, the analysis has focused on the extent to which the European Commission has lived up to the commitments made in the EPSR in the field of wages and collective bargaining.

So, what have European-level decision-makers done to support 'fair wages', 'adequate minimum wages' and 'collective bargaining'? The first real test in this respect were the 2018/2019 CSRs, the first to be issued after the proclamation of the EPSR. Our analysis of the 2018/2019 CSRs confirms Hacker's assessment that the EPSR has so far done nothing to change the dominance of fiscal and competitiveness-related objectives over social ones (Hacker 2018: 48). Even though there were some recommendations to reduce the gender pay gap and create the conditions for stronger wage growth, the bulk of formal and informal recommendations follows the logic of improving a country's cost competitiveness by ensuring moderate minimum wage growth and the decentralisation of collective bargaining. There was no recommendation for more dynamic minimum wage growth in countries with relatively low minimum wages such as Spain, Czechia or Estonia; nor was there a recommendation in support of multi-employer bargaining systems, in particular in those countries in which these systems were dismantled as part of the crisis management.

The Commission's record on supporting social dialogue at the European level has not been encouraging. In contrast to the late 1990s and the 2000s when the Commission's legislative proposals actively supported Social Dialogue by triggering processes of 'bargaining in the shadow of the law', the Commission recently refused to implement the 'General framework agreement for informing and consulting civil servants and employees of central government administrations' signed by the Social Dialogue Committee for Central Government Administrators. This sends a strong message that undermines the Commission's frequent proclamations on the importance of Social Dialogue, even more so since this is the second time in a row that it refuses to transpose a framework agreement concluded by Sectoral Social Dialogue Committees. The first one was in April 2012 when the Commission refused to transpose the agreement on the protection of occupational health and safety signed in the hairdressing sector into a directive. Furthermore, the analysis of recent CJEU cases shows that national collective agreements still receive little support in CJEU rulings, as illustrated by the various cases in which the compatibility of collective agreements with EU law has been questioned.

Measured against the commitments made by the European institutions and the Member States to supporting 'fair wages', 'adequate minimum wages' and 'collective bargaining', the actual results were very disappointing in 2018. What is still lacking are concrete initiatives that could make a direct and positive difference in European citizens' day-to-day lives in order to overcome the European legitimacy crisis. It is high time to deliver on the EPSR and get serious in upholding its commitments.

An alternative approach to support wage growth and collective bargaining

What would such an initiative look like in the field of wages and collective bargaining? The first step could be to give the EPSR more bite by adopting a 'social progress protocol' that ensures that in the event of a conflict of economic and social objectives, the latter are given priority. Second, the CSRs, as one of the key tools for implementing the EPSR's principles, should more actively embrace the commitments made to promoting fair wages, adequate minimum wages and collective bargaining. Third, the Social Scoreboard should include clearly defined indicators that specify what is meant by, for instance, the term 'adequate minimum wages'. This could include a minimum threshold for minimum wages at 60% of the national median wage. Another possibility would be a minimum threshold of collective bargaining coverage to be reached by EU Member States within a certain period of time. In its latest resolution, the ETUC recommends a coverage of at least 60% to be reached by 2025 (ETUC 2018: 1). This kind of minimum threshold could be monitored in the context of the European Semester, and countries that show no movement towards these criteria could receive a CSR on 'creating the conditions for higher collective bargaining coverage', along the lines of the CSRs that have been addressed to the Netherlands and Germany with respect to 'creating the conditions for stronger wage growth'. Concrete measures to this effect 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 only be awarded to contractors who respect the right to collective bargaining and collective agreements. In order to support Member States in building the structures needed for real collective bargaining, the EU could introduce a fund dedicated specifically to this purpose. The EPSR is a tool that has the potential to make Europe more social and help turn the anti-European tide, but it is time to deliver.