

Multi-employer bargaining under pressure  
Decentralisation trends in five European countries



# **Multi-employer bargaining under pressure Decentralisation trends in five European countries**

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Edited by

**Salvo Leonardi and Roberto Pedersini**

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# Chapter 1

## Breaking through the crisis with decentralisation?

### Collective bargaining in the EU after the great recession

Roberto Pedersini and Salvo Leonardi

#### 1. Setting the scene

The debate about industrial relations developments in Europe in recent years has focused on the multiple impact of the crisis (financial, economic and fiscal) and of policy and regulatory reforms promoted by European economic governance, the so-called Troika, and national governments (Marginson 2014; Marginson and Welz 2014; Papadakis and Ghellab 2014; Schulten and Müller 2015; Koukiadaki *et al.* 2016; Guardiancich and Molina 2017). Against this background, the different developments that have characterised national industrial relations systems entail a number of tasks, not only at the academic level, but also at the operational or practical level. First of all, it is important to improve our knowledge of the different national trajectories and analyse evidence in a comparative perspective. There is remarkable potential here for cross-national fertilisation and strategic learning; these are key components of both scholarship and social partner initiatives in labour relations. Secondly, such knowledge and analyses can contribute to strengthen forms and tools of cooperation and coordination at European level, which trade unions at both national and European level have been promoting for many years.

In order to pursue these objectives, a number of trade union–related research institutes and academic departments initiated the DECOBA project, funded by the European Commission. The DECOBA project, in particular, aims to:

- analyse the ongoing shift from centrally coordinated multi-employer collective bargaining to decentralised negotiations in a number of EU Member States where the former has traditionally been strong (Belgium, Germany, France, Italy, Spain);
- tackle the issue of how company-level bargaining can, in a changing environment, play a new, useful role in establishing working conditions, without paving the way for social dumping and wider inequalities;
- promote greater expertise and awareness, especially among the social partners, about such crucial developments and issues.

In previous studies, some of the DECOBA partners have stigmatised the negative implications of mainstream economic theory that regards wages as merely a cost factor and its policy implications in terms of adjustment and internal devaluation, which are part of ‘the strange triumph of failed ideas’, as Paul Krugman puts it (2010; see also Lehndorff 2012, 2015). In a number of other European studies (CAWIE, GOCOBA), a different view and narrative was put forward, arguing that the competitiveness crisis

in countries such as the southern European Member States was not due to high wage levels and labour market ‘rigidities’, but to elements of non-price competitiveness (firm size, infrastructure, shadow economy, financial speculation). Alternative strategies were identified, aiming at inclusive and wage-driven growth, based on the assumption that ‘Europe needs an inclusive growth strategy that focuses on reducing inequality and enhancing real income growth ... Restoring and supporting collective bargaining on wages is defined as a key factor in this strategy’ (Van Gyes and Schulten 2015: 409). Wage increases should be welcomed in order to support private demand and wage-led growth, which is still by far the most important macroeconomic factor in most euro-zone countries (Onaran and Obst 2016).

The DECOBA project was launched to update these analyses with new facts and developments in the early post-crisis phase and it goes beyond a merely descriptive approach. From this point of view, our key issue is to verify the conditions under which European industrial relations are entering the post-austerity phase, now that European and international institutions have given signals of a new era by recognising the shortcomings and failures of the austerity approach. The OECD and the IMF have reconsidered the effectiveness of austerity policies and have redefined their analyses with much more attention to (in)equality, the growth potential of wages and the benefits of coordinated bargaining (OECD 2012; IMF 2016). In a similar vein, the Juncker Commission has proposed the ‘European Pillar of Social Rights’, while ECB President Draghi admitted the importance of countering underemployment and increasing wages for boosting consumption and GDP, echoing some of the main points of the ETUC campaign for a ‘pay rise’ all over Europe.

What is the current state of industrial relations in the European Union, after what has been described as a ‘frontal assault on multi-employer bargaining’ (Marginson 2014)? Were multi-employer collective bargaining institutions indeed compromised or are they still solid? Which processes were initiated during the crisis and the adjustment phase and which trajectories can we identify for the future? Can the new policy climate find fertile ground for confirming industrial relations as a key component of the European model?

In order to respond to these questions, we focus on the transformations of recent years, notably in 2012–2017. But we broaden our perspective to include, on one side, the trajectories that the countries under review were following before the crisis and to assess, on the other, the effects of institutional change on industrial relations processes and outcomes. In this sense, we consider not only the revision of rules, but also the impact of reforms on practice, which crucially depends on the responses and strategies developed by social partners, in a changing economic and institutional environment. Domestic elements and especially the agency of national actors have in fact remained relatively unexplored. Here, we want to analyse both the external and internal drivers of adjustments in industrial relations and highlight the role played by the different actors, namely national governments, trade unions and employers’ associations.

By taking advantage of the longer span of time, we can obtain new insights about current developments in collective bargaining and industrial relations. Of course,



we are analysing an ongoing process and it is difficult to extrapolate future trends. However, we can better focus on the state of play and emerging patterns. Moreover, we believe that the inclusion of agency adds substantially to the explanatory power of the analytical framework and provides a better understanding of what might be influencing the prospects of national industrial relations systems, in a combination of continuity and change.

In this general picture, economic and institutional (regulatory) factors are strictly intertwined and it is often difficult to identify their respective roles. The financial crisis led to pervasive liquidity problems, a credit crunch and increased bankruptcies; the economic crisis involved declining demand, widespread reorganisation and restructuring processes, as well as rising unemployment; and the fiscal crisis hardened public budget constraints and, besides inducing a retrenchment of public expenditure, often led to public sector job and wage cuts.

Policy and regulatory reforms were often intended to respond to the challenges posed by the manifold crisis, which clearly did not hit all EU countries in the same way. External pressures exerted by European Economic Governance and the Troika had quite different degrees of force and involved distinct tools and implications for the target countries, basically depending on the presence and severity of imbalances and their contingent situations. Indeed, if the incisiveness of external intervention has sometimes been very important, this was basically in response to internal problems. Whereas the specific recipes and recommendations can be criticised for their social impacts and ineffectiveness, and possibly better measures could be adopted, the relevance of the problems they wanted to address – public debt crisis or bailouts in the financial sector – must be acknowledged.

In sum, the basic descriptive question we want to address is whether, during the period under analysis, there was a change in collective bargaining structures. More precisely, we want to assess whether the crisis can be regarded as a turning or a break point, whereby national industrial relations systems have been diverted from their previous trajectory to follow a new path, or at least existing trends have been accelerated to the extent that the fundamental features of collective bargaining structures have effectively changed. From the analytical point of view, we want to identify the main drivers that can explain the pattern we observe, be it continuity or change. In this respect, as mentioned above, the main variables we use are economic conditions, public finances, external policy pressures and domestic agency in the political, economic and industrial relations domains – that is, what governments, enterprises and social partners did to tackle the crisis itself or the growing external pressures.

Our analysis is based on five in-depth cases presented in the following chapters. They cover a fairly diverse set of industrial relations systems, as well as different situations, as far as the other variables under consideration are concerned. The case studies provide up-to-date and extensive information on industrial relations developments in the economy as a whole and in two distinct sectors: metalworking and retail trade. Examining this large evidence base allows us to respond to the first descriptive question, whereas for the explanation of the differences across countries, we propose an interpretative

framework. The use of a case-study analysis provides some important insights into the processes shaping change in collective bargaining and industrial relations, but the complex web of causation and correlation needs to be further explored. However, it would be difficult to study transformations of a mostly qualitative nature by using other methods, considering that proper quantitative data on these phenomena (that is consisting of ‘measures’ rather than ‘scores’) are often missing.

Despite important differences, all the national industrial systems covered by this study share two basic features, which make them particularly relevant for our investigation of the transformation of the collective bargaining structure:

- (i) the traditional pivotal role of sectoral bargaining;
- (ii) the multi-tier bargaining system, which includes second-level negotiations, mostly at company level (with the peculiarities of the German case concerning the role of works councils, see below), but to a certain extent at territorial level too. More variation exists in terms of the extent and relevance of inter-sectoral bargaining, but, with the exception of Germany, this level plays a significant role everywhere.

By looking at changes in these characteristics, we can see whether the balance point of collective bargaining is moving downward and whether multi-employer bargaining remains the most important steering factor in the system overall.

## **2. Definition of variables**

Analysing bargaining structures is a complex exercise, especially in multi-tier systems. While it can be relatively simple to identify the most important bargaining level, assessing the relative importance of other levels may not be so straightforward. This implies not only the consideration of rules on prerogatives, priorities and coordination across different levels, but also of the effective relevance of the provisions defined at the various levels. This involves both a qualitative assessment of the importance of the different levels (by looking, for instance, at the scope of the various agreements) and a quantitative analysis, which can focus on the relative coverage of the distinct levels. The latter consideration points to a more fundamental issue: if we concentrate on collective bargaining institutions, we may overlook the shrinking of collective bargaining coverage overall. If ‘disorganised decentralisation’ brings the collective bargaining system closer to market regulation, the reduction in the coverage of collective bargaining – which we may call ‘decollectivisation’ – goes even more clearly in the same direction.

Therefore, in order to analyse the state and transformations of collective bargaining, we will look at the following features:

- the coordination of collective bargaining by assessing the degree of vertical coordination (organised/disorganised bargaining) and horizontal coordination (unitary/segmented bargaining) and by establishing whether coordination is the result of internal processes governed by the bargaining parties or of external intervention by the state and government (autonomous/dependent coordination);

- the coverage of collective bargaining (high/low) provides an indication of the effectiveness of collective regulation of employment relations at various levels;
- the quality of collective bargaining (core/framework/implementation provisions) is related to its incisiveness in determining actual employment and working conditions by both central/sectoral and decentralised agreements.

To some extent, these dimensions may be considered a selection of the classic variables proposed by Hugh Clegg in *Trade Unionism under Collective Bargaining* (1976). Clegg spoke of the extent of collective bargaining, as the proportion of employees covered by agreements, and of the degree of control and the scope of bargaining, as the capacity, respectively, to set and enforce obligatory standards and to regulate a broad range of aspects (Clegg 1976: 8–9). As we are focusing on multi-tier bargaining systems, some adaptations are needed, because the issues of vertical coordination and of the quantitative and qualitative relevance of the different negotiation levels become particularly important.

## 2.1 Bargaining structure and coordination

Coordination is often regarded as the key feature of the collective bargaining structure. It has replaced the role that centralisation formerly played in the analysis of neocorporatism in the 1970s and 1980s, in order to take into consideration both the reality of multi-tier bargaining systems and the growing importance of decentralised bargaining (Traxler 1995; Traxler *et al.* 1997). For our purposes, it is important to distinguish between different kinds of coordination mechanism, which impinge on different characteristics of the bargaining system. First, we can identify vertical coordination between bargaining levels, so that the relative prerogatives and competencies of the various points of negotiation are clearly established in order to reduce the scope for overlap and replications. Second, horizontal coordination across bargaining units ensures an even development in the main elements of negotiation, such as wages or the bargaining structure itself, and can promote the diffusion of the results achieved in certain areas to other segments of the economy. Third, we can distinguish between internal and external coordination, since coordination can be the result of rules or practices autonomously produced by the social partners or it can derive from constraints imposed and provisions enacted by the political authorities. These different forms of coordination can be linked to three important features of collective bargaining systems: whether it involves organised or disorganised decentralisation within a multi-employer bargaining framework; whether the bargaining system is unitary (inclusive) or segmented; and whether it is autonomous or dependent on state intervention.

Due to the variety of market situations and organisational patterns across different sectors, it is essential to limit the focus of horizontal coordination to wage developments, on one side, and the rules governing bargaining itself, on the other. Although traditionally only wage-setting is considered in this kind of analysis (Visser 2013), the inclusion of this second element allows us to check for the existence of multiple bargaining structures within a single economy, instead of assuming that each country embraces a unitary system. A further element of horizontal segmentation may be linked

to the proliferation of first-level (typically sectoral) bargaining units, usually due to the establishment of new employer associations for existing or emerging sectors. If the new bargaining units adopt the prevalent bargaining structure and are covered by the existing peak-level organisations, the impact on horizontal coordination may be trivial. By contrast, if they create separate bargaining systems, then horizontal coordination may be jeopardised. Turning to vertical coordination, it is useful to broaden our attention to include at least the main conditions of employment, such as wages, working time and work organisation, in order to better grasp the relations between and relative scope of the various bargaining levels. In fact, in many cases, the scope of wage flexibility at lower bargaining levels can be limited, especially downwards, whereas other important elements of employment can be broadly determined through decentralised agreements.

There are a number of connections between types of coordination and the means and processes by which it can be achieved (Traxler *et al.* 2001; Traxler 2003; Traxler and Brandl 2012; Visser 2013: 54–61). For instance, the introduction of binding statutory wage ceilings and floors promotes horizontal coordination and imply a lower level of autonomy on the part of the bargaining system; the presence of pattern bargaining essentially promotes horizontal coordination between bargaining units. However, the introduction of statutory or collectively agreed rules can ensure both horizontal and vertical coordination: a national wage norm steers pay rises across sectors, whereas the favourability principle affects relations between bargaining levels. Similarly, organisational action by the unions and/or the employers can contribute to coordination across bargaining units and between bargaining levels.

Table 1 presents the main coordination patterns, reflecting horizontal and vertical coordination. Centralised bargaining systems, by definition, involve high scores on both dimensions, essentially because the exclusivity or even merely the prevalence of one encompassing central bargaining level resolves the issue of coordination. Where sectoral bargaining prevails and company or local agreements are possible, as in the national cases under investigation here, it is no longer possible to disregard the coordination problem.

Table 1 Main coordination patterns

		Horizontal coordination	
		High	Low
Vertical coordination	High	Organised bargaining	Segmented bargaining
	Low	Decentralised bargaining	Disorganised bargaining

Source: Authors' design.

In such a situation, the bargaining structure can replicate the 'coherence' automatically enforced by centralised systems only if it can ensure high horizontal and vertical coordination. This is the case of organised bargaining, with regard to which centralisation is only one possibility. The opposite condition of symmetrically low coordination on

both dimensions identifies disorganised bargaining, thereby reproducing the basic distinction between organised and disorganised decentralisation introduced by Traxler (1995). However, our scheme takes into consideration two intermediate positions: segmented bargaining between vertically organised separate bargaining units and decentralised bargaining, which enhances the autonomy of second-level agreements, but maintains overall horizontal coordination across the whole economy. Although, at first sight, this may seem an implausible combination, it could depict a radical shift to company-level bargaining, coupled with the implementation of a legally enforced wage norm. Moreover, it is important to recall that we are now looking only at the institutional features of the bargaining system; we will discuss its effectiveness in the section on coverage. This means that decentralised bargaining without significant coverage of decentralised agreements could well amount to the demise of the bargaining system altogether.

The factors that can influence horizontal coordination include the presence of an intersectoral bargaining level, the force and role of peak organisations on both sides of industry; the practice of pattern bargaining; and legal provisions that enforce wage floors and wage ceilings or wage norms. Similarly, vertical coordination can be promoted by prerogatives and priorities established in both collective agreements (as in the opening-clause system in Germany) and legislation (for instance, by defining a favourability principle, which ensures that decentralised deals can only improve on conditions established in higher levels, as in the case of Belgium). Typically, legal provisions influencing the degree of horizontal coordination help to enhance it by implementing general standards in terms of wage developments or other working conditions. On the contrary, the effect on vertical coordination critically depends on the content of the norms, which may support both organised and disorganised bargaining systems.

We now turn to our national cases and identify their specific features as regards bargaining coordination. Despite their common features – that is, the pivotal role of sectoral bargaining and the presence of different bargaining levels – their collective bargaining institutions differ substantially and the changes introduced in recent years point to different trajectories. Detailed descriptions of national bargaining systems and their recent reforms can be found in the individual chapters in this volume. Here, we provide a brief overview and interpretation, in accordance with the analytical framework presented in this chapter.

*Belgium* is usually described as a highly institutionalised and centralised system. Some of its basic features are confirmed by the current analysis. However, the emerging picture is slightly more diversified. Horizontal coordination is ensured by both legislative provisions, notably the introduction of a statutory ceiling for wage increases in order to maintain competitiveness (already in 1996), and by the indexation mechanisms, which are universally present in collective agreements, although they operate according to two distinct mechanisms in the different sectors (see the chapter on Belgium for details). A further element of coordination derives from intersectoral bargaining, which determines the norm of wage increases across the economy, which is supposed to be added to the indexation factor. In terms of vertical coordination, a strict favourability principle

applies, so that decentralised bargaining can only enhance economic and normative provisions, as well as protections. Some limited variation in the structure of collective bargaining can be found across sectors, essentially concerning the relative importance of sectoral agreements as opposed to company bargaining. In certain industries, sectoral bargaining tends to determine only a general framework, whereas the most important provisions are set at company level. This happens for instance in the chemical and banking sectors, while in steel and paper company agreements are prevalent, due to the presence of a small number of very large enterprises. Such variance, however, remains in the collective bargaining system, legally regulated at central level since 1968.

A number of changes have affected the Belgian collective bargaining structure in recent years – including an increase in the importance of regional social dialogue – especially with regard to policymaking. However, focusing on the bargaining system in the private sector, the most important changes concern the government’s renewed activism, imposing wage moderation by enacting strict statutory wage norms. Such interventions in 2011–2016 did not affect the established bargaining structure, which remained organised, but have reduced bargaining autonomy. This state of affairs was institutionalised with a reform of the wage-setting system in March 2017, which reduces social partners’ autonomy and increases government influence (see the chapter on Belgium). Interestingly, the autonomy that the social partners have lost at the intersectoral level has been reinstated at the decentralised level. In order to recover at least partly the leeway they lost at central level, the social partners have enhanced the role of decentralised negotiations, thereby stressing the potential of decentralisation in a system that remains protected by a fairly strict favourability principle. Referring to the distinction between opening clauses, which empower decentralised bargaining, and opt-out clauses, which enable derogations (Marginson and Welz 2014:, 8), we can say that the Belgian example seems to point to a proactive response by social partners. They were able to preserve their autonomy in ways that correspond to the government objective of promoting the diffusion of gain-sharing at company level. In sum, we can say that nowadays Belgium has a system of organised bargaining with less social partner autonomy in wage setting at central level, but potentially more scope for supplementary decentralised bargaining.

*France* has a similarly highly institutionalised system, whose main governing factor is national legislation. The presence of extensive regulations on mandatory negotiations at national and decentralised level since the 1982 Auroux laws; widespread use of the extension of multi-employer agreements; regulation of representativeness; provisions on workplace representation structures; and the presence of a legal minimum wage contribute to define a framework strongly influenced by government action. Such characterisation is further strengthened by the provisions on mandatory social dialogue at national level, enacted in 2007 under Jacques Chirac and reinforced later under both Sarkozy and Hollande, as well as by the traditional role played by a statutory favourability principle. The lack of intersectoral wage bargaining and of an economy-wide wage norm indicate that horizontal coordination may be less effectively ensured in France than in Belgium. However, the role played by the minimum legal wage (SMIC) can be regarded as similar. We therefore consider France to be a second example of organised bargaining.

Recent reforms have not affected horizontal coordination nor the general institutionalisation of industrial relations. Rather, they have focused on vertical coordination and have tried to increase decentralised bargaining autonomy by loosening the favourability principle in certain areas. The most recent *ordonnances* signed by President Macron on 22 September 2017 continued along these lines by identifying a limited set of issues – for instance, minimum wage rates, job classification systems, equality between women and men, training – which are reserved for sectoral agreements and to which the favourability principle will continue to apply, and a second group of topics which sectoral agreements may decide to exclude from possible derogations at decentralised level. On all other issues, decentralised agreements can now introduce provisions that are independent and potentially derogate from existing sectoral rules. Certainly, to achieve this result a majority company-level agreement is needed, because with no agreement the sectoral deal remains in force. However, especially if a company runs into economic difficulties or is under threat of delocalisation, the new institutional setting seems to provide grounds for more concession bargaining. In SMEs, in particular, where no trade union is present, the agreement may now be concluded by elected employees who are not mandated/appointed by unions and in micro firms the employer initiatives may be sanctioned by an employer-initiated employee referendum. In larger enterprises, the employer continues to need the unions' agreement and this may provide some leverage for their demands, too. The general trend in rules seems therefore to be moving France towards decentralised bargaining, in which horizontal coordination will remain mostly dependent on the SMIC. Beyond the new rules, vertical coordination will rest mainly upon trade union strength at decentralised level, based on the broad entitlements assigned by legislation, the mandatory nature of negotiations and the presence of a now unitary employee representation structure in which they are predominant. However, it is worth mentioning that such developments may weaken the overall relevance of multi-employer bargaining, which would critically depend on the continuity of the extension of sectoral bargaining. Otherwise, the risk of moving to single-employer bargaining may soon emerge.

*Germany* has long been regarded as the exemplary case of coordinated bargaining. In this traditional picture, on one hand, horizontal coordination is ensured by pattern bargaining, often led by the strong metalworking union IG Metall. On the other hand, vertical coordination is supported by granting exclusive bargaining rights to trade unions, which operate mainly at sectoral level. In workplaces, the codetermination rights entrusted to works councils represent an important balance for management prerogatives in employment-relevant issues. Works councils and management can conclude so-called works agreements, which de facto represent a second bargaining level, although they are not seen as collective agreements in the strict sense, as they can only supplement sectoral collective agreements and have to comply with the favourability principle. Trade unions are not formally involved, although they effectively play a substantial part in works councils, since many councillors are in fact trade unionists, especially in larger companies. Legislation on employee representation in the supervisory boards of large companies contributes to define an overall picture of worker participation and provides further leverage for coordination in a broader sense. The inclusion of opening clauses in sectoral agreements, which started as early as the 1960s, confirms the capacity of the industrial relations system to combine some



degree of decentralisation with continued control by industry-wide agreements. In fact, the opening-clause system gained momentum in the 1980s–1990s and soon became a reference for organised decentralisation.

The analysis presented in this volume points to a significantly different state of industrial relations in 2017. In terms of horizontal coordination, pattern bargaining probably plays a less prominent role than in the past. In fact, it may well have lost its pivotal position in the German industrial relations system. A possible new candidate for horizontal coordination might be the legal minimum wage introduced as recently as January 2015. However, it remains to be seen to what extent the development of the minimum wage will influence collective bargaining. So far, it only has influence on a few collective agreements in low pay sectors. By contrast, minimum wage adjustment largely follows the development of collectively agreed wages. In fact, the Minimum Wage Commission, which is made up of employers and trade union representatives, in preparing its biennial recommendations on adjustment to the minimum wage level, is also supposed to consider developments in collectively agreed wages (Amlinger *et al.* 2016). But if coordination now rests at least partly on the legal minimum wage, the nature of coordination has somehow changed. While pattern bargaining could play a progressive role in specific bargaining rounds, the legal minimum wage essentially provides for rather modest protection and ensures – by definition – minimum pay development.

Turning to vertical coordination, the expansion and reconfiguration of the opening-clause system in recent years has, on one side, reduced its original exceptional nature and, on the other side, confirmed a fairly developed management procedure that ensures trade union influence on the process overall. For instance, in the case of the metalworking sector, the Pforzheim Agreement of 2004 introduced a general opening clause, but, at the same time, it enabled the institutionalisation and regulation of the derogation procedure, thereby resolving the problem of earlier disorganised decentralisation. As a consequence of such a regulatory setting, with some sectoral specificities (see the German chapter for a comparison between the metalworking, chemicals and retail sectors), the once quite separate roles of trade unions and works councils have somehow become closer, since the implementation of opening clauses involves the two actors in the same processes with shared responsibilities. Overall, it is possible to confirm the institutional framework as supporting bargaining coordination, at least in manufacturing. However, there is a growing role of legal intervention due to the decline of collective bargaining coverage, which was not the case in the past. Indeed, the reinforced possibility to extend sectoral collective agreements introduced by legislation (Schulten 2018), as well as the legal minimum wage signal somewhat less autonomy on the part of the industrial relations system, while promoting a re-strengthening of the bargaining system and its coordination capacities, as traditional supportive measures used to do.

Until the 1990s, *Italy* was, alongside the United Kingdom and the Nordic countries, a typical case of voluntarism, with a minor role for statutory regulations, apart from a number of important provisions promoting trade union action established by the Workers' Statute of May 1970. Similarly to the German case, horizontal coordination



was promoted by the leading role played by the metalworking sector through pattern bargaining and, at certain junctures, by public employers in the large segment of state-owned enterprises, which was also important in the French case. The relevance of the major trade union confederations (CGIL, CISL and UIL) and employers' peak association (Confindustria) provided an encompassing framework for industrial relations, which helped diffuse practices across sectors. Moreover, the presence of an indexation mechanism, designed in a way that had a strong equalising impact on wage differentials in the high-inflation years of the early 1980s, represented an important factor in economy-wide wage coordination. There were no strong or legal rules for vertical coordination, but the clear predominant role played by the industry-wide agreements, as well as the union capacity to extend their action to workplaces significantly reduced the autonomy of decentralised bargaining, whereas it allowed forms of micro-concertation (Regini 1995).

The institutional picture changed in the early 1990s as new rules for horizontal and vertical coordination were enacted. In the first direction, the monetary policy tool of planned inflation was the key income-policy indicator and provided the yardstick for wage increases in all sectors, with the objective of preserving the purchasing power of pay. In the other direction, the second level of negotiation specialised in gain sharing, so that duplication of norms was ruled out and a specific prerogative on performance-related pay was recognised with regard to decentralised deals. Consequently, Italy entered the 1990s with an organised bargaining system, which put it alongside Germany and other continental European countries (Pedersini 2014).

A series of intersectoral agreements after 2009 introduced some adjustments, but did not modify the basic features of the system. Forecast inflation has become the main reference for periodic wage increases at the sectoral level (in some cases, the reference is ex-post inflation, see the chapter on Italy for details), thereby confirming the specialisation of industry-wide agreements in preserving the purchasing power of pay. The scope for decentralised bargaining has increased somewhat, and the opening-clause system has been introduced, with the definition of specific rules on the effectiveness of agreements, in order to take into account the presence of a plurality of unions within workplaces, which may not sign all deals jointly. In particular, since 2011 a number of intersectoral agreements signed by CGIL, CISL and UIL, together with Confindustria have introduced a minimum representativeness threshold of 5 per cent for participating in sectoral negotiations and have endorsed a majority principle for the validity of agreements at all levels. Through these provisions, coordinated bargaining has been preserved.

However, a new provision was introduced in the Italian legal system in the summer of 2011, which enables decentralised agreements to derogate extensively from sectoral collective agreements and, to a certain extent, even from legislation. According to Article 8 of Decree Law 138/2001, derogatory agreements can be linked to a large number of objectives: increasing employment, enhancing the quality of employment contracts, promoting employee participation, fighting undeclared work, improving competitiveness and wages, managing industrial reorganisation and restructuring, supporting investment and the start of new economic initiatives. Derogations can

similarly cover a wide range of topics, including working time, the introduction of new technologies, work organisation, job classification and tasks, non-standard contracts, hiring procedures and the consequences of terminating the employment relationship. Moreover, horizontal coordination has been threatened by the emergence of new bargaining units, which may be either inside or outside the traditional perimeter of intersectoral relations between the major industrial relations actors. Notably, this happened with the exit of the Fiat Group from Federmeccanica, Confindustria's affiliated metalworking employer association, and the creation of a new, separate collective bargaining system. The increasing number of industry-wide agreements in recent years, with new signatory employer associations, and the splits opening up in some employer associations are going in the same direction. In general, the overall regulatory framework remains attached to the model of coordinated bargaining, but it now includes some elements of both decentralised bargaining and segmented bargaining, which may erode and disorganise the system.

*Spain*, like the other countries examined here, entered the financial and economic crisis with a substantially coordinated bargaining system, anchored to centralised agreements setting guidelines and wage norms, widespread use of indexation mechanisms in collective agreements, as well as a predominant role for sectoral bargaining, usually at provincial level. Measures unilaterally enacted by the government during the crisis introduced some significant changes, in three instances between 2010 and 2012. Major changes were enacted with the 2011 and 2012 reforms.

In June 2011 the socialist government introduced measures aimed at favouring decentralised bargaining. The new legislation suppressed the possibility to establish by agreement the complementarity of the various bargaining levels, whereby higher levels can restrict the scope of decentralised deals by stating that lower levels cannot regulate what is already regulated at higher levels. In addition, it provided for the priority of decentralised agreements on a number of key issues, such as basic wages and supplements, overtime and shift bonuses, working time and job classification systems. However, this legal priority was balanced by the possibility of sectoral agreements to establish coordination rules and exclude certain topics from the negotiation entitlements of decentralised bargaining.

The conservative government's reform of 2012 proceeded further along the path of strengthening decentralisation. First, temporary derogations from sectoral agreements became easier, as the reasons allowing them were broadened and the number of items that could be derogated expanded. Second, the effectiveness of collective agreements was limited to only one year after their deadlines. Previously, expired agreements continued to be valid indefinitely, until they were renegotiated. With the 2012 reform, expired agreements remain effective for only one year after expiry, which puts pressure on unions. In fact, unions now have to negotiate under the threat of losing collective bargaining coverage if the negotiations for renewal last more than one year. Third and most importantly, the clause allowing sectoral agreements to regulate the bargaining structure and exclude some issues from decentralised agreements was suppressed, thereby making decentralised bargaining a general and non-suppressible regulatory tool with regard to the key topics of collective bargaining mentioned above. Finally,

employer prerogatives for unilateral internal flexibility were reinforced. Employers can now introduce substantial changes in working conditions if they are not regulated by mandatory collective bargaining agreements, concerning the following issues: (i) working day; (ii) working time and distribution of working time; (iii) shift work regimes; (iv) system of remuneration and wage levels; (v) work performance; and (vi) tasks.

In terms of the vertical relationship between the various negotiation levels, such changes have clearly shifted the institutional balance of the bargaining system to an overly decentralised bargaining setting, with fairly broad scope, which does not include for instance the reservation of some basic elements to sectoral agreements, as in the French case. Moreover, the new rules undermine the effectiveness of horizontal coordination in wage bargaining allowed by indexation mechanisms and guidelines set in higher-level agreements. Therefore, the Spanish bargaining system appears to represent a case of decentralised bargaining, potentially prone to a shift to disorganised bargaining.

## 2.2 Bargaining coverage

Having analysed the changes in bargaining institutions, we can now turn to consider the relative coverage rates of both sectoral/central agreements and decentralised ones. Because we are studying multi-tier bargaining systems, which were traditionally centred around industry-wide agreements, the impact of the possible shift to lower-level agreements must be assessed against their effective diffusion.

As we have seen, in *Belgium* the bargaining structure has not undergone radical changes in recent years and is still characterised by high horizontal and vertical coordination. Unilateral intervention by the government in wage-setting, however, has decreased the autonomy of the bargaining system. The lower scope for wage bargaining at sectoral level has triggered some readjustment in the balance between bargaining levels, so that the relevance of decentralised agreements increased somewhat, but still in a closely coordinated setting. In terms of coverage, sectoral agreements continue to cover almost the whole workforce (90 per cent or more), thanks to the joint committee system and extensions, although no data are available on the coverage of decentralised agreements. However, there are indications of increased use of second-level deals. This rise is related mainly to the use of company settlements on variable pay as complementary or alternative to the (imposed) wage moderation or freezes at central level. Between 2009 and 2015 the percentage of the total wages coming from this bonus system rose to almost 1 per cent (based, among other things, on 1,917 company agreements).

In contrast to Belgium, in *France* changes in bargaining structure have been important, amounting to an institutional drift to decentralised bargaining. Concerning coverage, sectoral agreements still influence the employment terms and conditions of almost the whole workforce (90 per cent or more), as in Belgium. Decentralised company agreements have become progressively more important since the early 1980s, not only because of their entitlements, as indicated above, but also in numerical terms. In fact, coordination ensured by the favourability principle was soon coupled with competition in rule setting between the sectoral and company levels (Morin 1996). This was also

because employers could exploit their increased bargaining power at company level (see the chapter on France). The number of company deals progressively increased from relatively low levels in the early 1980s (3,900 in 1984) until the end of the 1990s, when they peaked in connection with the implementation of the Aubry laws on the 35-hour week. After falling again until 2003, their number started to grow and reached almost 40,000 in 2013, above the peak of the year 2000. In 2014 and 2015, the number of company deals was stable at around 37,000.

In France, company level collective bargaining follows a cycle influenced by mandatory negotiations on different topics, which do not take place at the same time, but in periodic rounds. Nevertheless, they have involved a fairly stable share of the workforce in recent years. In 2015, for instance, agreements were reached in 15 per cent of workplaces with more than 10 employees and covered 61.5 per cent of the respective workforce. Existing data do not allow us to identify any impact of the measures which provided more scope for derogations at company level, also due to the short time passed since the introduction of the latest measures. However, previous interventions in the same direction did not show a very high take-up rate. An early reform in 2004 allowed company agreements to derogate sectoral standards on all matters except basic wage rates, job classification, vocational training and supplementary social protection. At the same time, legislation allowed sectoral agreements to regulate or even rule out this option and indeed most industry-wide deals used this possibility and enforced a strict hierarchy between levels, with sectoral provisions prevailing. Similarly, a temporary derogation of sectoral standards agreed in the national inter-sectoral agreement (ANI) on competitiveness and job security signed in 2013 during the Hollande presidency was used in only ten agreements. Despite this current state of affairs, it must be recognised that the formal and real importance of company bargaining certainly provides a solid basis for making the institutional shift to decentralisation without strong vertical coordination effective, as allowed by the latest Macron *ordonnances*.

Table 2 Collective bargaining coverage: sectoral and decentralised agreements, 2015–2016 (% of employees)

	Sectoral coverage	Decentralised coverage
Belgium	≥90%	(No data)
France	≥90%	61.5%*
Germany	48%	30%**–17%***
Italy	90%	34%
Spain	65–70%	5%

Note: \* Percentage share of the workforce in enterprises with at least 10 employees. \*\* Workers covered by collective agreements and a works council. \*\*\* This corresponds to 35 per cent of all workers covered by collective agreements. Source: DECOBA.

In *Germany*, the erosion of the overall bargaining coverage rate is a key feature of recent developments, although it represents a medium- to long-term trend, which started at least in the mid-1990s. When we analyse trends in coverage rates in Germany, besides looking at the role of industry-wide agreements, it is possible to consider, on one side,

single-employer bargaining as an alternative to industry-wide agreements and, on the other, the diffusion of second-level deals within the framework set by industry-wide accords. In practice, the decentralisation of the bargaining structure may take place both with a shift to single-employer bargaining and by growing utilisation of opening clauses through the conclusion of derogation agreements.

The general trend shows that the coverage of sectoral agreements has progressively decreased in the past 20 years. In 1998, coverage was 68 per cent in western Germany and 52 per cent in the east. By 2016, it had decreased to 51 per cent and 36 per cent, respectively, amounting to overall coverage of 48 per cent. As for company agreements, they remained stable over this period. In 1998 and 2016 alike, they covered 8 per cent of workers in western Germany and 11 per cent of workers in the east, and 8 per cent altogether.

Companies covered by sectoral agreements may also conclude works agreements between the works council and the management, which can be considered a form of second-level bargaining. However, in the German context these works agreements are not seen as collective agreements in the strict sense, as they could only cover issues in addition to collective agreements and have to adhere to the favourability principle. All in all, around 30 per cent of all workers in Germany are covered by both a collective agreement and a works council.

While the German system has always been characterised by sectoral collective agreements and (supplementary) works agreements, the debate on decentralisation of collective bargaining has focused almost exclusively on so-called ‘derogation agreements’. The latter are based on opening clauses in sectoral collective agreements that allow (temporary) derogation from collectively agreed industry-wide standards at company level. In contrast to regular works agreements, derogation agreements are concluded mainly by the responsible trade union rather than by the works council. According to survey data, in 2011 some 20 per cent of companies covered by collective agreements used opening clauses. These companies employ around 35 per cent of all workers covered by collective agreements, which corresponds to about 17 per cent of all workers in Germany.

Another source confirms the same proportion of companies using opening clauses in 2015 (21 per cent) and signals that a further 13 per cent of companies are implementing ‘informal derogations’ outside the framework of opening clauses. The fact that use of opening clauses is not linked to economic and financial performance is a further indication of its importance. In fact, opening clauses do not seem to be an exceptional feature of workplace joint regulation, unlike when ‘hardship clauses’ were originally included in sectoral agreements to face temporary difficulties. They appear to be rather a structural tool. Today, they are still formally temporary, but tend to be regularly renegotiated to accompany firms’ business strategies.

A further aspect worth considering in the case of Germany are differentials in the sectoral coverage of industry-wide agreements. They can be observed thanks to recent data provided by the German Statistical Office, based on the German Structure of

Earnings Survey (SES). This survey generally indicates lower coverage rates than the traditional source (see the German chapter for a discussion of the two sources), but the information about the relative sectoral coverage rates provides important insights. While in 2014 coverage was above-average in a number of traditional manufacturing sectors, financial services, energy and public administration, it was significantly lower in certain services and in agriculture and somewhat lower in electronic, food industry and retail trade.

By combining the data on institutional change and on bargaining coverage, we see that some sectors (mainly in manufacturing) seem characterised by organised decentralisation, but others (mainly services) show more evidence of de-collectivisation and erosion. The lack of a link between derogations and the enterprise's economic and financial situation, as well as the non-trivial diffusion of 'informal derogations' suggest some limitations in enforcement of the regulatory framework that lays down the conditions for derogations. This does not necessarily mean that organisational control over the process is weak. In fact, while the procedures involving the various actors and stakeholders in the activation and implementation of opening clauses may be followed strictly, the capacity to influence the final outcome may still be weakened.

In *Italy*, the coverage rates of industry-wide agreements have been high and substantially stable in recent years. It is estimated that some 80 per cent of the overall workforce are covered by sectoral deals (Visser 2016). Recent ISTAT data on the earnings structure even indicate that collectively agreed wage rates are applied to almost all employees. In fact, more than 90 per cent of enterprises with 10 employees or above apply industry-wide deals to their whole workforce consistently across sectors (CNEL-ISTAT 2016: 105–106). Conversely, only a minority of employees are affected by decentralised bargaining. The same ISTAT data show that some 20 per cent of companies with at least 10 employees are covered by decentralised collective agreements, including both company and territorial accords (CNEL-ISTAT 2016: 109).

In particular, company agreements are signed in 12.9 per cent of enterprises with at least 10 employees and the propensity to conclude company deals is strictly related to size. Coverage involves 8.8 per cent of enterprises with between 10 and 49 employees, 31.9 per cent of those with 50–199 employees, 56.6 per cent of those employing between 200 and 499 employees and 65.5 per cent of the larger ones (Fondazione Di Vittorio 2016: 2). The type of economic activity influences the incidence of company agreements. In manufacturing and construction, some 25 per cent of companies with 10 employees or above are covered by decentralised agreements. Due to the particular features of the two sectors, the majority of enterprises in manufacturing are covered by company deals (17.9 per cent), whereas in the construction sector the main decentralised level is the territory (20.4 per cent). Service companies show a second-level collective bargaining coverage below 20 per cent, with a prevalence of company deals (Fondazione Di Vittorio 2016: 4).

If we move from the percentage of companies covered to coverage in terms of employees, it has been estimated that company agreements affect some 27 per cent of the total private sector workforce, including micro-firms below 10 employees and excluding agriculture



and household workers. At sectoral level, this goes from 39 per cent in manufacturing to 25 per cent in business services, 18 per cent in personal services and 5 per cent in construction. In construction, most decentralised deals are concluded at territorial level, which add a further estimated coverage of 20 per cent of employees. In the other sectors, the extra coverage allowed by territorial deals is 5 per cent in manufacturing and business services and 12 per cent in personal services. Overall, it stands at 7 per cent, so that the combined coverage of second-level company and territorial agreements is 34 per cent (Fondazione Di Vittorio 2016: 8–10).

These data indicate a relatively low diffusion of decentralised agreements, with the partial exception of manufacturing. Even more importantly for our analysis, the extension of second-level agreements does not seem to have grown significantly in recent decades. A previous ISTAT study on collective bargaining in the mid-1990s showed that company agreements were concluded at a slightly lower level of 10 per cent of firms with 10 employees or more, with coverage of some 40 per cent of workers in the same subgroups of firms, which roughly corresponds to the present estimation of 27 per cent of the whole workforce.

These two analyses diverge with regard to the distance between the manufacturing and service sectors. Whereas there were no substantial differences in the mid-1990s, now manufacturing industry seems more significantly involved in decentralised bargaining (18 per cent of firms as opposed to around 10 per cent). It is hard to tell whether this is the result of the features of the two surveys or reflects an increase in decentralised bargaining in manufacturing. Without further data and analysis, we cannot say whether there are clear signs of a general expansion of decentralised collective bargaining. Rather, in terms of coverage, sectoral agreements certainly remain the most important reference. Moreover, the use of derogations seems rather limited: 2 per cent of firms used them in 2012–2013, according to the CNEL-ISTAT survey (2016: 115). Similarly, the latest report of the observatory on decentralised bargaining maintained by the union confederation CISL indicates that derogations were included in 4 per cent of the agreements signed in 2015–2016 (OCSEL 2017: 10–11). In sum, the bargaining hierarchy does not seem to be radically challenged for the time being, also because decentralised bargaining has not effectively expanded its reach.

Among the countries included in this study, *Spain's* collective bargaining system has probably been most affected by recent unilateral government initiatives. The substantial changes include the following: the prioritisation of decentralised agreements over sectoral deals, without reserving any topics to the latter; the shortening of the validity of collective agreements after their expiry; the possibility to engage in negotiations with non-union entities; and broader scope for employers to introduce unilateral changes in working conditions not regulated by mandatory collective bargaining agreements (see above). One of the main objectives of the new measures was to promote decentralised bargaining at the company level. Data show that particularly the 2012 reform may have succeeded in this, as the number of agreements rose in 2013, possibly also driven by the new expiration clause and therefore by the necessity to renew deals. Notably, the number of agreements concluded in newly established bargaining units went up significantly in 2013 and this may reflect efforts to take advantage of the new rules on

derogations, among other things. Indeed, accords concluded in new company and group bargaining units almost doubled from 2012 to 2013 and then remained at a similar high level, which slightly decreased by 10 per cent each year until 2016, when they still stood 40 per cent above the 2012 level. However, in terms of newly covered employees, the new agreements involved only some 0.5 per cent of total employees per year from 2012 to 2016, with a 1 per cent peak in 2013.

Indeed, bargaining coverage rates remained relatively stable during the crisis, at around 65 per cent of total employees for agreements above the company level (if we take into consideration the share of total employment which is excluded from collective bargaining, we would get levels around 7–8 per cent higher; see Visser 2016)<sup>1</sup> and about 6 per cent for company agreements. In fact, the substantial loss of coverage from 2008 until 2016 – around 1.5 million workers considering the agreements above the company level – roughly parallels the fall in the number of employees, which decreased by some 1.6 million in the same period. Derogations from company agreements remained fairly stable between 2012 and 2016, covering around 0.3 per cent of total employees, with again a peak of 1 per cent in 2013. In part, the rise in new company-level bargaining units illustrated above and the use of derogations can be linked to the activation of negotiations in SMEs with non-union worker delegations, which led to derogatory deals (agreements ‘in pejus’). This practice remained limited, however, and it has also been challenged in court, due to the controversial legitimation of the bargaining party on the employee side (see the chapter on Spain for details). According to this evidence, we can say that, overall, the Spanish bargaining system, so far, has not been challenged substantially: sectoral agreements remain at the heart of the system, whereas the reach of company agreements is not expanding and the possibility for derogations is not used widely. One issue that remains underexplored is the utilisation of reinforced employer prerogatives to unilaterally modify the terms of employment, introduced by the 2012 reform. If this kind of unilateral modification expanded, the central role of collective bargaining as a regulatory tool may be threatened, especially in SMEs, where this practice could be a more attractive option than collectively agreed derogations.

### 2.3 Bargaining quality across levels: increasing scope for decentralised agreements

A proper assessment of the quality and effectiveness of collective bargaining at the various levels would require a detailed analysis of the content of the different agreements. This is certainly an important element of research on current developments in collective bargaining, but it goes beyond the objectives of this study. Here, we essentially want to consider whether recent changes have involved some degree of ‘hollowing out’ of

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1. The identification of the bargaining coverage rate remains a controversial issue in Spain, due to different methods to calculate it and the alleged limits of official statistics. Current estimates vary from 65 per cent up to as much as 90 per cent. Here, we stick to the official statistics provided by the Spanish Ministry of Labour (Ministerio de Empleo y Seguridad Social, *Estadística de convenios colectivos de trabajo*, <http://www.empleo.gob.es/estadisticas/cct/welcome.htm>), for the number of covered workers, and to the Eurostat Labour Force Survey data (<http://ec.europa.eu/eurostat/web/lfs/data/database>), as far as the number of employees is concerned.



sectoral agreements and we can address this issue essentially by combining the two previous dimensions and using summary information on the issues addressed in decentralised agreements as opposed to sectoral deals.

In multi-tier bargaining systems the various levels of negotiations are complementary, but can also be in competition with one another. Vertical coordination is the institutional tool for regulating potential competition and assigning relative importance to the different levels. Organised bargaining systems are often those where lower-level negotiations take place in a framework set by higher-level agreements, which maintain a hierarchical prevalence. However, vertical coordination may also involve a substantial shift of competences from central to decentralised levels. Moreover, decentralised collective bargaining does not necessarily imply lower levels of protection for the workers involved. Against the background of full-employment, in the 1960s and 1970s, important waves of decentralisation of collective bargaining were driven by the strength of union representation in workplaces, leading to important results in terms of pay rises, stronger protections and union prerogatives. As for the legal framework, the bargaining power of unions at decentralised level was often reinforced by the presence of a favourability principle, which ensured that second-level agreements could only enhance protections established at higher levels.

In recent years, the long-term shift of bargaining power in favour of employers driven by the internationalisation of markets and production was, on one hand, exacerbated by the impact of the economic crisis on growth and employment and, on the other, buttressed by a number of measures that eroded the role of sectoral/central collective bargaining. Some of these measures may effectively support a weakening of the regulatory role of sectoral agreements, starting from dismantling the favourability principle. The 2012 reform enacted in Spain, as well as Article 8 of Decree 138 introduced by the Italian government in August 2011 provide for the possibility of extensive derogations by decentralised agreements under certain, broadly defined circumstances. Importantly, the Spanish regulation includes pay among the terms of employment that can be derogated, whereas the Italian rules do not. The recent ordonnances signed by President Macron in France on 22 September 2017 go in the same direction, although they provide that some fundamental topics remain reserved to sectoral deals, including basic wages. However, the very limited impact so far of the former measures in Italy and Spain suggests that there is no direct link between reforms and outcomes. The response of the social partners is fundamental and it can try to reinstate or confirm the role of industry-wide agreements. The conclusion of the first national metalworking agreement in Spain in 2016 goes in this direction. Similarly, the Italian social partners have signed a number of intersectoral agreements aimed at establishing a clear framework for organised decentralisation, whose objective is to preserve the role of sectoral agreements and of the bargaining parties.

In Germany, where the issue of vertical coordination remains fully in the hands of the social partners, the system of opening clauses, as well as the practice of ‘informal derogations’ seem affect relations between bargaining levels. Indeed, the utilisation of opening clauses appears to be widespread and affects two major issues, working time and wages, often in the form of so-called pacts for employment and competitiveness,

whereby more flexibility is exchanged for job security and sometimes investment. In the case of the metalworking sector, for instance, the above-mentioned Pforzheim Agreement, with its general opening clause, provided solid ground for the diffusion of derogations, which currently involve around one-third of all companies covered by the sectoral agreement (2012–2014, source: IG Metall). In contrast, derogation agreements play only a minor role in the German retail trade, since employers largely favour disorganised decentralisation and have withdrawn from collective bargaining (see the chapter on Germany for more details).

Only Belgium seems to be insulated from this trend towards a possible erosion of the role of central agreements through derogations. There, the stability of the favourability principle remains a formal impediment to such developments. However, as indicated above, the shrinking scope for wage bargaining at central and sectoral level imposed by government intervention and confirmed by the new 2017 law on collective bargaining, has shifted the attention of the social partners to the company level. This emerging trend may encourage the development of company bargaining outside the sectors where it was already the main bargaining level (the petro-chemical, chemical, banking, steel and paper industries).

Table 3 provides an overview of the current state of play concerning the importance of decentralised bargaining in the five countries featured in this study. In Belgium, the role of company agreements has remained close to the traditional ‘distributive’ role. Derogations are possible only in certain very limited and highly regulated cases envisaged by sectoral agreements. Therefore, decentralised deals take place mainly in larger and better performing enterprises and provide for additional benefits and protections compared with sectoral and central deals.

In the other countries, the scope and nature of company agreements is much broader. In Germany, we can find the opening-clause system established and administered by the social partners at the sectoral level to specifically allow derogations. Nowadays, opening clauses are broadly used and cover important topics, so that the provisions of sectoral agreements can be regarded as defining a framework, which allows significant adaptations at company level. Whether this amounts to an overall weakening of the regulatory framework or rather enables participation and union revitalisation at workplace level is still debated, with rather different views in various sectors (see the chapter on Germany). In France, Italy and Spain, the most recent shifts to decentralised agreements were driven by government intervention, which was implemented either unilaterally or without social concertation agreements with the social partners. In some cases, reforms had to face the open opposition of at least parts of the union movement and some criticism also from the employers’ side.

These recent changes in legislation have intervened in pre-existing decentralised bargaining systems, which show some significant differences. In France, decentralised negotiations are well-developed and supported by legislative prerogatives; in Italy, they have a limited, but still relevant extension; in Spain, they seem to cover a fairly limited share of the workforce. In all cases, though, decentralised bargaining covers a wide range of topics and can enable adaptation to local conditions and support mutually

Table 3 Main features of decentralised bargaining, 2016–2017

	Favourability principle	Diffusion of decentralised bargaining	Main topics of decentralised bargaining	Current use of derogations
Belgium	Yes, except very limited cases of opening clauses, strictly regulated by sectoral agreements	No data	Additional bonuses and benefits, working time arrangements, job classification	Exceptional, almost non-existent
France	Thoroughly redefined by recent Macron <i>ordonnances</i> , with limited topics reserved to sectoral agreements (minimum wage rates, job classification systems, equality between women and men, training and so on)	High	Wage supplements, working time, employment, profit sharing and participation	Very low, almost non-existent
Germany	Yes, valid for works agreements. Derogations possible only within procedural framework defined at sectoral level for opening clauses	Medium	Implementation of sectoral agreements and additional social benefits introduced through works agreements. Derogation agreements on basis of opening clauses and informal derogation	Medium, mostly on working time and compensation (wages, allowances, annual bonuses)
Italy	No, broad derogations are possible for a wide range of reasons according to legislation. Basic wage rates cannot be affected. Intersectoral agreements defined regulatory framework for the validity of derogatory accords	Medium	Wage supplements, reorganisation and restructuring, welfare benefits, working time, union prerogatives	Low, mostly on work organisation, working time, wage supplements, job classification
Spain	Broad derogations are possible for a wide range of reasons according to legislation, which also strengthened employer prerogatives for unilateral changes in terms of employment. Decentralised agreements can also derogate sectoral wage rates	Low	Wage supplements, job classification, working time, employment, equal opportunities, training, complementary welfare, industrial relations	Low, mostly on wages and working hours

Source: DECOBA

beneficial exchanges, as in the case of pacts for employment and competitiveness in Germany (Addison *et al.* 2017).

The fact that, to date, utilisation of derogations is rather limited in all countries suggests at least two reflections. First, the balance between sectoral agreements and decentralised deals has not changed yet and the former remain the principal reference for joint regulation of employment and working conditions. Second, the social partners

seems quite cautious about taking up the possibilities offered by the new legislation. Multi-employer bargaining still represents a fundamental reference for unions and workers' protections and employers seem to recognise its merits in terms of providing a level playing field for competition and a common basis for building positive workplace industrial relations. It may only be a question of time, but, if this interpretation is valid, the ways in which decentralisation of bargaining structures has been implemented lately seem ill-conceived. Instead of supporting the renewal of workplace industrial relations, they jeopardise it. Careful monitoring of future developments in this area remains a key task for all industrial relations scholars and practitioners.

### **3. The driving forces**

The mapping of changes in our five countries points to both commonalities and substantial differences. What are the factors that can explain the pattern of transformation that we have observed? As mentioned above, we are looking at a relatively short window of observation between 2012 and 2017, but we want to include a longer time span, with a view to understanding whether we are witnessing short-term or long-term effects. Short-term shocks may have an external origin, such as those entailed by the global financial and economic crisis that broke in the second half of the 2000s. However, they are always mediated by the internal situation and addressed by domestic actors, so that disentangling 'external' and 'internal' factors can be difficult, if not impossible. Here, we identify some variables that have been used to explain developments in industrial relations and, more generally, in the variance of structural reforms implemented in the EU in recent years. From a more qualitative perspective, we will try to identify the processes and agency that have shaped the patterns we have identified.

These are the short-term variables that we have considered:

- economic growth, as an indicator of the economic conditions of enterprises;
- exports, as a measure of the external competitive pressure on enterprises;
- employment and unemployment, as indicators of the balance of power between workers and employers;
- public debt and deficit, as a measure of vulnerability and exposure within the EU;
- country-specific recommendations, in order to consider the influence of the EU governance framework;
- agency of governments and social partners, which represents the mediation of the other variables.

Table 4 shows that the five countries under examination have been affected by the financial and economic crisis to quite different degrees.

Spain suffered the largest decline in output, which remained below the pre-crisis period in 2016. During the crisis, employment decreased by almost 3.5 million, more than 15 per cent below the pre-crisis level, and it was still below that level by 11 per cent in 2016. The unemployment rate rose to 26 per cent and in 2016 it was still 11 percentage points higher than the pre-crisis level. Its financial vulnerability increased dramatically: Spain

Table 4 Economic indicators during the crisis, 2007–2016<sup>a</sup>

	GDP volumes <sup>b</sup>		Exports <sup>c</sup>	Debt <sup>c</sup>			Deficit <sup>c</sup>		
	Min	2016	2016	Min	Max	2016	Max	Mean	2016
EU28	95.6	105.1	44.1	57.6	86.7	83.5	-6.6	-3.6	-1.7
EA19	95.5	103.0	45.9	65.0	92.0	89.2	-6.3	-3.2	-1.5
Belgium	97.7	106.6	84.5	87.0	106.7	105.9	-5.4	-3.0	-2.6
Germany	94.4	108.7	46.1	63.7	81.0	68.3	-4.2	-0.7	0.8
Spain	<b>91.1</b>	98.6	32.9	35.6	100.4	99.4	<b>-11.0</b>	<b>-6.6</b>	<b>-4.5</b>
France	97.1	105.1	29.3	64.3	96.0	96.0	-7.2	-4.5	-3.4
Italy	91.4	<b>93.2</b>	29.8	<b>99.8</b>	<b>132.6</b>	<b>132.6</b>	-5.3	-3.1	-2.4

	Employment ('000)				Unemployment (%)			
	Max	Reduction	Reduction/ pre-crisis <sup>d</sup>	2016/ pre-crisis <sup>e</sup>	Max	Mean	2016	2016 - pre-crisis <sup>f</sup>
EU28	224,173.2	7,453.7	3.3	0.6	11.0	9.3	8.7	1.6
EA19	146,758.6	6,089.0	4.1	-0.5	12.1	10.2	10.2	2.7
Belgium	4,586.7	25.2	0.6	3.2	8.6	7.9	7.9	0.9
Germany	41,267.3	548.1	1.4	7.1	8.8	6.2	4.2	-3.4
Spain	20,579.9	3,440.9	<b>16.7</b>	<b>-10.9</b>	<b>26.2</b>	<b>19.7</b>	<b>19.7</b>	<b>11.4</b>
France	26,583.8	252.0	1.0	2.5	10.4	9.2	10.1	3.0
Italy	23,090.3	899.8	3.9	-1.4	12.9	9.8	11.9	5.7

Notes: a) best performance among the five countries in italics, worst performance among the five countries in bold;

b) 100=2008, 2007 for Italy; c) % of GDP; d) %; e) % change; f) percentage point change.

Source: Eurostat 2017.

entered the crisis with the lowest debt, but indebtedness increased almost threefold during it, while the deficit was higher than in the other four countries and was highest of all in 2016.

At the other end of the spectrum, we have Germany. The recovery was strong; the fall in GDP was not insignificant, but growth resumed rapidly and in 2016 GDP surpassed the pre-crisis level by almost 9 per cent. Employment performance has been particularly strong. The loss of jobs during the crisis was relatively limited, at 1.4 per cent of the pre-crisis level. In 2016, the unemployment rate had almost halved compared with pre-crisis levels and Germany was the only case among our five countries where it was lower than before the crisis. Both debt and deficit increased during the crisis, but the debt has now almost gone back to the initial level, while in 2016 a surplus was achieved.

The other three countries lie between these two extremes, with Belgium closer to Germany in terms of economic and employment performance, but with a higher vulnerability in terms of public finances. Belgium is also the country with the highest ratio of exports to GDP, which makes it particularly sensitive to external competition issues and therefore very attentive to price dynamics, as the laws on competition clearly

indicate. Italy is closer to Spain in many respects, with a poor economic and employment performance. In particular, Italy lags behind most in terms of recovery. It also presents the weakest position in public finance. France has done relatively well in promoting economic recovery, as well as job hoarding and job creation. It has a more vulnerable situation in public finance and relatively high unemployment rates.

It is often asserted that EU economic governance exerts a significant pressure on national industrial relations systems and especially collective bargaining institutions (see Bongelli in this volume). Taking a mainstream economic approach, the link between wages and productivity has been emphasised in EU recommendations as a means to foster price competitiveness. Institutions promoting the establishment of wage floors, such as legal minimum wages, indexation mechanisms and extension procedures have been regarded by mainstream economists with suspicion, as sources of ‘rigidity’ and potentially detrimental to employment. The five countries under examination have been involved in the review cycle of domestic policies embodied in the so-called ‘European Semester’ and have received a number of Country-specific Recommendations (CSRs) on wage-setting and labour market institutions. It should be noted, however, that the areas covered by such recommendations are broad, whereas we focus on only a subset. In addressing recommendations, national governments can, to be sure, select strategically and progress in one area may reduce the pressure on others. In the system as a whole, ‘the Commission is responsible for the analysis and the monitoring it performs, the Council is accountable for the recommendations issued ... the national governments still are to be considered responsible for the policies implemented in their own country’ (Bongelli in this volume, p. 264). Although governments retain final responsibility for their policies, the EU governance framework involves national governments in a monitoring and peer review system, which makes policymakers more accountable for their initiatives.

Suggestions to introduce ‘structural reforms’ to make the labour market more ‘flexible’, better align wages and productivity and make wage-setting more adaptable to local conditions have been included in the recommendations addressed to a number of countries, including all those under review here. Germany is a partial exception, because it imposed comprehensive labour market deregulation well before the crisis and its currently good economic and employment performance has reduced monitoring pressure, although, among other things, indications for reducing the tax wedge and, most notably, to instigate wage growth to support domestic demand have been put forward. It should also be noted that many of these recommendations have been reiterated a number of times, which may be regarded as an indication of their low effectiveness, as well as of the room to manoeuvre that national governments retain (Marginson and Welz 2014). This was the case, for instance, with regard to wage indexation mechanisms for Belgium, whose revision was repeatedly suggested in the EU reviews. However, reiteration and vulnerability in terms of budgetary imbalances may lead to adoption, especially if this can help obtain more flexibility in the assessment of public budget developments. The reforms introduced by Italy, France, Spain and Belgium affecting collective bargaining have in fact been acknowledged by EU institutions in their periodic review of national policies, although sometimes with concerns about their effectiveness and implementation (as in the case of Spain).

It is probably not by chance that the major formal interventions in industrial relations and collective bargaining can be found in the countries with the more critical economic and budgetary conditions, and we should not forget that Spain also received European financial support to recapitalise its financial sector between July 2012 and January 2014. However, the changes in institutional frameworks should be seen in terms of the interaction between the national and supra-national levels, with governments as key actors, especially because of the need to handle the impact of the economic and financial crisis on domestic economies and labour markets. Spain and France introduced important provisions affecting industrial relations. Italy, which remains in a fragile economic and budgetary situation, did not fully follow in the same direction. Important and incisive reforms have been imposed on the pension system in late 2011 and the labour market since 2012, accommodating EU policy recommendations. However, industrial relations were not subjected to far-reaching reforms, with the fundamental – if one-off – exception of Article 8 of Decree Law 138/2011, when the Berlusconi government received a letter from the ECB suggesting decentralisation of the bargaining system. This relative preservation of social partner autonomy in regulating key elements of the collective bargaining system can probably be linked to the voluntarist tradition of Italian industrial relations and notably to the efforts of the Italian social partners, who have been intensively negotiating on the issues of representation and collective bargaining structure since 2011. They achieved important results, as the single text on representation of January 2014 shows, but the difficulties faced in implementing their agreements may lead to some form of legislative intervention, which could now receive broad support, especially if it enacted the results of bilateral negotiations.

Belgium also received substantial recommendations within the EU governance system, but it did not change the structure of collective bargaining or, for instance, abandon the wage indexation system adopted in collective agreements. Like Italy, the main reforms arising from interaction with the EU institutions on social policy concerned pensions and the fiscal system, including the tax wedge. True, the government took central wage-setting under stricter control, imposed a wage freeze in 2013–2014 and temporarily abolished the wage indexation mechanism in 2015–2016. However, in this it followed a policy orientation established in the late 1980s, with the first law on competitiveness, which may be linked to the openness of Belgium's domestic economy.

Germany, despite its positive short-term performance in growth and employment, as well as the lack of significant pressure on industrial relations from the EU economic governance framework, has undergone a significant transformation with regard to collective bargaining. Indeed, changes in the German bargaining system are no less substantial than in the other countries. In fact, the cuts in the coverage of sectoral agreements and the increasing role of company-level bargaining in derogating sectoral standards may be interpreted as announcing more radical transformations in the future. Policy responses have, indeed, gone in the direction of providing more coordination, especially at horizontal level, through the introduction of the legal minimum wage in January 2015 and the provision of more possibilities to extend collective agreements. In sum, our case studies clearly show that, besides national governments within the EU policy framework, the role of the social partners is of the utmost importance. Not only are national policies set domestically, in which the social partners play an important



role, but the effectiveness of legislative interventions is mediated by the strategies and initiatives implemented by the social partners, both jointly and individually. Germany is probably the example closest to the general picture of long-term changes in collective bargaining driven by developments in bilateral industrial relations, within a changing economic and institutional framework. The differences that we can discern in the structure of collective bargaining in the chemicals, metalworking and service sectors, with the significant exception of retail, are indicative of the importance of specific features of the various sectors. Sectors play an important role everywhere (Bechter *et al.* 2011), but in this case the weakening of horizontal coordination and the lack of an encompassing formal regulatory framework has probably emphasised the role of sectoral social partners. The other countries provide different examples of the role of social partners: the ‘enrichment’ of decentralised bargaining linked to stricter legal wage norms in Belgium; the importance that Spanish employers, especially SMEs, still attach to sectoral agreements at provincial level; the results obtained by Spanish unions in supporting the role of multi-employer bargaining within the new legislative framework; the limited impact so far of the rules enabling derogations in France; and the similarly low diffusion of derogations and social partner commitment to autonomously defining the rules of collective bargaining in Italy. These examples all indicate the substantial autonomy of industrial relations systems, even when external government interventionism endangers their independence.

#### **4. Concluding remarks: the way forward through troubled waters**

In this final section, we can go back to our initial questions: was the recent crisis a turning point for EU industrial relations? What remains after the ‘frontal assault’ on multi-employer bargaining? What kind of industrial relations are now being advanced by the new EU policy climate, which aims to revitalise social dialogue?

The analysis of our five country cases, summarised in Table 5, suggests some tentative answers. Multi-employer bargaining has been under pressure in recent years through the impact of the financial and economic crisis and government interventions in areas traditionally within the remit of social partner autonomy. Such pressure on collective bargaining systems has impacted both their structure – notably the degree of coordination between different bargaining levels and across bargaining units – and their outcomes, leading especially to wage restraint and internal devaluation, as well as to more concession bargaining, namely at company level.

The space for decentralised bargaining increased almost everywhere, including in Belgium, where the bargaining system remains strongly organised. In France, Italy and Spain, legal reforms have subverted the traditional bargaining hierarchy established by previous legislation or collective agreements, thereby favouring decentralised agreements over sectoral ones. In some countries, such weakening of vertical coordination may, in the future, involve a substantial erosion of multi-employer bargaining and, in certain cases, could lead to disorganised bargaining and even the dismantling of collective bargaining institutions.



Table 5 Breaking through the crisis: current trends in collective bargaining

	Bargaining structure		Coverage		Bargained derogations	
	Coordination	Autonomy	Sectoral	Decentralised	Scope	Use
Belgium	Organised bargaining	Decreasing in horizontal coordination	High (stable)	No data (Increasing)	None, very limited	Not applicable
France	Decentralised bargaining	Decreasing in vertical coordination	High (stable)	Increasing	Broad, with limitations	Low
Germany	Organised bargaining	Decreasing in horizontal coordination	Declining (partial de-collectivisation)	Medium (stable)	Broad, with procedural rules	Medium (increasing)
Italy	Organised bargaining/ decentralised and segmented bargaining?	Threatened in vertical coordination	High (stable)	Medium (stable)	Broad	Low
Spain	Decentralised bargaining/ disorganised bargaining?	Decreasing in vertical coordination	High (stable)	Low (stable)	Broad	Low

Source: DECOBA.

Some national collective bargaining systems have been affected by an increasing variety of bargaining units with different levels of protection (segmentation) and a tendency towards a decline of collective bargaining coverage (de-collectivisation). Germany is a case in point, while Italy and – partly – Belgium show emerging signs of segmentation. It should be underlined that segmentation often results in lower protection and therefore represents a possible alternative to decentralised derogations, especially where the prevalence of sectoral agreements in uncontested, as in Belgium.

The increasing government intervention in industrial relations and collective bargaining issues is reducing bargaining autonomy in the countries under review. In some cases, government intervention aims to directly affect the bargaining structure or outcomes, as in France, Italy and Spain, by supporting the prevalence of decentralised agreements, or in Belgium with stricter wage norms and the imposition of temporary wage freezes. In Germany, by contrast, the introduction of the legal minimum wage in 2015 and the reinforcement of extension mechanisms have gone some way towards counteracting the weakening of the general regulatory capacity of industrial relations.

In sum, the crisis was accompanied by a number of policy-driven changes, especially in the countries most affected by the economic downturn and more exposed in terms of public finance vulnerability, and reinforced the tendency towards segmentation. However, our analysis indicates that no systemic changes in collective bargaining structure have yet taken place.

Indeed, a number of elements signal the resilience of national employment relations, which essentially derives from the autonomous institutions of industrial relations and the actions of the social partners. National social partners on both sides seem to consider joint regulation, including at central and sectoral levels, as an asset which must be preserved.

The scant utilisation of the derogations newly allowed by legislation in France, Italy and Spain suggests that, so far, the local bargaining parties do not consider them a useful tool, despite the support that employers often gave these reforms in national political debates. Possibly this limited implementation may be linked to the disruptive potential that derogations could play, especially on existing workplace industrial relations, which were established in a regulatory framework that was more conducive to mutually beneficial deals. Leaving aside exceptional circumstances, in fact, there is no guarantee that recourse to disadvantageous (to workers) derogations would help company performance, especially in the medium-to-long term, while they can certainly corrode commitment, trust and cooperation in the workplace.

However, it is important to underline that the reforms introduced during the crisis have increased the number of options available to employers, thereby reinforcing their bargaining position vis-à-vis the unions, and have sometimes directly strengthened the employers' unilateral prerogatives to modify employment terms and conditions. These new 'exit strategies' from collective bargaining contribute to weakening the regulatory capacity of industrial relations and may erode the importance of collective bargaining in the future.

Our case studies expose the policy failures that characterise the ways in which the crisis was addressed in the European Union. Austerity measures were particularly severe where the economic downturn and budgetary fragility were most pronounced. Despite the policymakers' expectations, austerity did not lead to fast and strong recovery. Spain and Italy still lagged behind in 2016 in terms of economic and employment performance. Decentralisation 'by decree' was similarly ineffective. There are no signs of lasting growth with regard to decentralised agreements in France, Italy and Spain, nor of significant use of the opportunities for derogations.

Similarly, autonomous action by the social partners is subject to a number of limitations. In Italy, almost 25 years of efforts to support decentralised bargaining as a means of promoting productivity and growth, as well as higher wages and better working conditions, have achieved meagre results. In Germany, the fully autonomous system of opening clauses could not stop either the decline in collective bargaining coverage at sectoral level or the emergence of important segments of the economy with very little union presence and collective bargaining, if any.

The new policy climate at EU level, therefore, finds the national systems of industrial relations somewhat under strain, or in troubled waters. The double weakness of policy initiatives and autonomous action in industrial relations, when taken alone, confirms the importance of a combination of supportive legal institutions and autonomous industrial relations (Bordogna and Cella 1999). If they proceed along diverging paths,

the potential of industrial relations for growth and social cohesion, which is recognised and supported by the EU institutions, can be wasted.

In this perspective, horizontal coordination of collective bargaining is becoming a key issue, if we want to fight inequality and promote decent terms of employment and working conditions across our economies and in the EU. This may entail more policy and legal interventions than in the past to enforce minimum standards and promote the integrative role of collective bargaining.

Decentralisation is a long-term trend in collective bargaining, which pre-dates the crisis and whose prospects depend on its capacity to meet the expectations of both bargaining parties. The policy option of opening up room for derogations does not seem to go in this direction. Instead, decentralisation requires substantial institutional support, of which horizontal and vertical coordination are essential components, in order to avoid the risks of a low-protection/low-productivity trap, with growing disorganisation, segmentation and de-collectivisation. In particular, it is important to frame decentralised bargaining in a regulatory system that fosters workers' protections and productivity, by supporting wages as a key element of growth rather than a cost. Multi-tier bargaining systems may in this way combine the inclusiveness of multi-employer agreements with the responsiveness and adaptability of decentralised deals.

Industrial relations institutions at all levels are valuable assets that promote trust and cooperation in the workplace. Social partners appear to be clearly aware of this and show great caution in handling new legal rules that might endanger established institutions. Policies that fully recognise and support the autonomy of the social partners and their joint regulatory systems are a necessary element of any initiatives which aim to be effective and fully exploit the potential inherent in industrial relations for growth and social cohesion. Balancing a more incisive role for the state with support for social partner autonomy is the challenge that lies ahead.

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## **Chapter 2**

# **The 'resistible' rise of decentralised bargaining: a cross-country and inter-sectoral comparison**

**Mimmo Carriero, Maria Concetta Ambra and Andrea Ciarini**

### **1. Introduction**

The common thesis that emerges from the national studies in the present volume is that collective bargaining systems and industrial relations have been 'under stress' and in transition over the course of the past decade. Although all the studies testify that there has been a – more or less pronounced – move away from traditional structures revolving around national sectoral agreements, along with a redesign of bargaining structures, this has not led to anything clear and definitive.

On this basis the object of this report – the role and trends of decentralised bargaining – becomes a kind of general litmus test for the tendencies and changes in industrial relations in European countries.

It is worth emphasising that the studies in this volume, which analyse in depth the quantitative and qualitative developments in two sectors – the metal industry and the retail trade – in five countries, enable us to substantially improve our understanding of the processes involved in decentralised bargaining – but more generally within the bargaining framework – on a larger scale than the studies previously available. In fact, there is no shortage of comparative research and interesting case studies (see, for example, Pulignano and Keune 2014), but by and large they have been limited to a few cases in the same sector. In this report we provide a more extensive and systematic framework of information and analysis.

The decentralisation of collective bargaining in all the countries examined in this volume emerges as the key issue around which various proposals, debates and attempts at implementation revolve.

Decentralisation is presented here both in the European public debate and in public debates in the individual countries under examination not only as desirable, but also as necessary, not least in its positive effects on economic performance, such as an expected increase in competitiveness. However, while this linkage is presented as a matter of course, there is considerable doubt concerning whether decentralisation of collective bargaining really is compatible with the attainment of other public goods. As the French researchers remind us in their chapter, authoritative international institutions such as the OECD have called into question whether the effects of decentralisation are self-evident not only with regard to employment growth – or other social matters – but also in relation to the aim of improving economic performance, which is generally presented as

inevitable. This means that such outcomes are not automatic, but that decentralisation requires accompanying measures, government policies and the support of the social partners if it is to yield positive results, whether economic or social.

This more fragmentary and rather more nuanced way of looking at things, in contrast with more confidently straightforward representations, seems to be confirmed by the fact that, in all the relevant countries, the gap between the importance attributed to this issue and its real substance varies substantially. Essentially, bargaining decentralisation, to the extent that it is desired and pursued, does not appear to be a government priority within the various collective bargaining systems. This means that its practical implementation is taking place more laboriously and ambiguously than institutional pronouncements might lead one to believe. For this reason the work carried out in the five countries analysed here turns out to be extremely useful. Indeed, it represents a substantial contribution to the available knowledge concerning this phenomenon. And it puts particular emphasis, for the first time, both in depth and on a comparative basis, on the quantitative development of company-level bargaining, but also the specific features it assumes within the national context.

## **2. Some aspects of interpretation**

The focus of academic discussions of decentralisation is usually the extent to which it is controlled and organised (based on the interpretative categories worked out by Traxler 1995). This variable appears to be indispensable in helping us to classify the case study findings and their ramifications for individual national systems. We shall therefore examine it in due course.

But the Decoba project country reports confirm a high degree of differentiation with regard to the behaviour of the parties concerned, and the substance and outcomes of collective bargaining. Indeed, it is reasonable to declare that the bottom line with regard to decentralisation, quite apart from whether it is negotiated or monitored, consists precisely in the following: it is connected to increasing differences between companies, sectors and national systems. It would therefore make sense to avail oneself of other monitoring and classificatory instruments to examine the internal workings of the changes under way, rather than top-down or only in the aggregate.

For this reason one might envisage at least three varieties of decentralisation or corporatisation of collective bargaining:

- (i) wholesale decentralisation, in other words, a broader and more ambitious decentralisation that asserts itself at the expense of other levels of negotiation and tends to crowd out the competition, overturning collective bargaining structures by means of the priority assigned to the company level as opposed to the national one;
- (ii) incremental decentralisation, when it develops into an enhancement – more or less significant – of the framework of regulations and protections already in operation by means of sectoral collective bargaining;



- (iii) equivalent decentralisation, which takes shape in cases in which corporatisation does not result in substantial modifications in the framework of collective bargaining overall or in the balance between the bargaining levels.

But how does the propensity towards decentralisation come into being and develop, along with its – whether real or assumed – increasing importance in industrial relations systems?

As highlighted in the national case studies, first and foremost we can identify:

- pressures and arguments, and a certain commitment on the part of the European institutions, as well as unelected technocratic bodies (such as the ECB) leading towards an affirmation of this issue's key importance;
- declarations, pledges and elaborative or normative processes instigated by national governments, often retranslating and redefining commitments of European origin;
- a focus on this issue as the outcome of cultural innovation, attesting to collective bargaining systems' capacity to reform and modernise, instigated by the industrial relations actors themselves through the systems' internal dynamics.

The picture that emerges from the country reports testifies to how these elements are often found mixed together, but except in the case of Germany, where the role of the employers' side and of the agreements between the negotiating parties is crucial, the main initiative in this context largely derives from national and European public institutions.

This trend enables us to underline something of a more general character. In fact, a standpoint that we might categorise as of neoliberal origin seems to be particularly influential, one that links the prescriptiveness of decentralisation to the consideration that it can establish itself naturally or spontaneously as an epiphenomenon of the self-regulating market. However, the national case studies provide us with a quite different picture. Decentralisation is applied to a greater or lesser extent but it takes shape and assumes a certain quantitative consistency only in the presence of a clear political or institutional impetus, through the use of a variety of instruments.

To summarise the framework that underpins the promotion of decentralisation we might list the following:

- The commitments of European instigation operating in the various countries to varying degrees and resonance. This variable seems more important in countries such as Spain and Italy, which were hit particularly hard by the great recession, while it is much less amenable to circumstances in Germany.
- National study commissions that amplify and orient the European impetus (as in the case of France).
- Legislative interventions designed to reorganise the collective bargaining system in the direction of more marked decentralisation (France, Spain and Belgium).
- Incentives within the framework of company bargaining aimed at boosting productivity increases (Italy).

- The prevalence of unilateral government actions, planned or implemented in almost all the relevant countries, concerning resort to concertation, except for the attempts – generally unsuccessful – on the part of the Hollande administration in France to reach a tripartite agreement; in some cases, such government decisions have been accompanied by partial accords between the parties, approved by some of the interested organisations.
- A willingness, in some cases, among the social partners (Italy), an active role for employers' associations (to a greater extent in Germany, to a smaller extent in France) and generally a certain puzzlement and a wait-and-see attitude on the part of the trade unions.

Thus it is not actors' particular attitudes – at least not alone or taken in isolation – that affect the development of decentralised bargaining. When this phenomenon manages to attain a foothold in the industrial relations domain it is because it is backed by the organisations of collective representation, as is particularly evident in the case of Germany. In other cases the social partners' apparent agreement or willingness appear to be more for show. Take the example of Italy, with regard to which it is also worth mentioning the interconfederal agreement between Confindustria and the trade unions (2016), signed in order to extend company bargaining to small businesses with regard to productivity and related benefits.

The cultural and institutional background from which the bargaining experiences of the different countries under examination derive should also be considered. Path dependence, to be sure, explains the difficulties and resistance that can be observed as frequently among the trade unions as among the employers: and among the latter, they manifest themselves as much in individual attitudes as in collective choices. However, this applies in particular to union organisations. Generally speaking they regard company bargaining as problematic, given its peculiar features, and the possibility that it is just an tool of management interests.

The only country that really stands out from this viewpoint is Italy. Indeed, in the Italian system, which traditionally is strongly voluntarist, it was originally trade union pressure in the 1960s – supported by the organisations of state-owned companies – that fostered the emergence of experiments with company-level bargaining (at the time, presented as 'articulated' bargaining – in other words, supplementary to national bargaining). This historical background enables us to understand the reasons for the greater willingness generally displayed in this regard by Italian trade union confederations.

Nevertheless, overall the diffusion of company-level bargaining remains unsatisfactory, especially if we relate the data presented in this volume to the – extremely strong – commitment of the public institutions and to the willingness exhibited by the social partners, including to a certain extent the trade union organisations. The reasons underlying this slow – or at any rate below expectations – growth are well explained in the chapter on Spain. It correctly underlines the transaction costs in setting up company bargaining, which are perceived as very high by most of the actors. Adopting this mechanism, whose benefits are hardly a foregone conclusion, requires from companies a substantial organisational, cultural and financial commitment and increases their costs.

This particularly concerns smaller companies, which do not have the means necessary to cope with these requirements. To the organisational and economic difficulties can be added a certain cultural resistance. On the employers' side, many companies prefer to stick with tried and tested national agreements, which do not require any additional commitments or added costs. Furthermore, the benefits of multi-employer agreements, appreciated or preferred by a substantial proportion of the same employers, include that fact that they keep sectoral cost competition under control, thereby avoiding – more or less opportunistic – dumping. Thus it is not just the trade unions that have a problem or are reluctant to get on board with decentralisation, even though, generally speaking, they seem to take the view that decentralisation mainly favours company strategies and shifts the balance of power in favour of the management side.

The paradox arising from the picture we have painted thus far is that the decentralisation of collective bargaining currently in the making in various countries – excluding opt-outs exercised by a number of companies – should be regarded mainly as a kind of 'centralised' decentralisation; in other words, desired and promoted by central, national or European bodies, laws and institutions and thus a higher-level centralisation than that of sectoral agreements. This approach, which is strongly evident in key regulations on decentralisation, seems rather oriented towards creating a 'climate' favourable for what has been described as 'neoliberal decentralisation' (Baccaro and Howell 2012). Its application does not consist so much in the concrete reinforcement of decentralised industrial relations as in making the erosion of national-level rules and constraints more plausible.

### **3. Bargaining structure and coordination**

The Decoba project's choice to focus on two important sectors appears to be fully borne out.

In fact, the metal industry figures prominently in the history of sectoral agreements, in which it has had a pivotal role. Partly, this remains the case, as may be seen from the case studies of Germany and Italy, and to a considerable extent in those of France, Belgium and Spain. In particular because of its size and well-established role in negotiations the metal sector continues to play a prominent role in Germany. Company-level bargaining does not seem to have called this into question – notwithstanding the reduction in collective agreement coverage – and instead rather complements it.

The retail sector, which is highly fragmented and dominated by small businesses, has generally not featured prominently in traditional industrial relations. But the domain of private services is vast and growing, besides being extremely heterogeneous, and trade union activities and collective bargaining have found it hard to gain a foothold there. This has resulted in a renewed effort to reorganise industrial relations.

In other words, as the data presented in the country reports confirm, the metal sector generally functions well above average, with significant sectoral bargaining, widespread company agreements (thanks to the presence of large leading firms) and consolidated

and well structured relations between the parties. In the retail sector, by contrast, things generally seem to be going in the opposite direction: it is rather below average, certainly in terms of collective agreement coverage.

In fact, bargaining experiences in the retail sector provide us with an outline of collective bargaining's general lines of development. As the case studies make evident, in this domain decentralised collective bargaining is struggling to become established and appears linked above all to reorganisation measures or some group-wide agreements (especially in large retailers). This is hindered by various factors, such as the smaller size of businesses and their fragmentation, the weak trade union presence and the difficulty of finding any bargaining chips in the face of strong management pressure to cut costs and increase flexibility. Developments in this sector make it easier to understand the wide range of trade union trajectories. For example, the downward trend in the membership of the ver.di union federation in Germany turns out to be related to the failure of collective bargaining to gain ground in this sector. By contrast, the often unpredictable growth in unionisation in Italy in the same bargaining sector forms the basis – even in a non-linear way – of a more entrenched and extensive bargaining activity.

If, therefore, we adopt a quantitative approach, referring to the substance and importance of collective bargaining and decentralisation in the two sectors under examination it is safe to say that the data – to be sure, incomplete or not exhaustive in some instances – indicate a difference between the two sectors with regard to the breadth and robustness of collective bargaining. In a broad sense collective bargaining in the metal sector covers a large number of workers and exhibits a greater capacity for regulation. This also applies to company-level bargaining which stands out as comparatively more extensive and, at the same time, does not merely play second fiddle to national agreements. Conversely, we can say that the picture is the opposite for the retail sector, albeit with some differences and nuances: bargaining coverage is smaller and generally appears to be less innovative and more defensive in nature.

In the countries under examination, not surprisingly, a structural obstacle is mentioned that makes it difficult to extend company-level and decentralised bargaining. In a nutshell, company-level bargaining is developing in companies in which conditions are generally favourable, namely medium-sized and large companies. This functions as a kind of access barrier that is difficult to break down. Its effects are similar in the various countries, although the degree of impact differs. This gap between small companies, on one hand, and medium-sized and large ones on the other is particularly evident in the Mediterranean countries – Spain and especially Italy – in which small enterprises (sometimes even micro enterprises) predominate, to a greater or lesser extent. Having said that, the effects even in Germany, France and Belgium are not to be underestimated, as the national reports confirm, although this is somewhat attenuated by the leading role of a fairly broad swath of large companies.

As we have already shown, this helps explain the differences and varying robustness of bargaining structures between the metal sector and the retail sector.

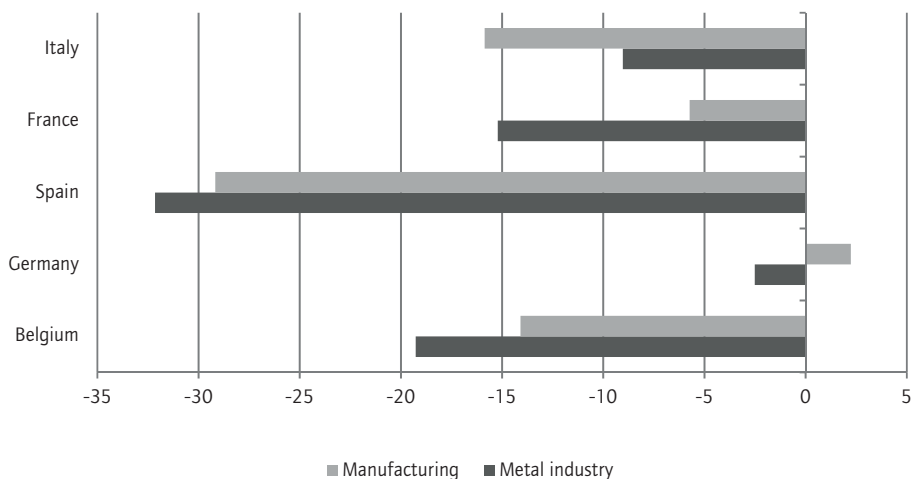
In all the countries under examination here more or less significant sectoral and company-level agreements have been signed in the metal sector, often renewed from previous agreements. The retail sector, on the other hand, is characterised by weakness and fragmentation, tending – for example, in the case of Germany – more in the direction of erosion of collective bargaining and ‘disorganised’ decentralisation; in other words, outside the rules agreed by the relevant actors at aggregate levels.

While a significant part of the metal sector includes companies committed to introducing technological and organisational innovations and to boosting quality and competitiveness, that hardly applies to the retail sector. There the competition between companies largely involves cutting costs and therefore may be best described as ‘taking the low road’. With the exception of a few sectors with more collective agreement coverage and otherwise protected the overall impression is one of worsening working conditions, longer working hours (with a particular emphasis on Sunday opening in some countries), flexibility and precarious terms of employment.

#### 4. Organised versus disorganised decentralisation: metal industry

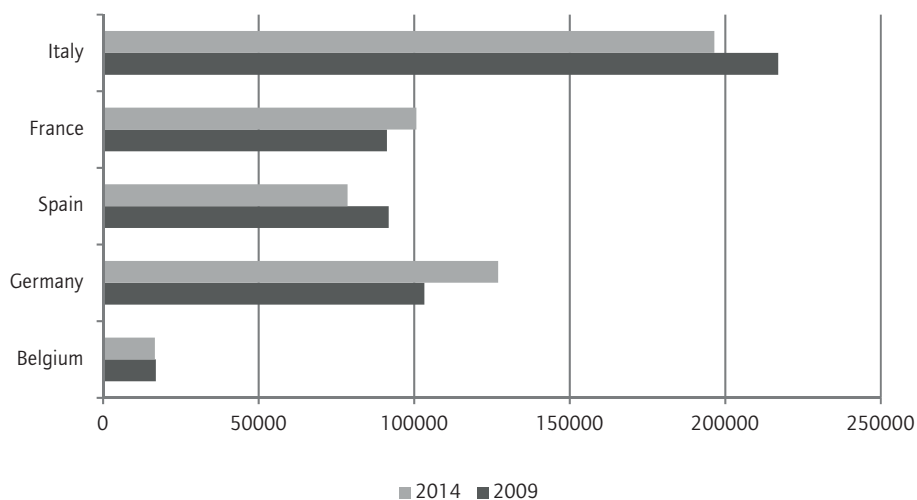
In this section we focus on the recent changes in collective bargaining in the metal industry. As in many other economic sectors the financial and economic crisis had negative effects on the metal sector, triggering job losses and a general deterioration in the labour market. Apart from Germany, severe employment declines affected metalworkers in many European countries, especially Italy and Spain, as we can see in Figures 1 and 2. A general negative trend also affected value added, which declined

Figure 1 Employment trends in the manufacturing and metal sectors in selected European countries, 2008–2014 (%)



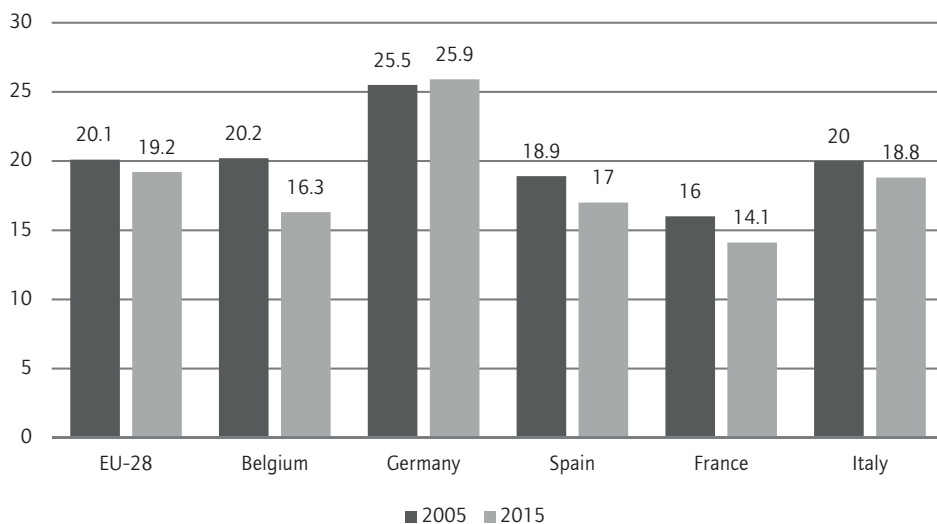
Source: Eurostat Business Statistics.

Figure 2 Number of enterprises in the metal sector in selected European countries, 2009–2014



Source: Eurostat Business Statistics.

Figure 3 Value added in the metal sector, 2005 and 2015 (%)



Source: Eurostat Business Statistics.

Against this background it is worth examining how and to what extent the social partners – both employers and trade unions – reacted to the pressures imposed by the economic downturn and the institutional changes promoted by governments in order to boost productivity and sustain economic recovery. The metal industry retains a higher union density and collective bargaining coverage than other economic sectors, especially trade and retail (see next section). However recent changes in the institutional setting and the effects of the crisis have challenged the unions. In view of this, the aim of this section is to analyse the manner in which common trends towards decentralisation can be traced in the five countries under investigation: Belgium, France, Spain, Germany and Italy. As widely recognised, in the metal industry, bargaining encompasses a higher number of workers and has a stronger regulatory impact. This also concerns company bargaining, which is comparatively more widespread and, at the same time, plays a relatively prominent role in national agreements. In many countries the sectoral level is significant in collective bargaining. However in the more recent years, this does not mean that this organised system of social dialogue and collective bargaining is 'dead'. It has rather shifted to a different setting, depending on countries' specific institutional arrangements.

Even those countries – such as Belgium – that traditionally have been characterised by a high degree of centralisation have partially shifted their collective bargaining systems towards organised decentralisation. Sectoral bargaining is the main pillar of the metal industry's industrial relations system. At the sectoral level, collective agreements are concluded in joint committees or joint subcommittees by all the social partners. Joint committees make decisions on pay levels, classification schemes, working time arrangements, training and working conditions. Also, minimum wages are still negotiated at the sectoral level. In these circumstances the trend towards decentralisation appears to be grounded in coordinated bargaining at sectoral level. It is worth noting that derogation or opening clauses are not part of this decentralisation tendency. In fact, the social partners have managed to preserve an intermediary role. As noted by Van Gyes *et al.* in the Belgian report, neoliberal reforms have not been incorporated into collective bargaining and social dialogue. Conversely, the state has opted for more radical reforms aimed at strengthening wage moderation. It has to be said that government intervention has not affected the bargaining structure, but rather the autonomy of the bargaining system, especially after the reform of the wage-setting system in 2017. In response to the impact of such state-driven wage moderation on industrial relations and collective bargaining, the social partners have tried to bargain on various type of benefits at company and sectoral level (occupational pensions, variable pay beyond the 'fixed' basic wage increase and so on). Most of these flexible approaches have led to a new form of coordinated decentralisation that has limited the wage freeze imposed by central governments. With more limited room for manoeuvre at the intersectoral level, social actors have been able to regain autonomy and influence at sectoral and company level. As the authors provided for the Belgian chapter emphasise, they were able to mount their response to decentralisation pressures with a high degree of coordination.

Together with Belgium, France is one of the European countries with a higher degree of industrial relations institutionalisation, characterised by state intervention even

at company level. Extensive regulation by the state is a traditional feature of French industrial relations. Since the Auroux laws of 1992 negotiations at company level are mandatory. As reported by Rehfeldt and Vincent, in 2015, 4,310 company agreements were signed by union delegates in the metal industry, corresponding to 10 per cent of the companies in the sector (1.17 million employees, around 70 per cent of all employees). Against this background it is worth noting that only the biggest companies used such agreements, with a focus on wages and working time. However, as Rehfeldt and Vincent report, such accords often represent only general agreements on job guarantees and social standards at company level. Other companies, in particular in the automobile sector, have signed different agreements, focusing on competitiveness, representing what Rehfeldt and Vincent call the French version of ‘concession bargaining’. In France, bargaining has traditionally been underpinned by legislation at all levels, including derogation. However, as the authors highlight, the laws on derogation have not had a significant effect in practice. Despite labour market reforms and changes in collective bargaining, the number of collective agreements has remained remarkably stable in recent years. Rather than legislation, it was the crisis and the impact of international competition that encouraged new decentralised agreements at company level in the metal industry. It is worth noting that none of these agreements needed any legal stimulation with regard to derogation. However, this might change in the future as a consequence of the El Khomri law of 2016 and the awaited reforms proclaimed by the new French President Emmanuel Macron.

Rehfeldt and Vincent outline how French legislation has sought to foster company bargaining in the past few years – even before the El Khomri labour law – through derogation and the assignment of new tasks to unions at sectoral level in the form of a permanent joint committee on bargaining and interpretation. This joint committee is to have several tasks, from representing the sector with the public authorities to monitoring working conditions and interpreting branch agreements for the courts. According to the El Khomri law, competitiveness has to be fostered by greater decentralisation of collective bargaining at company level, in order to boost productivity and labour flexibility. However, it remains to be proven that such decentralisation can have a positive influence on wages and productivity.

All these changes confirm a trend towards decentralisation, with unions pushed by legislation and state intervention to perform new tasks at company level. The relevance of horizontal coordination remains, due to the SMIC. However, most of the recent changes promoted by President Macron may reinforce single-employer bargaining by limiting the areas reserved to sectoral agreements.

Spain is a paradigmatic case in this regard, since it is the industrial relations system most affected by unilateral state intervention towards decentralisation and wage devaluation. Compared with Belgium and France the Spanish metal industry is characterised by an inverse relationship. As outlined by Rocha in the Spanish report, collective bargaining in the metal industry has been under pressure due to the combined impacts of the crisis and the labour market reforms, especially those of 2012. This combined effect and the traditional fragmentation of collective bargaining due to the high number of micro and small companies led to huge deterioration in the industrial relations system, without any



intermediary role for trade unions. According to data reported by Rocha these changes led to a reduction in the coverage rate, with a decline of 173,000 workers covered by collective agreements between 2008 and 2015 (around –14 per cent). Employers in the metal industry have taken advantage of this reform by adjusting working conditions at company level. As a result, such disorganised decentralisation has helped to strengthen companies' unilateral power to impose wage devaluation and greater flexibility with regard to working time distribution. According to Rocha, companies' unilateral power reinforces the trend towards internal devaluation through three main mechanisms: the establishment of new bargaining units at company level that can bargain in pejus to achieve wage cuts; temporary derogations from sectoral agreements; and, last but not least, a steady deterioration of working conditions.

Employers in the metal sector favour decentralisation at company level. However, in some cases they have tried to preserve collective bargaining at territorial level. In contrast to the government's position, employers' confederations have defended this level because it represents a traditional pillar of the Spanish industrial relations system. Against this background, Spanish trade unions have reacted by defending provincial collective agreements and ensuring better coordination among the different bargaining levels. Secondly, as Rocha highlights, they reacted by promoting defensive agreements aimed at mitigating the negative effects of the crisis at company level. Thirdly, after 20 years of failed attempts, they were able to negotiate the first statutory national-level collective agreement pertaining to industry, technology and services in the metal sector.

The trend towards decentralisation has affected both Germany and Italy, but in different settings. In Germany the Pforzheim Agreement marked a turning point in the long-standing debate on decentralisation. Starting from this agreement the decentralisation of collective bargaining via opening clauses became the new normal in the German metal industry. According to data provided by the authors provided for the German chapter of this book, there was a steady rise in company-level derogations following the Pforzheim Agreement, from only 70 cases in 2004 to 730 in 2009, with the key issues being wages and working time. For the period 2012–2014, the data reported by the authors show an increase in such agreements: one-third of companies deviated from the sectoral agreement. In 2014 roughly half of all companies (representing 60 per cent of total employment in the metal industry) were covered by a derogation agreement.

The Pforzheim Agreement introduced opening clauses into the metal industry. Against this background it is worth noting that, contrary to earlier opening clauses, the Pforzheim Agreement focused on procedural rules rather than derogations. As Schulten and Bispinck (in this volume) highlight in the case of deviation from sectoral agreements, the company and the works council are obliged to make a joint application to the sector-level bargaining parties. As a second step, unions negotiate a supplementary agreement with the company, on various issues, including working hours and wages. All these procedures allowed unions to regain control over opening clauses. With the establishment of such a general framework the social partners were able to influence decentralisation process, even during the first years of the crisis, when unions and companies came under particular pressure. On the union side, it is important to note that the Pforzheim Agreement allowed unions not only to regain control over

decentralisation, but also to experiment with new strategies to recruit new members and foster their presence at company level. According to the new strategy, opening clauses can be accepted only with the active involvement and consent of union members at company level. Moreover, the metal union confederation IG Metall used company-level bargaining to recruit new members and to launch a new campaign to boost collective bargaining coverage. As Schulten and Bispinck highlight, the new strategy aimed at fostering collective bargaining coverage against outsourcing, temporary agency work and contract work and at preventing wage dumping in those sectors – such as logistics – in which sector-wide collective agreements are still lacking.

To some extent, this same trend can be observed with regard to the Italian metal industry. Despite pressure towards disintermediation the sector has maintained a certain degree of inter-sectoral coordination, with the role of the two traditional levels confirmed. In the past few years, the employers' association Confindustria has called for more decentralisation in wage setting, in the direction of firm-level bargaining. In the metal industry, the biggest company, FIAT, withdrew from Confindustria in 2009 in order to evade the exigencies of collective bargaining and to impose its own establishment-level agreements. Against this background, negotiations for the new national industry-wide agreement took more than one year and the last two renewals were signed without FIOM-CGIL. At the end of a difficult negotiation, an agreement was reached in November 2016 with all the most representative trade unions, and signed after the workers approved the draft in a ballot.

The new agreement provides a wide range of novelties:

- duration (from three to four years);
- wages (a new inflation adjustment mechanism defined every year ex post, not ex ante, as in other sectoral agreements);
- occupational welfare (both at sectoral and company level: health insurance, complementary pensions and a wide range of benefits provided at company level through vouchers);
- training;
- working conditions (total overtime limited to 120 hours per year for companies with more than 200 employees, and 128 hours for smaller firms);
- work–life balance (extension of parental leave); and
- workers' participation (new sectoral and national commissions on active labour market policies and participation in larger companies).

The trade unions were able to circumvent the huge pressure towards decentralisation by using the new contractual architecture to relaunch collective bargaining. As pointed out in the Italian report (Leonardi, Ambra and Ciarini, in this volume), trade union confederations have reacted to the new contractual architecture with a certain degree of openness, considering the challenge as an opportunity to relaunch collective bargaining in terms of both coverage and contents. By contrast, employers stress the changes in order to improve flexibility and labour productivity. As the new collective agreement does not grant significant wage increases, the trade unions reacted by extending bargaining on occupational welfare and flexible benefits at company level. Occupational welfare

and flexible benefits are seen as a way of improving both welfare service provision and labour productivity. The flexible benefits included in the metal industry's agreement are additional ones, provided by the second-tier negotiation, conferring on all workers 100 euros in 2017, 150 euros in 2018 and 200 euros in 2019. As noted by Leonardi, Ambra and Ciarini (in this volume) the vast majority of company-level agreements have been signed in larger companies – especially multinationals – with more than 1,000 employees (39.7 per cent of the total). In fact, small and micro-enterprises are rather left out in the cold in this respect because it is difficult to introduce such flexible benefits without the economies of scale that larger companies enjoy.

To sum up, collective bargaining was under constraint in all the five countries analysed, subject to pressure from the economic crisis, on one hand, and from employer demands for greater flexibility and wage freezes, on the other. As a consequence of these pressures a new wave of decentralisation occurred in many countries. However, this does not mean that the previous system of collective bargaining is doomed. Rather its contents and tools are being relocated to a new decentralised setting in which the social partners can promote new strategies and initiatives in order to minimise the social cost and boost collective bargaining coverage. In many cases, the trend towards decentralisation and wage freezes has been reinforced by the state, through new legislative frameworks and direct intervention aimed at mitigating wage increases and promoting company-level bargaining. In Spain, pressures towards decentralisation and wage freezes imposed by state intervention have endowed companies with more unilateral power, which has had enormous consequences for both the labour market and industrial relations. In the other countries, state intervention has been counterbalanced to some extent by a new activism among the social partners, using new contractual arrangements to relocate

Table 1 Collective bargaining in the metal industry: structure and trends in a cross-country comparison

	Industrial relations in the metal industry	Trends towards decentralisation
Germany	The main pillar of the collective bargaining system in the German metal industry is sectoral bargaining. The metal industry is historically subdivided into 21 regional bargaining areas, in which the employers' associations negotiate with the regional IG Metall organisations.	The trend towards decentralisation of collective bargaining has affected the German metal industry for more than three decades. For a long time, IG Metall was very sceptical of using opening clauses, which were criticised for undermining the principle function of sectoral agreements.
France	Sectoral agreements guide collective agreements in the French metal industry. In order to gain more flexibility employers advocate company-level agreements.	Two types of collective agreements are negotiated at the sectoral level: <i>conventions collectives</i> (CC) and <i>accords collectifs</i> . Despite labour market reforms and changes in the collective bargaining process, it is worth noting a remarkable stability in the number of collective agreements in recent years.

Table 1 **Collective bargaining in the metal industry: structure and trends in a cross-country comparison (cont.)**

	Industrial relations in the metal industry	Trends towards decentralisation
Belgium	Industrial relations in the Belgian metalworking sector are structured in terms of three interlinked levels: national, sectoral and company.	Sectoral bargaining is the main pillar of the metal industry industrial relations system. At the sectoral level collective agreements are concluded in joint committees or joint subcommittees by all social partners. Joint committees make decisions on pay levels, classification schemes, working time arrangements, training and working conditions. Sectoral collective agreements apply to all employers and employees covered by the joint committees or subcommittees concerned.
Spain	Collective bargaining in the metal industry is traditionally fragmented and atomised, with a large number of agreements at provincial and company level. This is due to the high number of micro and small companies.	In recent years there has been a slight increase in the weight of company-level agreements, although this has not caused a substantial alteration in the existing structure of collective bargaining in the metal industry.
Italy	Since 1993 collective bargaining has taken place at two levels in Italy. The two-tier bargaining system is based on industry-wide agreements. More recently the trade unions have reinforced the role of second-level bargaining, with the main aim of increasing flexibility and productivity.	In contrast to the countries examined here, in Italy there is neither a statutory minimum wage nor a legal extension mechanism. However, courts tend to honour minimum wage claims based on sectoral agreements for workers performing similar work.

collective bargaining and to extend welfare provision at sectoral and/or at company level.

Tables 1 and 2 present the key evidence in the metal industry sector, distinguishing between structure and trends towards decentralisation (Table 1) and changes at sectoral and company level (Table 2).

Table 2 Collective bargaining at sectoral and company level in the metal industry (cont.)

	Collective bargaining at sectoral level	Collective bargaining at company level
Germany	<p>In 2004 the Pforzheim Agreement introduced, for the first time, a general opening clause for the whole metal industry. According to this agreement, companies can derogate from sectoral agreements.</p> <p>The Pforzheim Agreement reorganised 'wild' decentralisation. With the definition of a general procedural framework the sectoral bargaining parties were able to regain control of the decentralisation process</p>	<p>According to data provided by Gesamtmetall, there was a steady rise in company-level derogations following the Pforzheim Agreement. In September 2004, only 70 cases were reported by Gesamtmetall, but by April 2009 the number had increased to 730. The key topics addressed by derogation agreements were pay and working time. Other important employer concessions have included extension of workers' and unions' codetermination rights, and commitments to undertake new investment and retain operations at existing sites.</p>
France	<p>Collective agreements (CCs) guide wages, working conditions and sectoral welfare benefits. The <i>accords collectifs</i> treat only specific topics. In addition to <i>conventions collectives</i>, there are in the metal sector 76 <i>conventions collectives territoriales</i> (CCTs). They represent local agreements, mostly at département level.</p> <p>CCs generally have unlimited duration. However, minimum wages for different qualification levels are renegotiated annually and have the form of amendments to the CCT.</p> <p>None of the minimum wages in the metal industry are below the statutory national inter-sectoral wage (SMIC)</p>	<p>Annual negotiations at company level are mandatory. As the amendments to the CC only fix the level of conventional minimum wages, these company agreements have a decisive impact on the evolution of real wages. Bargaining in big companies (Renault, PSA and so on.) influences the evolution of real wages in the whole sector.</p> <p>Most company agreements concern wages and working time.</p> <p>In 2015, 4,310 company agreements were signed by union delegates in the metal sector. This corresponds to 10 per cent of the companies in the sector. As these agreements are negotiated mainly by the biggest companies, they cover 1.17 million employees, around 70 per cent of all employees.</p>
Belgium	<p>The trend towards decentralisation is based on coordinated bargaining at the sectoral level.</p> <p>Sectoral bargaining is organised in several joint committees that jointly discuss a wide spectrum of topics: wage increases, flexibility, working time, time credits and working conditions</p> <p>Minimum wages are still negotiated at the sectoral level as well and are increased with the established wage margin.</p>	<p>Sectoral agreements are complemented by lower-level flexibility in bargaining additional income components and working time features.</p>

Table 2 Collective bargaining at sectoral and company level in the metal industry (cont.)

	Collective bargaining at sectoral level	Collective bargaining at company level
Spain	A slight increase in derogations from the contents of sectoral collective agreements. After Article 41 of the Workers' Statute in 2012 employers reinforced their unilateral power regarding working conditions. This reform was basically aimed at reducing the role of collective bargaining and reinforcing unilateral internal flexibility to the benefit of companies	Labour market reforms aimed at boosting decentralisation of collective bargaining, through the establishment of new bargaining units at company level, which can be labelled agreements in pejus, namely, agreements targeted mainly at fostering cuts in wage costs.
Italy	Second-level bargaining was used as a defensive option in the crisis years, with the aim of tackling the negative effects of the economic downturn at company level. More recently a new wave of decentralised agreements reflects the changes introduced by the stability laws of 2016 and 2017 with the provision of new fiscal incentives for flexible benefits at company level and occupational welfare schemes.	In general, the extension of company-level bargaining in the metal industry increases with size of company. Second-level bargaining is limited in small companies. In contrast there is a higher incidence of individual and territorial bargaining.

## 5. Country or sector? A cross-country comparison of industrial relations in the retail sector

The decentralisation of collective bargaining in Europe is a well-known issue in the industrial relations' literature (Traxler 1995, 1996, 2008; Marginson 2014; Marginson *et al.* 2016; Visser 2016). However, many studies focus on a country-specific industrial relations model, biased by the adoption of an approach centred on manufacturing. By contrast, few studies have looked at other sectors (Bechter *et al.* 2011) or have examined the retail sector in depth (Gautié and Schmitt 2010; Eurofound 2012; ILO 2015).

The very first study that found that industrial relations tend to vary more by sector than by country was that of Bechter *et al.* (2011). They showed how sectoral industrial relations regimes could vary, depending on the degree to which each sector is internationalised. Traxler and Brandl (2012) developed this argument, focusing on inter-sectoral productivity differentials between the tradeable (exposed) and non-tradeable (sheltered) sectors.

Concerning research that has examined retail specifically, Gautié and Schmitt (2010) in their international comparative analysis underlined that the employment models

characteristic of the retail sector differ fundamentally from those in manufacturing. Retailing is typically a low-wage and low-skill sector, which generally involves a higher share of low-wage workers, part-timers and female employment (Carré *et al.* 2010). Moreover, it has a low union density (Dribbusch 2005) with lower collective bargaining coverage compared with other sectors (Visser 2015). According to Carré *et al.* (2010) working conditions and terms of employment have deteriorated in the sector. Working conditions are adversely affected in particular by a trend towards the fragmentation of working hours and compensation, experimentation with non-standard contracts and a 'variety of other exit options from the institutions that safeguard job quality'. By contrast, Geppert *et al.* (2014) claim that it is wrong to generalise these working conditions to the retail sector, because company size makes a big difference. Organising a union is very difficult in smaller retail establishments than in larger stores. But does size of firm matter so much? Do unions have more room to manoeuvre in larger firms to bargain for better wages and working conditions?

The aim of this contribution is to obtain a better understanding of the factors that might explain similarities and differences across the five countries examined (German, Belgium, France, Spain and Italy) within the retail sector.

Although each country has its own model of work regulations and a distinctive national industrial relations system, a general convergence can be observed towards deteriorating wage and working conditions in the retail sector in all the countries examined in this book as an outcome of collective bargaining at sectoral and company or local level. What other factors could contribute to explain this converging trend?

By focusing on the retail sector across five different countries, our findings confirm the specificity of working conditions in the retail sector, which have been observed in other research. They are characterised by more articulated working time arrangements (Eurofound 2012) and growing use of atypical contracts, with less social protection (ILO 2015). In addition, as Eurofound (2012) outlined, retail has undergone a considerable transformation over the past decade, especially regarding its competitive structure and the growth of large companies at the expense of the numerous small and micro businesses.

Since firm size could be a crucial factor in unionising workers and obtaining better conditions, we further compared retail companies by size across the countries examined. We distinguished four different firm sizes: (i) *micro*: from zero to one employee; (ii) *small*: from two to nine employees; (iii) *medium*: from 10 to 49 employees; and (iv) *large*: over 50 employees. Table 3 shows that the retail sector is structurally characterised by a large number of micro-firms and/or self-employed.

The percentage of micro-firms in the French retail sector is very high (about 83 per cent). Rather than talk about 'firms' in such a case, it seems more correct to talk about self-employed workers. These percentages are quite high also in Belgium (about 59 per cent), Italy (about 55 per cent) and Spain (about 50 per cent).

Table 3 Enterprises and persons employed in the retail sector, 2015 (by firm size)

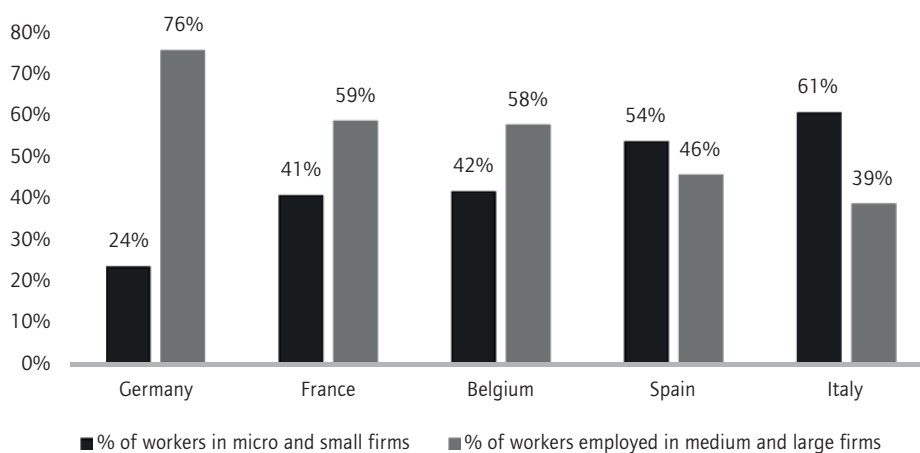
	Enterprises	Micro-enterprises (0–1 employee)	Employees	Employees in medium-sized and large enterprises (more than 10 employees)
	a.v.	%	a.v.	%
Germany	338,742	22.2	3,705,195	76.1%
France	526,254	83.4	1,966,245	58.9%
Belgium	75,034	58.7	321,993	57.9%
Spain	450,958	50.0	1,646,089	46.4%
Italy	606,355	54.9	1,821,435	39.1%

Notes: Firm size: Micro: from zero to one employee; small: from 2 to 9 employees; medium: from 10 to 49 employees; large: over 50 employees. Data for Belgium and France refer to 2014.

Source: Eurostat, Distributive trades by employment size class (NACE Rev. 2, G) [sbs\_sc\_dt\_r2]; Last updated 11.09.17.

In the French, Spanish and Italian retail sectors, micro- and small firms taken together (or firms with fewer than 10 employees) account for 98 per cent of all firms operating in the sector. The percentage of medium-sized and large firms (with more than 10 employees) is relatively higher only in Germany (about 17 per cent), followed by Belgium (about 5 per cent of firms). Besides the structure of the retail industry across countries, since it is assumed that trade unions are likely to find more conducive conditions for organising workers in large firms, it is important to examine the different proportions of

Figure 4 Employees in the retail trade, by firm size, 2015



Source: Eurostat, Distributive trades by employment size class (NACE Rev. 2, G) [sbs\_sc\_dt\_r2] (last accessed 11.09.17). Data for Belgium and France refer to 2014.



workers employed in medium-sized and large retailers in each country. According to the latest Eurostat data (2015), the majority of the retail workforce is employed in medium-sized and large firms (with more than 10 employees) in all the examined countries, except for Spain and Italy. German medium-sized and large retail companies employ about 76 per cent of workers in the sector, as against 59 per cent in France and 58 per cent in Belgium. Only in Spain and Italy do we find less than half the retail workforce in medium-sized and large companies (46 per cent and 39 per cent, respectively).

We can expect that German unions will have more room to manoeuvre with regard to representing and organising retail workers than Italian unions. However, as the German country report shows, trade unions (in this case Ver.di) nevertheless seem weak and unable to reach collective agreements with very large companies, such as Amazon or Zalando. This calls into question the idea that unions can bargain better wages and working conditions in bigger firms, with higher union density. Perhaps company size is a necessary condition for a union presence, but insufficient for improving wages and working conditions. It would also be worth analysing the differences between large retailers with different business models; big, global players such as Amazon or Zalando operate within e-commerce, with characteristic products and different strategies from those pursued by multinational food distributors, such as Carrefour, Auchan, Metro and Lidl.

Other factors that could help us in explaining this convergence towards lower wages and worse working conditions in the retail sector are the structure and characteristics of employer and union organisations and the way their relationships are changing in different countries.

We have focused, for each of the examined countries, on the most significant transformations in employment relations in the retail sector. The aim is to identify the main changes in the national industrial relations system that may have an impact on the retail sector, collective bargaining at sectoral and company level and, particularly, on relations between collective actors affecting wages and working conditions.

In the German retail sector, as outlined by Schulten and Bispinck (2017), one of the most relevant changes affecting labour relations has been the refusal of the employers' association to adopt the extension of collective agreements. Since 2000, retail agreements have not been generally binding. As a result, collective bargaining coverage has declined dramatically (Felbermayr and Lehwald 2015). In addition, a significant number of large retail corporations decided to withdraw from collective bargaining (Glaubitz 2017). The withdrawal of companies (especially large companies) from collective agreements is considered one of the driving forces towards more disorganised employment relations in the German retail sector (Schulten and Bispinck 2017). Consequently, working conditions in German retail have worsened, in term of both wages (which are below the average wage levels in the economy) and prolonged working time. For instance in 2014, about 22 per cent of all retail workers earned less than 8.50 euros per hour. Only in 2015 did the introduction of a national statutory minimum wage begin to reverse this trend, with the aim of raising low wages. According to Bosch (2016), in conjunction with the introduction of a minimum wage in Germany in 2015, measures to make it easier

to declare collective agreements generally binding were enacted. However, the author also stresses that these measures cannot be implemented without the agreement of the employers. In many industries not covered by collective agreements, the only way to achieve this is the mobilisation of employees and trade union action. Regarding the practice of extension rejected by the employers' association since 2000, the situation has not changed. A significant number of companies have declared that they take the existing sectoral agreements as 'orientation'. Therefore the proportion of employees covered by collective agreements at sectoral level decreased from 50 per cent in 2010 to 39 per cent in 2016, while the share of establishments covered by collective agreements fell from 33 per cent in 2010 to 27 per cent in 2016. Since this practice is rooted mainly in different strategies pursued by different groups of employers (officially, the employers' association is against extension, although some individual employers are in favour) it is crucial to investigate employers' strategies further.

In the French retail sector (as in Spain and Italy), there are many collective agreements at national/sectoral level (about 89). The company agreements – also in major retailers – generally take over the contents of sectoral agreements, with the addition of certain provisions, such as complementary health care or training schemes and (very rarely) wage benefits. The main issue for HR management is the organisation of work schedules. The main change has been the latest legislative developments, which made negotiations at company level prevail over the sectoral level, especially with regard to working time. In addition, with the Macron law of 2015, and the El Khomri law of 2016 opening possibilities on Sundays have widened. As Rehfeldt and Vincent highlight in their chapter, Sunday working and the extension of opening hours have become central issues in company negotiations. Low wages are prevalent in the French retail sector (similar to other countries). The proportion of employees paid close to the statutory minimum wage (SMIC) is the highest (between 20 and 32 per cent) in this sector. Moreover, the sector is characterised by great flexibility with regard to working time (29 per cent of retail workers have schedules that vary from week to week, compared with 22 per cent in the private sector as a whole). Almost nine out of ten people employed in this sector (88 per cent) work usually or occasionally on Saturdays or Sundays (as against 52 per cent in the private sector as a whole).

New rules on the deregulation ('liberalisation') of retail sector working time were introduced also in Italy in 2012, thus having a strong impact on industrial relations in the sector, in particular by fostering a split within the main employers' association (see Ambra in this volume). This trend toward more fragmentation of collective actors has had an impact on collective bargaining at sectoral level, pushing toward further segmentation of the retail sector:

- (i) the traditional retail sector (made up of micro-, small and medium-sized firms associated with *Confcommercio* or *Confesercenti*);
- (ii) large-scale and modern distribution (made up of large multi-national companies associated with *Federdistribuzione*);
- (iii) the cooperative distribution sector (made up of cooperatives, with their specific 'cooperative' business model).

The three trade union confederations, which started joint negotiations with all the employers' associations, were able to sign (for the first time jointly) the renewal of the national collective agreement at sectoral level only with two employers' associations (Confcommercio in 2015 and Confesercenti in 2016), representatives of the vast array of micro-, small and medium-sized firms, but not of large firms. Negotiations with Federdistribuzione, on one side, and with the cooperative distributors, on the other, are still under way. Therefore, since 2012, after the split between the two main employers' organisations, about 220,000–230,000 workers in many large firms still lack a sectoral agreement at national level. In addition, since 2013, about 80,000 workers are awaiting the renewal of the sectoral agreement with the so-called 'Distribuzione Cooperativa'.

Moreover, in recent years, the economic crisis has reduced the level and quality of decentralised collective bargaining. Even large retail companies and multinationals unilaterally cancelled many of the previous collective agreements at company (or establishment) level. Sometimes trade unions have been able to negotiate new collective agreements, at the cost of lowering wages and worsening working conditions in exchange for job retention. In addition, many new employers' associations and unions – which are not really representative – have been signing new collective agreements at national and sectoral level, giving rise to what we call 'pirate bargaining'. Another anomalous phenomenon is the option for companies to choose the sectoral agreement they prefer. For instance some firms operating in the logistics and transportation sector decided to associate with Confcommercio and to adopt the national collective agreement signed for the small and medium-sized retail sector instead of the national agreement in the logistics and transportation sector. These practices raise questions about who decides where the borders of a sector lie. How can it be established which sectoral collective agreement shall apply to which sector?

To better understand the phenomenon it would be useful to further analyse the employer associations' strategies and company strategies (especially those of multinationals) designed to take advantage of institutional loopholes. Regarding working conditions in the Italian retail sector, significant changes have strongly affected workers, including increases in temporary contracts and involuntary part-time work (which increased from 43 per cent in 2008 to 71 per cent in 2015). The introduction of new part-time contracts (such as the '8 hours contract' on Saturdays and Sundays for students and young people below than 25 years of age). More working time flexibility was introduced at sectoral level (for instance, the Confcommercio agreement renewed in 2015 prolonged working time from 40–44 hours a week to 40–48 hours).

The growing fragmentation of collective actors at national and sectoral level is not a peculiar feature of the Italian retail sector nor of Italian industrial relations. In France, there is a similar– or higher – degree of pluralism. However, within the framework of the French model of 'state-regulated' employment relations, recent new laws (in 2008 and 2014) introduced further and clear rules on the representativeness of collective actors (both unions and employers' organisations). By contrast, Italian trade unions and, above all, employers' associations have showed strong resistance not only to the possibility of legally regulating the social partners' representativeness, but also to the introduction of some form of statutory minimum wage, as proposed by the Renzi government in

2014. A widely shared position among the social partners – both unions and employers’ organisations – was that a statutory minimum wage was not necessary because of the extensive coverage of sectoral agreements (Colombo and Regalia 2016: 315). For this reason Italy’s industrial relations system still stands out among the countries under examination here due to its lack of a statutory minimum wage. Italy is in fact the only country considered in this volume in which minimum basic wages are fixed by the social partners through sectoral agreements.

In Belgium, every two years trade unions, employer representatives and government conclude an inter-professional agreement, which includes a wage norm. The most important transformation affecting the Belgian retail sector was the changing of this wage norm from indicative to imperative. The Belgian retail sector is regulated through different committees (large firms versus small firms) that settle on different standards (in order to take into account, for example, the different conditions of the self-employed). Negotiations in the concertation committees of small companies are friendly, since there are no statutory representative bodies in small enterprises and workers’ representation is more limited. Agreements at sectoral level provide a generally agreed minimum by leaving few possibilities for the company level (for instance, the possibility to choose between alternatives such as meal vouchers or group insurance). Derogations and opt-outs are allowed only in exceptional cases as part of drastic restructuring processes. In addition, in Belgium every sectoral agreement includes a legally required extension norm, which makes it binding for unaffiliated companies. This is crucial in the Belgian retail sector in order to limit (wage/cost-based) competition and to secure the (income) protection of all employees. Nevertheless, it is difficult for trade unions to monitor companies’ compliance, especially in the case of small retailers because there is almost no employee representation. On the other hand, increasing competition and restructuring are putting pressure on employers and making it more and more difficult to aggregate interests. Consequently, employers are becoming more and more interested in decentrally-bargained variable pay.

In Spain, the most significant change affecting labour relations in the retail sector was the 2012 labour market reform aimed at fostering the decentralisation of collective bargaining. As outlined by Rocha (in this volume), after the 2012 changes most of the new company-level agreements signed can be defined as ‘*in pejus*’, in the sense that these agreements focused mainly on cutting wages (‘wage costs’), extending the annualised working day and further flexibilising working time. Also in the Spanish retail sector there is a high number of sectoral collective agreements (about 387 in 2015, covering about 1.44 million workers), while the coverage of company-level agreements decreased from 7.3 per cent of all workers covered in 2012, to 4.3 per cent in 2015. Similar to other countries, wages in the retail sector are lower (with an average of 19,771 euros a year against an average of 22,858 euros a year in all economic sectors). However, there is a statutory minimum wage of 9,034 euros a year. Wages increases are linked to sales (taking as a reference the volume of sales in 2010). In a context of increasing deregulation of shopping hours, the elimination of paid Sundays and holidays has worsened working conditions.

In conclusion, in each of the examined countries (which have different institutional characteristics), we always found worse wage and working conditions in the retail sector than in manufacturing. The retail sector has undergone a great transformation during the past decade, especially in terms of its competitive structure and the growth of large companies at the expense of small and micro businesses. Nevertheless, the high presence of micro-firms and the self-employed – which seems to be a common trait of the vast world of ‘traditional retail’ across all the examined countries – may have influenced the characteristics and structures of retail industrial relations and the relations among the collective actors, resulting in a general drop in average wages and worsening working conditions (more atypical contracts, prolonged working time, involuntary part-time, Sunday working and so on).

Company size is a necessary condition for a trade union presence and worker organisation, but even it is insufficient to allow trade unions to act collectively (through traditional collective bargaining) to improve wages and working conditions. Another factor related to firm size is the range of business models adopted. The retail industry may be divided into ‘traditional retailing’, made up of micro-firms and self-employed, ‘modern and large-scale organised distribution’, made up of large companies, franchising and multinationals, and finally e-commerce, mainly made up of global players. Therefore it would be useful to analyse horizontal coordination not only in the sense of inter-sectoral coordination, but also in a new light, focusing more attention on the dynamics between employers’ and union organisations within the sector.

## **6. Final considerations**

However much it may be proclaimed company-level bargaining does not emerge automatically. This is demonstrated by the case of Spain, where it remains weak despite repeated institutional attempts to strengthen it and to make it the centre of gravity of the whole bargaining system.

The data presented in this volume make it clear that it is France and Germany where a marked tendency towards rising company-level bargaining is to be found.

In the case of France this growth, measured over recent years and an indication that the constraints arising from the so-called great recession have been overcome, appears due mainly to the favourable institutional framework and, in some cases, promotional efforts. This framework was imposed in the early 1980s by the Auroux laws, which enshrined an obligation to negotiate. It remains to be seen whether another push will be provided by the measures currently being contemplated by the Macron government, which were also inspired by the general thrust towards decentralisation.

In Germany, by contrast, decentralisation, which has progressively become more entrenched in recent years, appears to be the outcome of changes in bargaining strategy that have taken place within the framework of industrial relations, and thus brought about by the actors themselves through successive agreements, encouraged in particular by the employers.

As for Italy, it seems to be on the rise, sustained by various public incentive mechanisms developed over recent years. However, it would be jumping the gun to try to draw conclusions from this, whether quantitative or qualitative. Only future observation will show whether the previously limited space for decentralised bargaining is being expanded (practiced to date by only 20 per cent of companies) to cover a proportion of small enterprises, and also whether bargaining topics are significant and in line with the pursuit of more innovation or are more ‘utilitarian’ in nature, seeking to exploit economic incentives.

Still on the subject of the contents of bargaining the information supplied by the national reports is certainly useful, but will require more systematic investigation in the near future.

Generally speaking, it emerges from the data and the qualitative assessments that the main bargaining topics in the metal sector are concentrated on wages and working time, although other, currently less important topics are not neglected, such as organisational and technological changes and work organisation. The first two issues were important in the years leading up to the financial and economic crisis because they were subject to demands for more flexibility or, to put it another way, for adjustment to more difficult circumstances. In most cases, as the data show, flexible adjustments of this kind occurred in a negotiating context that differed from the past (when it was oriented largely towards commercial ends). In general, they tended to revolve around job retention guarantees or, in some countries, such as France, were oriented towards an agreed reduction, underpinned with guarantees, of jobs deemed surplus to requirements.

Flexibilisation of working hours and of terms of employment tends to be more characteristic of the retail sector. But even in this case not everything is necessarily stagnant or to be criticised. Here, too, spaces are opening up – although not generally and it is unknown whether generalisation is even possible – in pursuit of new ‘terms of trade’ and compromise in negotiation in response to other considerations. One might mention, in some countries, agreements in which other topics have been introduced into the bargaining framework, in the form of non-wage compensation. Such trends are evident, for example, in the design of working hours (flexible working hours among other things), various welfare services or other benefits, as well as greater attention to conciliation and more besides.

The national case studies provide a robust cognitive and interpretative framework within which we can draw up an initial overall assessment concerning bargaining system trends, the substance of decentralised bargaining, the quality of the various processes and the outcomes emerging in company-level bargaining.

Turning to the initial questions the first point to make is that bargaining decentralisation is less widespread than desired or expected and that overall – at least in the countries under examination here – it does not call into question previous bargaining structures and the framework of disorganised decentralisation. In the case of Spain there have been repeated attempts to dismantle the collective bargaining system in favour of company-level bargaining (in contrast to multi-employer bargaining), which is considered to be

'closer' to the problems of both management and workforce. Here, too, however, the data show that these repeated attempts have not produced the expected effects and established a lower centre of gravity for collective bargaining, but rather have led to more ambiguous outcomes, first and foremost an erosion of bargaining, especially in the retail sector.

In the case of France, too, the push to boost decentralised bargaining both quantitatively and qualitatively has to date led to uncertain outcomes and although the legislation provides the necessary basis for this, it cannot be said that, to date, company agreements have taken off and displaced sectoral agreements.

Even more ambiguous is the situation in Italy, where, in response to a law (Article 8 pushed by the Berlusconi government in 2011) favourable to the primacy of so-called 'proximity bargaining' the decisions and actions of interest-representing organisations have taken a rather different direction, tending rather largely to reaffirm traditional bargaining structures. It should be noted that during the last parliament government did not tackle bargaining structures and instead worked towards strengthening decentralised agreements, although without impinging on the prerogatives of national bargaining (without prejudice to provisions otherwise specified, but only partially implemented).

On this basis, what we defined at the beginning as 'wholesale decentralisation' has become established, for the time being, only in a limited – albeit important – part of the economy in the countries under examination. This applies primarily to big players in international markets who prefer their bargaining 'made to measure' and closely in accordance with management preferences.

But also the company-level bargaining that we have defined as 'incremental' does not really seem to have taken off, despite a number of examples cited by the authors of the case studies. The most noteworthy instance in this respect seems to be Germany, where company-level bargaining could help to expand room for negotiation and also help to increase bargaining coverage, which would be extremely valuable.

The substance of this phenomenon is difficult to measure in the case of Italy, where there have been numerous significant instances of bargaining (see, for example, Pero and Ponzellini 2015). Certainly a wide range of enterprises have been reaching agreements introducing new organisational models, making cost savings and productivity increases, with variable, but positive benefits on job quality. These agreements are widespread in the metal sector, but less so in the retail sector. Apart from the fact that they indicate a certain dynamism in some companies (especially medium-sized ones), what proportion they represent of companies as a whole is not clear; nor is their ability to serve as a positive reference for other companies in these sectors.

It should also be noted that the larger companies in this category, in all the countries under consideration, would also – under certain conditions – be the ones most tempted to switch (to wholesale decentralisation). It must be said, however, that decentralisation, where it really takes place, rather belongs in the third category, namely 'equivalent



decentralisation’, which at least on the surface does not rock the boat with regard to existing agreements. It also seems reasonable to suppose – as indicated by the German data – that in such cases a shift is occurring in favour of management, while the trade union role is primarily to contain disruptive impulses.

All in all, the bargaining activities described in this report and in the various countries largely come in the category of ‘organised decentralisation’. However, as the German chapter shows, this broad formula is liable to induce complacency, masking bargaining agreements’ underlying features and dynamics, particularly their quality and depth. In fact, this assessment covers a wide range of phenomena, which only increases the heterogeneity of bargaining solutions and situations, both within and across sectors. This also explains the major complications that beset collective representation. When decentralisation is managed the system overall continues to function, albeit more slowly. All the case studies complain about lower levels of collective bargaining, both quantitative and qualitative. Their worries include the resilience and viability of national sectoral agreements, even though they are not lacking in innovation and potential, not to mention whether they will be able to maintain the broad scope they had in the past. The national sectoral agreement signed in Italy in late 2016 can be regarded as something of a relaunch of this instrument, even though the new bargaining issues – such as training, welfare and grades – put forward in them at present lack adequate redistributive mechanisms.

According to the authors of the German chapter it would be worth exploring in more detail the extent to which decentralisation represents an opportunity for trade unions. They describe, taking the example of Germany, positive – albeit still in the minority – experiences that could conceivably serve to support union organising. This can be confirmed by the other national case studies, with the exception of companies with a long tradition and well established institutional rules that nurture decentralised bargaining and enable its ongoing adaptation (which seems to be happening in some quarters among Italian companies).

To sum up, the extension and quality of decentralisation in the countries examined in this book still seem to be variable, ambiguous or inadequate. For this very reason, however, it would be a good idea to try to build on this by increasing the actors’ participation to expand it and make it more effective. But such an advance would be possible only by means of a veritable cultural evolution, in which those involved might emerge as stakeholders in decentralisation, enhancing reciprocity in decision-making and mutual benefits. This would clarify the possible advantages for employees, beyond job retention.

It is clear from the picture presented here that, while important, the (main) institutional factors are not up to the job of engineering a real take-off for decentralisation. The cultural ‘glue’ that we referred to above would also be a great help. The envisaged scenario thus stands a chance only if the collectively organised actors play a more prominent role and show more commitment. They would help realise the full potential of the ‘social factors’ that could bring about an effective upgrade in decentralised bargaining processes, as the driving force behind their take-off.



But as can be seen from the present volume, these social factors are struggling to materialise and to get up and running. Resistance remains formidable in some quarters of the business community, where collective organisations face problems in their efforts to work out an adequate approach that is recognised by all those involved.

There are also critical issues on the trade union side, despite the fact that substantial progress has been made, as evidenced by the document produced in 2016 by the Italian trade union confederations, which are clearly pushing in this direction. Having said that, adequate structures and practical outcomes have yet to manifest themselves. Overall, trade union organisations are making heavy weather of a clear strategic choice in favour of decentralised and company-level agreements, both because of their difficulty in convincing their members of the benefits and due to the continuing prevalence of largely defensive attitudes.

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# **Chapter 3**

## **Opposites attract? Decentralisation tendencies in the most organised collective bargaining system in Europe**

### **Belgium in the period 2012–2016**

**Guy Van Gyes, Dries Van Herreweghe, Ine Smits and Sem Vandekerckhove**

#### **1. Introduction**

In this chapter we present an overview of recent decentralisation tendencies in the Belgian collective bargaining system. In Belgium, organised social dialogue is a core element of consociationalism as governance system, a form of democracy in which harmony in segmented societies is maintained through the distinctive role of elites and the autonomy of organised interests (Deschouwer 2012). A dense network of social dialogue bodies and concertation structures is created at the national level to maintain social peace and cohesion, and to stimulate economic growth. The characteristics of this industrial relations system include: full union participation, recognition and integration; a legal framework; centralised and strong organisations on both the employers' and the employees' side; socio-economic policy concertation; a mix of self-governance (paritarism), subsidiarity and state action with regard to social security; mechanisms of information and consultation (but not codetermination) in the workplace; and ideological pluralism among the actors (especially on the trade union side) linked to historical 'pillarisation' (Van Gyes *et al.* 2009). Collective bargaining in Belgium, and especially wage bargaining, is known for its high levels of coordination, organisation and coverage. A traditional three-level structure is framed by two-year intersectoral bargaining, automatic wage indexation, a central wage norm and a statutory minimum wage (Vandekerckhove and Van Gyes 2012; Dumka 2015). Despite politically polarised positions and regular failure to achieve consensus, the institutional apparatus remains intact and there is in general social peace holds sway.

The focus of this report is the period 2012–2016. A second economic dip after the 2009 recession, linked to the Eurozone crisis, resulted in a period of economic stagnation, rising unemployment and continued fiscal problems. Belgian politics, having finally resolved a four-year ethno-linguistic dispute and spurred by European recommendations, embarked on ambitious reforms, targeting fiscal austerity and international cost competitiveness. Ending a record period of 514 days without a federal government, the country was governed from 2011 to 2014 by a broad multi-party coalition of socialists, Christian Democrats and liberals, led by prime minister Elio Di Rupo. In autumn 2014, a centre-right government of liberals, Christian Democrats and right-wing Flemish nationalists was formed under prime minister Charles Michel. Although institutional continuity reigns, social dialogue has come under pressure. In particular, the presence of the non-traditional party N-VA and the lack of political allies in the government challenged the trade unions, which still enjoy large-scale support among the workforce and have maintained a union density rate above 50 per cent. The

unions started political strikes and protested against the government(s), but struggled to have the same impact as before in the changing environment for social concertation. The labour movement has come under increasing criticism by politicians and media. Social dialogue has been called into question for ‘not delivering’.

With this changing political climate of social dialogue as context, we will investigate the extent to which the Belgian system of collective bargaining exhibits the decentralisation tendencies observed elsewhere. To do so, we first depict the traditional and even today still strongly organised framework and practice of collective bargaining in Belgium in the next section. In Section 3 we then examine decentralisation trends in this system using a seven-dimensional operationalisation of the general decentralisation concept. In the closing Section 4 we illustrate these trends by summarising the findings from interviews in two sectors: the metal industry (manufacturing) and retail (services). The main conclusion is that although in comparative perspective the Belgian collective bargaining system is arguably the most organised and centralised in the EU or the OECD (OECD 2017), this does not imply that, in absolute terms, employee relations are rigidly fixed and settled only by centralised powers of social dialogue. Decentralisation tendencies are also part of the system and today even considered to be interesting solutions by the social partners.

## **2. The traditional collective bargaining system (at the start of the period under examination)**

### 2.1 Institutional and legal framework

The traditional collective bargaining system in Belgium is entirely regulated by the Act of 5 December 1968 on collective bargaining agreements and sectoral joint committees (1968-12-05/01) in which the right to organise and bargain collectively is recognised and protected. Wage bargaining is structured through three interlinked levels: the highest, national level, with centralised cross-sectoral agreements covering the entire economy; an important intermediate level covering specific sectors; and company-level negotiations as a complement or substitute for the sector-level bargaining. In principle, lower-level agreements can only improve (from the employees’ perspective) what has been negotiated at a higher level; in other words, there is no derogation.

Every company and employee is assigned to a sectoral joint committee as soon as the company applies for a social security number and the employee is registered. In this way, both the employee and the employer can retrieve the sectoral settlements for collectively agreed wages, generally including a job classification system and a wage grading scheme. These systems can be further developed and are often supplemented by company-level systems. Finally, the effective wage level may also include an individual raise, notably for higher-level jobs or for occupations characterised by employment shortages.

At the sectoral level the collective agreements are concluded within joint committees or joint subcommittees by all the organisations that are represented by them. There

Table 1 Largest joint committees by employment size, Belgium, 2015

Number	Committee	Statute	Number of workers
200	Auxiliary committee white-collars †	White-collar	422 973
330	Health sector	White/blue-collar	253 961
322	Temporary agency work/personnel services ‡	White/blue-collar	224 010
124	Construction	Blue-collar	143 061
111	Metal industry	Blue-collar	115 468
302	Horeca	White/blue-collar	114 083
201	Retail (non-food)	White-collar	88 722
140	Transport	Blue-collar	77 261
207	Chemical industry	White-collar	76 956
319	Social work	White/blue-collar	68 835
209	Metal industry	White-collar	65 248
118	Food industry	Blue-collar	58 960
310	Banks	White-collar	55 193
311	Warehouses	White-collar	54 048

Notes: † Includes employees from the business service sector, and white-collar workers from sectors in which they are a small minority, such as construction. ‡ Includes a voucher system subsidised by the state, mainly used for household chores. Source: Social Security Administration RSZ/ONSS.

are around 165 joint (sub)committees that make decisions on pay levels, classification schemes, working time arrangements, training and so on (see Table 1 for the most important ones). The sectoral collective bargaining agreements apply to all the employers and employees covered by the joint committees or subcommittees concerned. As negotiations at this level give legal content following the agreements at the national cross-sectoral level, the sector remains the most important bargaining level overall. Moreover, for many non-wage items, this is the highest level of negotiation. When all parties sign the sectoral agreements, legal extension by royal decree is fairly easy and is therefore nearly always applied.

By virtue of the 1968 Act, all employers who are members of an employers' organisation that has concluded a collective agreement at national or sectoral level, or who have themselves concluded a collective agreement, are bound by such agreement (Humblet and Rigaux 2016). The essence of Belgian law on collective agreements is that as soon as an employer is bound by such an agreement, the entire workforce becomes bound. In other words, a collective agreement binds the employees merely by virtue of the fact that they work for an employer who is bound by an agreement. Consequently, workers who do not belong to a signatory organisation (that is, a trade union party to a collective agreement), but who are employed by an employer member of a signatory organisation, are bound by the agreement. This corresponds to the notion that a trade union negotiates on behalf of all the workers in a particular economic sector.

Furthermore, when these agreements are concluded at the national or sectoral level, they can be declared binding *erga omnes* by Royal Decree. This holds only for collective agreements that have been concluded in joint bodies. Once a collective agreement has been extended, its provisions become binding – without any possibility of deviation – on all employers and the employees in their service, provided they fall within the territorial and professional scope of the agreement. Two consequences flow from this extension to non-affiliated parties:

- (i) collective agreements that have been declared generally binding will bind all employers and employees falling within the jurisdiction of the joint body, insofar as they fall within the scope stipulated in the agreement;
- (ii) it is an offence for an employer not to comply with the normative provisions of a collective agreement.

An employer cannot avoid the application of normative provisions by disaffiliating from the signatory employers' organisation. According Article 21 of the 1968 Act: 'An employer whose affiliation to an organisation bound by the agreement comes to an end shall remain bound by the said agreement unless and until the terms of the

**Box 1 Hierarchy of legal norms in Belgian labour law according to Article 51 of the Act of 5 December 1968**

The sources of obligations arising out of the employment relationship between employers and employees shall be as follows, in descending order of precedence:

1. the law in its peremptory provisions;
2. collective agreements declared to be generally binding, in the following order:
  - a. agreements concluded in the National Labour Council;
  - b. agreements concluded in a joint committee
  - c. agreements concluded in a joint subcommittee;
3. collective agreements that have not been declared generally binding, where the employer is a signatory thereof or is affiliated to an organisation signatory to such an agreement, in the following order:
  - a. agreements concluded in the National Labour Council;
  - b. agreements concluded in a joint committee;
  - c. agreements concluded in a joint subcommittee;
  - d. agreements concluded outside a joint body;
4. an individual agreement in writing;
5. collective agreements concluded in a joint body, but not declared generally binding, where the employer, although not a signatory thereof or not affiliated to an organisation signatory thereto, falls within the jurisdiction of the joint body in which the agreement was concluded;
6. work rules;
7. the supplementary provisions of the law;
8. a verbal individual agreement;
9. custom.

said agreement are so amended as to bring about a considerable modification of the obligation arising out of the agreement.’ This provision guarantees some stability in labour relations and avoids a situation in which an employer who is dissatisfied with a collective agreement negotiated in a joint body attempts to avoid its application by disaffiliating from the signatory organisation.

In order to prevent conflicts between collective agreements concluded at different levels, but covering the same industry, the legislator has established a hierarchy of collective agreements. Article 51 establishes a hierarchy between collective agreements concluded within the National Labour Council, a joint committee, a joint subcommittee and outside a joint body, as outlined in Box 1.

By virtue of this article, certain provisions of collective agreements may therefore be declared null and void on the basis that they are contrary to provisions contained in a hierarchically superior collective agreement. Consequently, the outcome of collective bargaining which has taken place in the body with the largest sphere of influence prevails over the others.

However, in this hierarchy one can also see that collective agreements concluded in a joint body, but not extended or declared generally binding by Royal Decree, rank below the individual agreement in writing. Article 26 of the law stipulates that the normative issues related to the individual employment relationship (that is, wages, working time and so on) in such a non-extended sector or national agreement are, in principle, binding (supplementarily binding), if not stated otherwise in the individual employment contract. As a consequence, it is common practice in the Belgian system to ask for the collective agreement to be declared generally legally binding by Royal Decree, to avoid this kind of derogation.

The *social peace obligation* obliges parties to refrain from formulating any additional claims concerning matters regulated by the collective agreement during its period of validity. Also, the peace clause may go further and prohibit any additional claim during the same period. This obligation may be expressed tacitly or explicitly. When the collective agreement does not explicitly address social peace, this obligation is restricted, in the sense that it relates only to matters regulated by the collective agreement. The social peace obligation is the transposition into labour law of the principles of civil law related to the execution of contracts, namely the autonomy of will, the obligatory (binding) force of contracts and their execution in good faith. Once it has been negotiated and concluded, a contract must be executed in accordance with the parties’ agreement. In general, social peace clauses form part of the obligatory portion of the collective agreement. This means that they do not bind either employers or employees, whether unionised or not, but only their representative organisations. However, social peace clauses could also be considered as forming part of the normative provisions when their wording is such that their scope of application is broader than that of signatory parties. The wording of the social peace clause therefore determines which persons are bound by it.



To ensure implementation in good faith, signatory parties to a collective agreement are obliged to inform their members of the content of collective agreements and to exert influence on their members to live up to the normative provisions of the agreement. This obligation is not absolute, since signatory parties are not ultimately responsible for their members' conduct. Furthermore, when one signatory party violates the social peace obligation, the right of the other party to be indemnified is limited. Article 4 of the 1968 Act provides specifically that in the case of non-performance of contractual obligations, damages can be recovered from an organisation when the collective agreement specifically provides for such a possibility. This never happens in practice, however.

## 2.2 Centralised instruments of coordination

Although, as already mentioned, the legal focus of collective bargaining is the sectoral level, the wage bargaining system in particular has developed into a more centralised and coordinated system. This is reflected in Belgium's very high score in the ICTWSS centralisation index (Visser 2013). The centralised set of coordinating instruments that shape the wage bargaining process in this way include: a statutory minimum wage, automatic wage indexation, and bi-annual social programming determined by a central wage norm.

### 2.2.1 Minimum wage

In 1975, the guaranteed average monthly minimum wage (GAMMW) was introduced through a collective agreement concluded in the National Labour Council.<sup>1</sup> A royal decree gives the agreement legal force, so that it applies to all private-sector wage earners in Belgium. The GAMMW is the minimum wage that private-sector employers must guarantee to a full-time worker for an average month. It is indexed through the pivot mechanism (see below) and was last raised in real terms in October 2008.

To determine whether the employer has complied with this obligation, the worker's average monthly wage is calculated. The definition of the wage – what components should be brought into the equation – is left to the sectoral joint committees. If the joint committees have not concluded an agreement, the average monthly wage consists of the compensation for normal hours worked (for example, wages in cash or in kind, bonuses and benefits based on normal hours worked), excluding certain elements such as payment for overtime hours, union bonuses and double holiday pay. The elements are added up for a calendar year to obtain the annual wage and a monthly average is calculated. The average monthly wage thus obtained can be compared with the GAMMW which the employer has to meet.

### 2.2.2 Wage indexation

Belgium is one of the few remaining countries in western Europe that have nearly universal automatic index-linking for setting wages. This means that pay and social security benefits are linked to a consumer price index. The link is intended to prevent

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1. Dutch: Nationale Arbeidsraad (NAR); French: Conseil National du Travail (CNT).



the erosion of purchasing power by inflation. Often misunderstood by critics, the system is not centrally organised, but rather a patchwork of sectoral mechanisms agreed upon freely by the members of the joint committees (NBB 2012) They differ in terms of timing, indexation system, calculation of the moving average of the index, rounding rules, target groups, and other details. The only restriction, imposed by the law (Royal Decree 1993-12-24/34; Act 1994-03-30/31) is that sectors that index wages have to use the so-called Health Index, which is the normal consumer price index excluding the prices of cigarettes, alcohol and fuel for motorised vehicles. In practice, the sectoral agreements refer to the Social Index<sup>2</sup>, which is a four-month moving average of the Health Index. Two types of wage indexation exist:

- (i) Pivot system: when the Health Index reaches an increase of 2 per cent, wages are also increased by 2 per cent (sometimes with a delay of one month or more). This system is, for example, applied in the public sector. Not the date, but the pay increase is fixed.
- (ii) Coefficient system: this system looks at the reference index at a certain point in time and compares it with another point in time. This percentage difference will be applied to wages. This can be done on a monthly basis, quarterly, every half year, yearly and so on. Annual indexation is found most often, with January being the usual month for indexing wages. In this system the date of adjustment is known, but not the increase.

### 2.2.3 Bi-annual intersectoral programming and the wage norm

At the national level, informal pay negotiations in the private sector take place every two years outside the permanent official bipartite structure – that is, outside the National Labour Council. The result is a national cross-sectoral agreement<sup>2</sup> that defines the *wage norm*, which is the upper limit for sectoral and firm-level pay increases for the following two years. The bargaining group, called the ‘Group of Ten’, meets in seclusion, away from the media and the general public, and consists of the key representatives of the national social partners recognised by the Central Economic Council<sup>3</sup> and National Labour Council. It is led by a representative of the largest employers’ federation, the FEB-VBO. These ‘social-programming’ agreements constitute political and moral commitments and are considered very influential, although they are in principle not legally binding. In the absence of a final agreement, however, the government may legally enforce parts of it in law. While wage increases are further specified in sectoral collective agreements, non-wage elements of the agreements are often implemented by national collective agreements settled in the National Labour Council. Hence one could argue that these agreements are the functional equivalent of a bipartite social pact, but reached in close interaction with the government.

The state supports the biannual negotiations with a strict law on monitoring and intervention in the wage-setting system and through the services of the Central Economic Council. The purpose is to manage wage increases and balance the automatic indexing of wages and sectoral bargaining. The 1989 Law on the competitiveness of the

2. Dutch: Interprofessioneel Akkoord (IPA); French: Accord Interprofessionnel (AIP).

3. Dutch: Centrale Raad voor het Bedrijfsleven (CRB); French: Conseil Central de l’Economie (CCE).

economy (1989-01-06/31) authorises government intervention if the average overall wage increase results (based on past performance) in an upsurge of relative labour costs and in a deteriorating external performance of companies in the private sector. The 1989 Law was extended in 1996 (1996-07-26/32) to enable the government to monitor the wage bargaining process even more closely. The most important changes with respect to the 1989 Law were a shift from an assessment of labour costs based on past performance to one that predicted future performance, and the fact that the number of countries used as a benchmark was reduced to three. The forecast weighted growth of foreign hourly labour costs (a weighted average for France, Germany and the Netherlands) now acts as an upper limit for wage negotiations at all levels (macro, sector and company). This limit is suggested to the social partners to be adopted as the wage norm. The lower limit remains, as before, the automatic price index.

### 3. Decentralisation and centralisation tendencies

Collective bargaining and especially wage bargaining in Belgium is thus known for its high degree of coordination and the importance of the sectoral level of negotiations. During the crisis, unlike in other European countries, no major institutional changes were made in wage-setting mechanisms (Vermandere and Van Gyes 2014; Dumka 2015). However, more recently tendencies towards (de)centralisation can be detected, and although they do not yet represent major institutional reforms of the system in question, they do represent change and transformation.

#### 3.1 Conceptual framework

There is no real consensus on the definition or measure of decentralisation in the literature on decentralised collective bargaining. In broad terms, decentralisation means that decision-making authority or power is transferred from the higher/central to the local/lower level. Applied to industrial relations, this means that the process of setting wages and other contract terms moves downwards in the hierarchical levels of labour regulation (Soskice 1990). The ‘decentralisation’ discussion of collective bargaining institutions centres around the question of whether wages should be set at the company or workplace level, the industry level (intermediate) or the national level (centralised).

Table 2 Conceptual arena of potential decentralisation/centralisation by levels, Belgium

	Single company	Sectoral or multi-company bargaining	Intersectoral
Local	Company/establishment	–	–
Region/province	–	–	–
National	–	National sector agreement	National pact/agreement
International	–	–	–

Source: Authors' elaboration.

Table 2 shows that more options are available with regard to the shifting of labour-regulation powers, for instance adding the geographical dimension. From a Belgian perspective – which in recent decades has, politically, become a ‘federalised’ country, in which the regions have gained importance – considering the regional level within a study of ‘decentralisation’ is certainly a sensible possibility. An additional perspective is the occupational divide, which could be added to the table, making it three-dimensional, indicating whether agreements at any level or geographical circumscription apply to all occupations or are occupation-specific, in which case this fragmentation of collective bargaining is another form of decentralisation.

The next element in the decentralisation discussion is how regulatory or bargaining power is decentralised or centralised. Borrowing from the broader conceptualisations in administrative science, the following might be mentioned:

- *Decentralisation strictu sensu*: A clear pattern of decentralisation strictly speaking (or ‘devolution’) is provided when collective labour regulation is shifted from a higher to a lower level, in the most extreme case from a national, intersectoral, multi-occupational bargaining agreement to an agreement for one occupational group at a local company or establishment.
- *Deconcentration*: The creation of new joint negotiation bodies at the same level, which take over powers or responsibilities of the former bodies.
- *Delegation/empowerment*: The shifting of bargaining power or tasks to lower levels; they gain the independence to decide issues on their own, even though they are still controlled. The higher level is also still involved. This route can be designated as empowerment because the local or lower-level players are explicitly granted decision-making power, while the central intervention or agreement establishes the local consultation/bargaining procedures and facilities.
- *Derogation/opting-out*: Deviant collective bargaining agreements organising the undercutting of collectively agreed standards by lower-level company agreements. This process is facilitated by the necessary inclusion of procedural derogation clauses in higher-level collective agreements.

Besides these clear and formally detectable trends of decentralisation, implicit or indirect forms of decentralisation can be distinguished (Tros 2001), as well as a shift in the balance of power through state intervention:

- *Centralised retreat*: The abolition, non-continuation or slimming down of substantive rules at a centralised or higher level, leaving it open who will fill in the regulatory gap. This will always be a lower-level decision-making unit.
- *Deliberate (or not) abstention*: New issues are not picked up or are deliberately left to other levels of bargaining and regulation.
- *Overruling/state intervention*: In this case the bipartite bargaining process is overruled by a state intervention imposing a new labour regulation.

In what follows we discuss these dimensions with regard to the development of the Belgian collective bargaining system in recent years.

### 3.2 Decentralisation strictu sensu: maintenance of multi-level bargaining, with tendencies towards regionalisation

Traditionally in Belgian collective bargaining, the most importance is attached to the sectoral level. However, Table 3 draws a more nuanced picture for the largest sectors and sector joint committees (referred to by their number or name). Notably in the capital-intensive sectors, where labour cost is only a minor issue – although with high operational importance – sectoral agreements have never been very important. Furthermore, pattern bargaining or bargaining coordination between different sectors is a pervasive practice in not-for-profit sectors such as health care and social work. The table also mentions many intermediate forms, highlighting the multi-level character of the bargaining system and the complementarity between the different levels. This is also the case for other domains of collective bargaining besides wage setting, such as working time regulations. It is thus a fallacy to describe the Belgian practice of collective bargaining as a homogeneous, centralised sector system.

However, despite the various levels that are in operation at the same time, the coverage rate of collective agreements is still a stable 90 per cent or more. Only particular

Table 3 Typology of sectors by dominant bargaining form, Belgium

	Category	Key examples
1	Sectors together	Social (health, social work, socio-cultural sector)
2	Sector; only additional company bargaining in a very few large companies	Joint committees 106, 118, 119, 121, 124, 130, 140, 201, 226, 303, 304, 314, 317, 327 Blue-collars: construction and construction-related sectors, graphical industry, transport White-collars: small retail; horeca, transport, arts White-collars/blue-collars: hairdressers and parlours, cleaning, private security; sheltered employment for people with disability
3	Sector; additional bargaining in largest companies	Garages, textiles, electricians White-collars: food retail Large retailers
4	Sector acts as a target-setting framework for company bargaining	Non-ferro and metal manufacturing
5	Sector acts as a substitute when no company agreement is reached or settled	Petro-chemical industry and chemical industry Auxiliary committee for white-collar and blue-collars workers (100 and 200) Banking
6	Company agreements	Steel and paper industry

managerial staff (so-called ‘*cadres/kaderleden*’) are not bound by these agreements, but their working conditions follow at least the increases of the lower-level employees.

As far as decentralisation goes, *regionalisation* is perhaps a deeper trend. In October 2011, a sixth state reform was agreed at the political level, continuing the transfer of powers to the regional governments and split the electoral constituency of Brussels-Halle-Vilvoorde, which had been a contentious issue for several decades. Under that reform, additional labour market powers were transferred to the regions from 1 July 2014, such as reductions in social security contributions for specific target groups, paid educational leave and employment plans for job-seekers, while social security, labour law, organisation of social dialogue and wage setting remain federal competences. Before the reforms, the federal state was responsible for the ‘passive’ component of employment policies (benefits), while the ‘active’ component was a shared responsibility between regions, communities and the federal government. Now the regions will have more competences regarding active labour market policy (ALMP): vocational training, a set of employment incentives, direct job creation policies (for example, the household service vouchers system) and controlling and sanctioning active job search behaviour.

Because of the creation of autonomous regional government levels in the 1980s, proper policy instruments were needed (Ongena 2010). Especially in Flanders – the largest region, which called most for state reforms – the creation of a proper social-economic dialogue channel for both the social partners and the political elite was a priority. Early on, regional social and economic councils were installed. For instance, two important bodies are active in the Flemish social dialogue: SERV (Social and Economic Council of Flanders) and VESOC (tripartite commission). SERV (Social and Economic Council of Flanders) is the consultative and advisory body of the Flemish social partners, in which they determine their common viewpoints and formulate recommendations and advice. SERV provides advice on all matters with a socio-economic impact for which the Flemish government is authorised. In Flanders SERV is viewed as a centre of dialogue and expertise. The tripartite dialogue between government, trade unions and employers takes place within the Flemish Economic and Social Consultative Committee (VESOC). If a consensus is reached within VESOC, the Flemish government commits itself to carrying out all resolutions for which there is consensus. The Flemish social partners defend this consensus to their members and contribute to its implementation. The chairman of the VESOC committee is the Flemish minister president, the head of the Flemish government ([www.serv.be/en/serv](http://www.serv.be/en/serv)).

Comparable institutions exist also in the other regions (Conseil économique et social de Wallonie, CESW; Conseil économique et social de la Région de Bruxelles-Capitale, CESRBC).

The regional social dialogue and consultation has led to specific employment pacts or agreements. Examples include the Career Agreement in 2012, the Jobs Pact of 2015 and the Training and Education Pact of November 2016 in Flanders. In Wallonia

concertation was concentrated around the Walloon government's consecutive 'Marshall plans' to revitalise the economy.

In Flanders these tripartite agreements led to the negotiation of sectoral covenants between the sectoral social partners (often still organised at the federal level) and the Flemish government. Although these agreements do not regulate the employment relationship and thus are not collective agreements *strictu sensu*, they form a 'tripartite' contract. These sectoral covenants provide a framework that commits all social partners in a sector to targets with regard to increasing diversity, school–labour market transitions and lifelong learning. These targets do not have to be met in each enterprise separately: the social partners are expected to apply for support and to implement plans on the company level on a voluntary basis. Examples of targets include: the number of diversity plans to be concluded within the next year, the share of migrant workers in training courses set up by the sector and so on.

When sectoral covenants are approved by the Flemish government, the sector receives funding for the recruitment of sectoral consultants who assist the social partners in the implementation of their sectoral plan and the preparation of dossiers. Sectoral covenants are agreements for 2–3 years. After each year, the industry should provide a progress or final evaluation report to the Flemish government. All sectoral covenants are monitored and evaluated annually by the Flemish government. The first generation of sectoral covenants were concluded within the framework of the Flemish Employment Agreement 2001–2002. The policy became structural following a specific Flemish decree on sectoral covenants in 2009.

On 22 May 2015, a new policy framework was agreed by VESOC. A performance-oriented follow-up system was the main innovation. To date, 34 sectoral covenants have been concluded. Execution and coordination of the targets included in the covenants is done by 120 consultants, employed by joint sectoral organisations but subsidised by the Flemish government.

One result of the growing importance of the regional level has been closer collaboration on the employers' side between the different organisations. Although unions also have different coordination and preparation bodies to internally discuss the different regional activities and negotiations, they are still confederated (mostly) at national level (Pasture 2000). However, regional social dialogue is organised on the employers' side by different organisations, among which VOKA, Flanders' Chamber of Commerce and Industry, stands out. Since 2012 and the state reform, closer concertation has been organised between the different employers' umbrella organisations – eight in total – to coordinate and prepare cross-sectoral social dialogue talks at different levels on a monthly basis. This Intersectoral Employers' Dialogue is coordinated by the main and still federal umbrella employers' organisation FEB-VBO, but includes also regional-specific employers' confederations (BECI, UCM, UNIZO, UWE and VOKA).

However, labour law (including collective agreements and their organisation) remains a federal power.

### 3.3 Overruled by government intervention

In the period 2011–2012 Belgium came under fire from financial markets and under the close supervision of the EU semester. Politics and government, temporarily freezing the ethno-linguistic conflict, took the lead in a programme of austerity and structural reforms, of which budget cuts, welfare reforms, an increase in the retirement age and wage moderation are key aspects, touching core features of existing agreements between social partners.

Table 4 National cross-sectoral ‘programming’ by the Group of Ten, 2009–2016

Time line and content	Support and implementation
<p><i>2009–2010 Agreement – ‘exceptional’ in response to crisis</i></p> <ul style="list-style-type: none"> <li>– Wage premiums (above indexation) of EUR 125 in 2009 and EUR 250 in 2010 without increasing costs for employers.</li> <li>– Eco-cheques: pay check is a voucher, granted with social tax exemptions, focusing on buying ecological or ‘green’ consumer goods.</li> <li>– Temporary unemployed higher benefit; employer’s new social tax reductions to recruit long-term unemployed.</li> </ul>	<ul style="list-style-type: none"> <li>– Full support.</li> <li>– Implementation by collective agreements.</li> </ul>
<p><i>2011–2012 Difficult, joint proposal rejected</i></p> <ul style="list-style-type: none"> <li>– A postponement of discussion on whether to maintain automatic wage indexation system.</li> <li>– A very limited wage rise of 0.3% above inflation rate.</li> <li>– A roadmap for harmonising blue-collar and white-collar statutes into one uniform statute.</li> </ul>	<ul style="list-style-type: none"> <li>– Two out of three unions rejected the proposal.</li> <li>– Implemented by government.</li> </ul>
<p><i>2013–2014 High hopes, talks collapse after wage freeze by government</i></p> <p>Not relevant.</p>	
<p><i>2015–2016 In tense climate, agreement reached because some wage increase possible, ‘look-alike’ IPA</i></p> <ul style="list-style-type: none"> <li>– Wage norm set at 0.5 for the total wage bill, creating the possibility to increase gross wage by 0.37%.</li> <li>– Additional envelope of 0.3% made available to accord in other, less taxed types of pay, thus less costly for employers.</li> <li>– In recurrent negotiations about ‘welfare adaptation’ of social benefits, agreement stipulated that all minima (for pensions, unemployment and disability compensation) were to be increased by 2%, but with differences for particular groups. • Additional envelope of 0.3% made available to accord in other, less taxed types of pay, thus less costly for employers.</li> <li>– In recurrent negotiations about ‘welfare adaptation’ of social benefits, agreement stipulated that all minima (for pensions, unemployment and disability compensation) were to be increased by 2%, but with differences for particular groups.</li> </ul>	<ul style="list-style-type: none"> <li>– ABVV-FGTB withdrew from negotiations; only agreement by a ‘Group of Eight’ and mainly implemented by government</li> </ul>



### **Tighter monitoring of wage coordination**

Centralised wage coordination came under the direct supervision of the government in 2013 (it had previously happened in the 1980s and 1990s) (Van Gyes *et al.* 2017). The negotiations between employer and employee representatives on the IPA 2009–2010 were difficult and only successful thanks to the financial mediation of the government. Negotiations on the IPA 2011–2012 failed. The proposed agreement was rejected by ABVV-FGTB and ACLVB-CGSLB unions. The government decided to impose the draft-IPA. As a consequence, the norm is no longer indicative as in previous periods but imperative. In the ensuing years, the impact of the government has been growing, resulting in less independence of the social partners. The period 2013–2014 is the low point of autonomy. There was not even a draft agreement and the government decided unilaterally not to allow extra wage increases above the automatically wage indexation. For the period 2015–2016 this arrangement was reversed with a plan to skip a 2 per cent indexation, imposed by the government and a negligible room of 0.5 per cent for sectoral bargaining.

These interventions happened amidst continued discussion and differences of opinion about automatic wage indexation and possible revision of the 1996 Law, also in accordance with recommendations made within the European Semester from 2012 onwards. Then in December 2016 the Michel government proposed a new and stricter revision of the 1996 Law, which was adopted by the Parliament in March 2017. Box 2 lists the main elements of the new bill.

### **Overruling early retirement settlements**

During the 1970s and 1980s, the end-of-career debate was part of the larger debate on unemployment (Struyven and Pollet 2015). It was felt that older workers were blocking opportunities for the young entering the labour market. Generous early retirement systems were set up, regulated by a series of sectoral agreements to organise early retirement (collective financing by sector-specific Social Assistance Funds, sector-specific age thresholds and so on). By the 1990s, the debate was disconnected from the unemployment issue and moved towards the ageing issue and the financial sustainability of the pension system. Reform initiatives were launched. In 2006 a first (moderate) reform was implemented by the so-called Generation Pact. Originally this was a Pact negotiated between the social partners, but when the unions pulled out of the final negotiations, the Verhofstadt government pushed through these first reforms.

Learning from the observation that the social partners had not made much progress in increasing the employment rate for 55–64 year olds, the Di Rupo government (2011–2014) took up the issue, leading to a ‘Generation Pact Bis’. This new set of measures included the measure that early retirements coming from collective redundancies would still be granted from the age of 52, while those coming from collective agreements would have to be 60. Individual applications for early retirement would be considered only from the age of 62. The Generation Pact Bis was meant to accelerate the pace of raising the actual retirement age. In October 2014, the new Michel government, consisting of coalition partners of the political centre-right, announced its programme, in which the pension reform would be one of the main components, although no party had it in their manifesto – rather it followed from pressures from the European Commission. The



## Box 2 Summary of the 2017 revision of the Wage Norm bill

- The maximum margin available for an increase may be calculated by using the ‘available national and international forecasts’ instead of the current OECD figures, which are generally regarded as being too optimistic. This new calculation base will allow the CEC to make the calculations in accordance with the principle of ‘prudence’ to avoid an overestimating forecast.
- The principle of the bi-annual setting of the wage norm between the social partners or by the Council of Ministers if no agreement is reached between the two sides remains in place. However, the wage norm margin will be laid down in a generally binding collective labour agreement, set by the National Labour Council, or by a Royal Decree if no agreement is reached between the two sides. In the first situation it can no longer be framed as an ‘IPA gentlemen’s agreement’ that has to be implemented by the sectoral agreements.
- Automatic wage *indexation* and *seniority*-based increases (cf. key part of sector and company pay scales) remain outside the scope of defining the wage norm.
- A new element concerns implementation of *ex post correction* mechanisms to correct unjustified increases in the previous period. In this connection, the following steps are taken:
  - The remaining margin is to be calculated every two years by the CEC, as is the macroeconomic productivity advantage;
  - Most of the cost savings resulting from the tax shift, currently being implemented by the Michel government and including a social tax reduction for employers, and at least 50 per cent of new tax savings will be used exclusively to reduce the so-called historical ‘gap’: the labour cost gap dating from before 1996 – a much disputed issue between the social partners. However, it remains unclear how all these kind of calculations will be taken into account.
  - If Belgian wages grow more slowly than those of our neighbours and when the historical handicap is still negative, at least half of the surplus should be dedicated to further reducing the historical backlog.
- A *safety margin* has to be provided in the calculated wage norm to absorb potential errors in the forecasts *ex ante* (the index development and hypothesised wage trends in neighbouring countries). This safety margin will be a quarter of the margin, and at least 0.5 per cent. If this safety margin remains unused, it will be added on top of the margin for the next period.
- Employers who exceed the maximum wage norm will be penalised by an administrative *fine* ranging between EUR 250 and EUR 5,000 (per employee working for the employer and whose wage violates the norm).
- Calculation of the margins will be the sole responsibility of the secretariat of the CEC – an autonomous civil service agency – and no longer a point to be settled by the bargaining social partners. These national bargainers can only discuss how and to what extent the calculated margins will be used (with all the corrections prescribed by law taken into account).

retirement age was set at 66 by 2025 and 67 by 2030. Early retirement on an individual basis would by 2018 be possible only at the age of 63. Collectively bargained early retirement would be raised to the age of 60 by 2017. The measure received positive feedback from the employers' side and met with fierce resistance – including strikes and demonstrations – from the trade unions in response to the consecutive decisions by the Di Rupo and Michel governments that overruled existing practices and the regulations on early retirement laid down in sectoral agreements.

### 3.4 Deconcentration: fine-tuning of joint committees and harmonisation of worker statutes

According to Article 38 of the 1968 Act, sectoral joint committees and joint subcommittees are competent to:

- collaborate in drafting collective agreements;
- promote dispute conciliation between employers and employees;
- advise the government, the National Labour Council and the Central Economic Council on matters falling within their competence, at the latter's request or on their own initiative;
- carry out any other task imposed on them by law or by virtue of a collective agreement.

Articles 35 and 36 of the 1968 Act regulate the establishment, competence and scope of application of joint committees: the Crown may, on its own initiative or at the request of one or more organisations, establish joint committees of employers and employees. It shall specify the persons, economic sector or undertakings to which these committees shall apply and their territorial scope. Whenever the Minister considers recommending that the Crown establish a joint committee or alter the scope of an existing committee, he or she shall inform the relevant organisations in a notice published in the *Moniteur Belge*. In circumstances in which the Crown acts on its own initiative, there must be consultation with the representative organisations. Moreover, Article 37 provides that: 'At the request of a joint committee, the Crown may establish one or more joint subcommittees. After consulting the affected joint committee, the Crown shall specify the persons and territory falling within the scope of the defined subcommittees. At the request of the joint committee itself the Minister can thus establish a joint subcommittee.'

In recent years efforts have increased to rationalise and modernise the number of joint committees, as well as to revise and update the scope and coverage of specific joint committees. A key event in this regard was the 'decoupling' of the so-called auxiliary joint committee for white-collar workers No. 218 in 2015 and its merger with the other auxiliary joint committee No. 200. Workers from certain non-profit (known in Belgium as 'social profit') sectors and B2B services were transferred to new joint committees with a particular scope (public lotteries, social housing, support staff in the liberal professions, such as accountants or notaries). Another example is making existing subcommittees in the transport and logistics sector official, thereby preventing

‘regime shopping’ between joint committees in relation to logistical activities. This joint committee No. 140 now has official and clearly defined subcommittees for bus and coach transport (No. 140.01), taxi drivers (No. 140.02), road transport and logistics for third parties (No. 140.03), ground handling at airports (No. 140.04) and moving companies (No. 140.05). Today the Belgian collective bargaining system includes 40 joint committees and 40 subcommittees for blue-collar workers; 20 joint committees and 3 subcommittees for white-collar workers; and 63 mixed (sub)committees.

In July 2013, an agreement was reached between the social partners about the (partial) harmonisation of the two main employment statutes, namely the blue- and white-collar statutes. With a deadline imposed by the Constitutional Court acting as a ‘sword of Damocles’, a compromise was struck, with, as the main reform in the short term, a single dismissal procedure for all employees, both white- and blue-collar. The harmonisation also covers other matters and has reinvigorated the debate on merging existing blue-collar and white-collar joint committees. This splitting of sectoral bargaining (and also company bargaining) by occupational statute is found mainly in the manufacturing sector. However, the merger debate also affects the current internal structure of the (largest) trade unions (ACV-CSC and ABVV-FGTB), which usually separate sectoral federations for blue-collar and white-collar workers.

In this regard, the 2016 policy brief of Federal Minister of Work Peeters, put before Parliament in November 2015, stated the following:

The landscape of joint committees had developed historically in such a way that the logic of the field of competence had somehow been lost. This has resulted in a series of difficulties: (i) the complexity hampers labour market mobility; (ii) the structure does not always reflect economic reality; and (iii) wage bargaining does not always coincide particularly well with company structures and the diminishing statutory differentiation between blue- and white-collars. To give an extra boost to the dialogue on modernising this landscape, additional analyses and guidelines will be made available for the social partners. A working method will be prepared to arrange the transition of collectively-agreed rules from one sector to another in an orderly and legally correct way.

One example of this ‘concentration’ movement in the field is the decision by the blue-collar and white-collar joint committees of the petroleum industry to bargain for both committees (Nos. 117 and 211) in one, common meeting.

### 3.5 Fading away of (minor) derogation clauses

As explained in Section 2.1, derogation of higher-level collective agreements is possible only when done explicitly and if the agreements have not been made generally binding by a Royal Decree. As the practice of legal extension is pervasive, (wage) standards at company level can in principle only be higher than those set at sectoral level. Company-level standards can undercut sectorally-defined minimum or absolute standards only

when this possibility is explicitly foreseen in the sectoral agreement, for example in an opening clause allowing them to do so. However, whatever room the sectoral agreement might provide for company deviations, in all cases the interprofessional minimum wage must be respected (Keune 2010).

This kind of opening clause refers, for example, to not adopting the sectoral pay scales and job classifications when a particular company agreement already exists on this matter. The same goes when a sectoral system governing extra occupational pension benefits is set up, but the company already has its own system. However, such practices remain exceptional, bound to the introduction of new benefits. Hardship clauses, as mentioned by Keune in his 2010 study of Belgium, have in any case not been expanded in recent years. In any case, the sectors he mentions for the 2009–2010 bargaining round (for example, department stores and the manufacturing of food products) did not include this kind of opening clause in the recent bargaining round (2015–2016).

### 3.6 No centralised retreat

The abolition, non-continuation or slimming down of substantive rules at a centralised or higher level, leaving it open who will fill the regulatory gap – in any case a lower level of decision-making – does not seem to have characterised the Belgian collective bargaining system in recent times.

#### **At the sectoral level**

On the contrary, it seems that, due to the small margins and limited opportunities available in wage bargaining, sectoral bargainers have focused on new topics. This includes the development of occupational pension schemes in addition to the (rather low) legal pension scheme in the private sector, experimentation with ‘innovation agreements’, and the establishment of funds for ‘sustainable work’. In the stimulus strategy that Di Rupo launched at the end of 2013, a new law states that at the sectoral level an agreement must be reached on innovation in the first year after signing a new IPA. It should include a report on innovation performance and commitments to improve innovation and be based on a ‘scoreboard’. The national social partners broadened the approach to sectoral ‘structural challenges’. At the end of 2014, about 22 joint committees had already reached agreement on the necessary ‘dashboard’. Some included existing improvements, so this policy innovation got off to a slow start. However, there were interesting new experiments, such as the chemical industry agreement of 18 February 2015, outlined in Box 3. In a press statement Koen Laenens, social director of the employers’ organisation Essencia, concluded:

We want the unions to engage in a broad debate on product and process innovations, and on innovations in work organisation. This agreement provides an opportunity for all social partners to optimally connect the competitiveness of the Belgian chemical and life sciences industry to employment. This collective agreement provides us with the opportunity to engage in an innovative social dialogue.

**Box 3      Sectoral bargaining innovations in the chemical industry agreement of 18 February 2015**

The agreement stated that it wanted to organise a sectoral social dialogue on the following topics:

1. The sector's innovation capacity.
2. The importance of government support measures for innovation and structural transformation.
3. R&D investment in the sector and its impact on production and employment.
4. The status of present and future employees' innovation competences.
5. Boosting the importance of innovation in social dialogue.
6. Promoting chemical innovation to the broader public and the optimisation of the 'go-to-market' process.
7. Work organisation as a tool for sustainable work and competitiveness.

In the new sectoral agreement that implemented the IPA wage deal for 2015–2016 the sector also introduced a so-called 'Demographic Fund'. As indicated by the legal wage norm, the maximum room for wage increases could be complemented for 2016 with an additional increase in average labour costs of 0.3 per cent. The social partners in the chemical industry decided to reserve this 0.3 per cent for the sector's occupational pension scheme (0.15 per cent) and for the financing of a Demographic Fund (0.15 per cent). Inspired by German examples the Fund is supposed to develop projects and distribute budgets to keep workers in work longer in a motivated and feasible way.

**At the National Labour Council**

The story of the National Labour Council is somewhat different. In recent years, it has provided more advice than usual (Cox 2013), but it also concluded 15 new national agreements in the period 2012–2015. This increase is related to the government's heightened social and labour policy reform activity since 2011. But the Council's role as driver or instigator of new regulation is very constrained, partly because the political side wants to take the lead, partly due to rising tensions between employers and employees on the core issues of macroeconomic governance (for example, the focus on competitiveness and 'austerity'). As a result, the Council's activities and especially national collective agreements have become more technical than before, in a complex, multi-level set of regulations on particular issues, and can be defined more as 'implementation agreements' of government decisions (linked to the reforms of leave systems and early retirement). However, some more substantial agreements were also reached, for instance on temporary agency work (Box 4).

**Box 4 Summary of the new national agreement on temporary agency work**

On 16 July 2013, at the National Labour Council, the social partners concluded Collective Agreement No. 108 on temporary work and temporary agency work. The following changes were introduced:

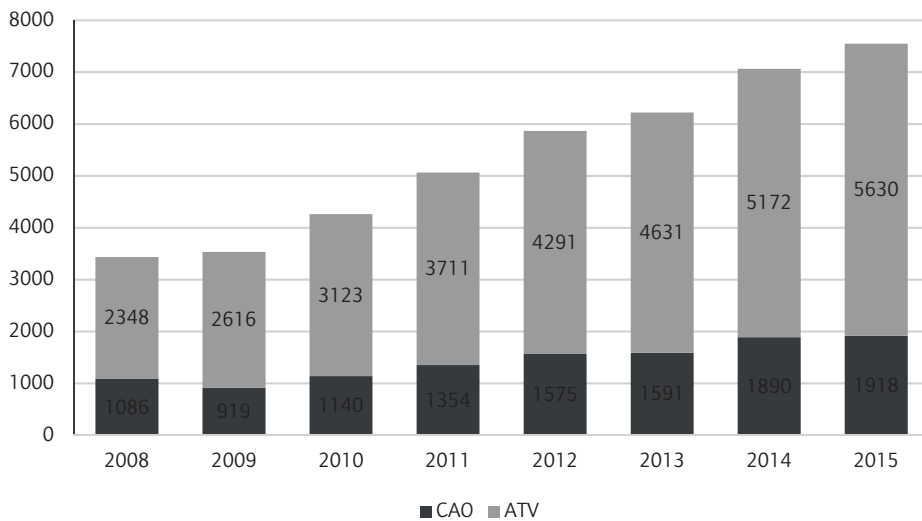
- Daily work contracts permitted for the ‘flexibility needs’ of the ‘customer-user’. There has to be proof that the flexibility is needed. ‘Customer-user’ employers must consult their works’ council or a trade union delegation, explaining why such contracts are necessary.
- A new condition allows the hiring of temporary agency workers on the grounds of ‘insertion’. Temporary agency workers can now fill vacant posts for a maximum of six months. After this ‘trial period’, a permanent contract can be offered but it is not compulsory.
- New procedures oblige ‘customer-users’ and temporary work agencies to notify trade unions when temporary agency workers are employed.

### 3.7 Deliberate abstention or organised delegation: company bonus agreements and local bargaining

These new initiatives, but also wage freezes, have also contributed to a proliferation of company agreements, not instead of, but rather in addition to sectoral or national initiatives. In the early crisis period the extraordinary measures on temporary unemployment (for white-collar employees) already necessitated more company agreements. The continued wage moderation also strengthened an ongoing trend of agreeing additional wage benefits at company level in stronger sectors and larger companies.

A key instrument in this regard has been the framework developed by national collective agreement No. 90, agreed in 2008. Belgian employers may confer benefits on their employees in the form of a non-recurrent performance-related bonus. The bonus may be granted only when a predetermined objective is achieved. A plan needs to be agreed on this objective in advance. This plan is in fact confirmed by a company collective agreement or by an act of accession, which should be approved by the sectoral joint committee. In the collective agreement the target has to be clearly defined, the objective concretely formulated, the monitoring methodology stipulated, the target period determined and the payment date agreed. The objective should be concrete, measurable, verifiable and, obviously, uncertain of achievement. There may also be multiple objectives in a single plan. Examples of objectives: to achieve specific sales or revenue growth; the realisation of a particular project; obtaining an official quality standard certificate; or reducing absenteeism. Up to a certain amount, such bonuses are exempt from income tax and, apart from a 13.07 per cent employee solidarity contribution, only a special social security contribution of 33 per cent is payable by the employer. The maximum bonus that can be paid under such a scheme is indexed each year. The number of employees receiving a bonus increased from

Figure 1 Company agreements and accords on collective bonus pay system, Belgium, 2008–2015



Source: Eurostat.

150,000 in 2008 to 600,000 in 2014 (Figure 1). It represented almost 2,000 company agreements and more than 5,500 accession acts in 2015. The bonus system represented a wage bill of more than EUR 526 million. Between 2009 and 2015 the percentage of the total wage mass coming from this bonus system rose to almost 1 per cent.

In Belgian companies, employee representation exists in the form of information and consultation rights through the works council and the Committee for Prevention and Protection at Work (CPP). A third form of formalised workplace representation consists of the union delegation, which is the main responsible actor for bargaining on company agreements (together with a required signatory trade union official). This workplace social dialogue has been granted more responsibilities in recent years. As in the early 1980s and mid-1990s, the difficulty of selling or implementing ‘flexibilisation’ and ‘moderation’ or ‘savings’ policies led to new rights or consultation opportunities for employee representatives. In the rising discussion of ‘sustainable work’ – linked to the reforms implemented in the retirement system – the focus is increasingly on issues such as stress and mental health. Already in the 1990s the Belgian social partners agreed on a common approach on the matter of psychosocial risks, first by collective agreement, later by law. This law was again thoroughly revised in 2014. The new laws reinforced and enlarged on previous definitions of ‘psychosocial risks’ in the workplace. The Committee for Prevention and Protection at Work is given important consultation and control rights at different stages.



Another innovation was the obligation for companies to establish employment plans for older workers. The works council – or in its absence, other employee representation bodies – has been granted consultation rights on this new initiative. The Di Rupo government, aspiring to complement its cuts in early retirement policies by positive incentives to keep more employees aged 55–65 at work, asked the social partners in the National Labour Council (NAR/CNT) to develop a framework agreement for company-level employment plans. National Collective Agreement No. 104 (agreed in June 2012) suggested a non-limiting list of initiatives that employers could use in drawing up an annual ‘company employment plan for recruiting and/or retaining 45+ year-old employees’. Initiatives include: recruitment of new staff aged 45 or over, training and developing competences, career guidance, internal changes, adapting working hours and conditions to meet the needs of older employees, preventing or remedying physical barriers and recognising acquired competences (experience). One condition is that employers must negotiate this plan with their employee representatives (union) or, in small or medium-sized enterprises, inform the workers. Companies with fewer than 20 employees are exempt from this obligation. First monitoring data, based on a survey of ACV-CSC employee representatives in 2014, show that in four out of five cases the works council receives information on the plan. Consultation is organised in about two-thirds of works councils (Pollet and Lamberts 2016).

## **4. Sectoral case studies**

We shall now illustrate the functioning and nature of the Belgian wage bargaining system laid out in Section 2 and the decentralisation tendencies discussed in Section 3 by looking in detail at the development of collective bargaining in two key sectors: the metal industry and the retail sector. This is based on interviews with the trade union representatives responsible for bargaining (see Annex).

### **4.1 Case study I: metal industry**

The metal sector (NACE 24-30) consists of several subsectors. Our focus in this study are the metalworking industry and steel and non-ferrous metals. Each of these subsectors has its own autonomous joint committee which is responsible for collective bargaining within its subsector. This is the largest industrial sector in the country, but it has experienced downsizing and job losses in the crisis (for example, between 2010 and 2015 metalworking lost almost 15,000 jobs, employment falling from 167,000 workers to 153,000).

Belgium is one of the biggest steel exporters in Europe. Over recent decades, however, the Belgian steel sector has undergone restructuring and downsizing, which has particularly affected companies not specialising in high-tech materials and with little access to (sea) transport. ArcelorMittal is the biggest steel producer in Belgium, where it accounts for approximately 40 per cent of steel production. The economic crisis also impacted the non-ferrous metals sector (in which Umicore is the largest company). Since 2008–2009 the sector has seen a slow and varying recovery.



Table 5 Sectoral collective bargaining structure, Belgium

	Blue-collar joint committees		White-collar joint committees	
	Number	Number of workers	Number	Number of workers
Metal (construction) sector	111	115 873	209	66 204
Steel sector	104	7 213	210	4 092
Non-ferrous sector	105.1	4 313	224	2 755

Note: \* As of 03/2016.

Source: RSZ-ONSS.

### The industrial relations landscape

Sectoral bargaining is organised in several joint committees. For the metalworking sector blue-collar workers are mainly situated in joint committee No. 111, white-collar in No. 209. The sector has a historical tradition of some subsectoral bargaining and bargaining by province. As the most important bargaining venue (in industry), the sector has always been a frontrunner in procedural innovation in the Belgian wage bargaining system: a ‘tight’ peace clause is complemented by specific trade union benefits; there is a regulated procedure for opting-out; and an agreed earnings increase can be implemented in companies in a flexible way by choosing one of the possible options (increase the basic wage or implement a set of premiums or wage benefits).

In the metal sector a wide spectrum of topics is discussed within the joint committees, including: wage increases, flexibility, working time, time credits and working conditions. Since the joint committee for metal working (No. 111) is the biggest, it plays a major role in setting an example for the other joint committees. The smaller joint committees base the topics they discuss on those determined by joint committee No. 111. In addition, the blue-collar unions in the metal sector traditionally play a leading (and if necessary mobilising) role in Belgian social dialogue.

The joint committees responsible for the steel sector are No. 104 for blue-collar workers and No. 210 for white-collar workers. The collective bargaining tradition in the sector differs from that in the metalworking sector. The main level of collective bargaining in the steel sector has always been the company. GSV (Groupement de la Sidérurgie – Staalindustrie Verbond) is the employers’ federation active in the sector, although because the sector has traditionally been dominated by a few very large companies (ArcelorMittal, Aperam, NLMK), it has significantly less bargaining power and capabilities than its counterpart Agoria in the metal sector. In addition, collective bargaining for non-ferrous production is organised at sectoral level by separate joint committees, namely No. 105.1 (blue-collar) and No. 224 (white-collar); this sector consists mainly of Umicore and several of its divisions. Because of the small number of companies in the sector, no separate employers’ federation is active. Therefore, bargaining is situated mainly at the company level. The Umicore management plays a key role in representing the employers within the sector.

On the trade union side, ACV-CSC (represented by ACV-Metea for blue-collar workers and the Flemish LBC-NVK and French CNE-GNC for white-collar workers) is now the largest trade union (due mainly to its stronger representation in the Flanders region and also among white-collar workers). The ABVV-FGTB metal federation has traditionally been more militant (also within the socialist trade union itself). In the early 2000s the Flemish and Walloon federations separated. White-collar workers are represented by BBTK-SETCA in the socialist confederation. The third Belgian confederation ACLVB-CSLB is less important in the sector (but growing).

Before 1996 wage increases were based less on formal rules and more on ‘gut feeling’. However, in 1996 the wage norm was introduced, initially it had a more indicative role which became more imposing over the years. In practice the sectoral wage norm has always been implemented. Because of the use of the wage norm and the continued use of the automatic wage indexation mechanism at the sectoral level there is little room for wage setting based on productivity indicators.

The wage indexation system differs across the sectors as well. Both the metal sector and the non-ferrous sector make use of a coefficient, mainly on an annual basis. The steel sector, on the other hand, makes use of a pivot index of 2 per cent.

With regard to job grading and wage classification a distinction is drawn between the biggest joint committee (No. 111) and the others within the sector. Within joint committee No. 111 (metalworking) there is no wage classification. Because of the companies’ heterogeneity it is not possible to distinguish a number of profiles. Exceptions are the provinces of East and West Flanders, which do have a form of provincial classification, which means that a certain degree of wage classification is possible here.

A peace clause has been implemented in every collective agreement that states that all matters settled within the agreement cannot be subject to future negotiations or actions to force such negotiations. In exchange for social peace the employers pay into a sectoral fund to cover part – 70 per cent – of the employees’ trade union membership fees. If the peace clause is violated employers have the right to reduce their union contribution.

### **Decentralisation**

The sector is characterised by the following forms of decentralisation and centralisation.

*Overruling/state intervention:* Despite the importance of the sectoral level, the national level still plays a significant role in collective bargaining. Trade union interviewees from the metal sector said that they wait until the intersectoral (also called ‘interprofessional’), national agreements have been concluded (whether successfully or not) to provide guidance on structuring the topics of discussion and formulating the bargaining agenda and demands at the sectoral level. Within the past six years or so, however, only one such agreement has been concluded and signed by all partners at the national level, because the state intervened in the wage bargaining process at the national level by imposing a wage freeze.

The sectoral levels have developed their own negotiation traditions and are not severely affected if an interprofessional agreement is not concluded. If negotiations on the national level do succeed, the sectoral level has to respect its conclusions. For example, if a wage norm is established, it has to be followed by the lower levels. In that case the sectoral level negotiators use the nationally agreed wage norm as a starting point and framework for further negotiations.

As already mentioned, in the steel sector the company level has always been the most prominent. The sectoral level handles only matters that legally have to be discussed on that level (for example, early retirement). Even though the sectoral level is less dominant, all successful interprofessional agreements have to be followed as well.

*Decentralisation strictu sensu:* As a result of the limited flexibility brought about by the increase of interprofessional agreements (for example, the wage norm), trade union representatives have noticed a rise in individual remuneration. Especially in the case of white-collar workers and executives, companies are increasingly providing wage optimisation services for individual employees. Representatives have been unable to reverse the trend but instead have attempted to frame the individualised measures within collective agreements at the company level.

In the metal construction sector a provincial level is also active. These so-called joint sections do not have the same autonomy as joint committees; they can negotiate on certain topics but always have to report back to the federal level for validation. For example, the end-of-year bonuses for the metal construction sector are negotiated at this level. This intermediate level has always existed.

*Implementation of CBA 90 as organised decentralisation:* Because of the limiting framework created by the wage norm at national level, many companies see a need to increase their flexibility with regard to remuneration. Especially in the metal, steel and non-ferrous sector the competition between companies to acquire qualified technical personnel is high. Therefore, companies feel obliged to make their remuneration systems more attractive. One way of this doing is to resort to Collective Agreement No. 90. This collective agreement, dating back to 2007, arranges non-recurring benefits that are related to the collective results of either the company, a group of companies or a specific group of employees predefined based on objective criteria. On the other hand, the results must be definable, clearly measurable and uncertain when the benefit is introduced.

*Delegation/empowerment:* Particularly in the metal sector sectoral-level trade union officials use a form of delegation. Two systems are used to delegate certain decisions to the company level. In the first, which is more often utilised in bigger companies, the company level has considerable freedom to choose the manner in which they apply the wage margin (for example, basic wage increase, hospitalisation insurance and so on). In other (often smaller) companies, negotiators at the company level are allowed to choose from a list of four options. If in any case the negotiators reach an agreement before the deadline stipulated in the sectoral framework agreement, the agreement is deemed valid. If no agreement has been concluded the (base) wage will increase automatically

according to the wage margin defined in the sectoral agreement. This system is called the ‘company envelope’. According to the people we interviewed, it is a ‘balanced’ approach, satisfying both sides of the sectoral bargaining table. From the company management standpoint, there is room for negotiation flexibility at the company level and an opportunity for made-to-measure company wage negotiations. However, from the trade union side a significant amount of sectoral influence and coordination is still secured in the process and the sectoral level maintains control over the general direction and trend of wage developments. Minimum wages are still negotiated at the sectoral level as well and are increased with the established wage margin.

*Derogation/opting out:* This form of decentralisation has occurred in rare cases, as in the case of supplementary occupational pensions. In 1999 companies within the sector were allowed to consider whether or not they would participate in the sectoral collective agreement on this matter or to maintain their own supplementary pension system. Ultimately, 53 out of approximately 7,500 companies opted to use their own system. However, they are still obliged to apply the same extra raise in (occupational) pensions (in one form or another) as the other companies.

*Centralised retreat:* Given the authority enjoyed by Agoria at the sectoral level in the metal sector, trade union interviewees deemed it unlikely that the federation would agree not to reach a sectoral agreement. This appeared to be on the cards only in 1989, when no wage rise seemed possible. This deadlock eventually led to negotiations at the provincial level and the creation of provincial wage scales. Even today there are two minimum wage scales in the metal sector, the national and the – more generally used – provincial wage scale.

## Conclusion

The metal sector has always been a vanguard sector in the Belgian system of collective bargaining and industrial relations. It experienced major growth in parallel with development of the institutional system of Belgian social dialogue (from the 1930s to the 1970s). It is probably the key example of Belgian ‘*Konfliktpartnerschaft*’. On one hand, relations between the social partners have always been difficult, but on the other hand the drive or need to strike deals has always been high (due to the sector’s competitiveness and export-orientation). In metal manufacturing this has led to coordinated and centralised bargaining at the sectoral level, while in the basic metal industry, where labour costs are only a small part of total production costs, company size is large and (skilled) workers play a key role in production operations, the main focus of collective bargaining has always been the decentralised company level.

In metalworking, sectoral dominance in bargaining has meanwhile evolved in a multi-layered bargaining setting. Nevertheless, sectoral actors continue to play an organising and intermediating role. Traditionally, sectoral bargaining was complemented by lower-level flexibility in bargaining additional income components and working time features. The loosely structured wage grading system in the sector also facilitated labour cost flexibility. In recent times, these flexible opportunities have been expanded by transforming the sectoral accords into framework agreements that can be adapted to company particularities and preferences. Alongside the higher-level imposition

of a wage norm and more opportunities for variable pay, sectoral organisations try to maintain their role by translating the wage norm into an ‘envelope’ or ‘menu’ for wage bargaining. Additional or innovative forms of reward are framed in procedural or substantive sectoral wage agreements (cf. occupational pension system, variable pay under CBA-90).

## 4.2 Case study II: retail

Commerce is a very important sector in the Belgian economy. In total, more than 400,000 people are employed in the commercial sector, including wholesalers and retailers. They account for 11 per cent of Belgian GNP. In this section, however, we focus only on the retail sector, thus all ‘shops’ (large and small), every seller to an end-user. In the retail sector, over 24,000 employers and over 200,000 employees are active, the large majority of them white-collar workers.

### **Industrial relations landscape**

In the most recent social elections in 2016 ABVV-FGTB obtained over 47 per cent of the mandates in works councils and committees for prevention and protection at work. It thus continues to represent the most employees in the sector. ACV-CSC and ACLVB-CGSLB are the second and third largest employee representative organisations, respectively. Even though the unions’ ideological foundations differ, collaboration at the national, sectoral and company levels on employee representation has been described as very productive. Nevertheless, declining influence has been noted, along with a tendency to be more pragmatic because of increasing competition and loss of jobs in the retail sector.

On the employers’ side, the key organisations are Comeos, Unizo and UCM. Comeos represents employers in the retail and in wholesale sectors. In the retail sector, store chains as well as franchises can join Comeos. Participating in social dialogue at all levels in the commerce sector (wholesalers, small and large retailers), Comeos has a very powerful position. Unizo and UCM unite and represent independent entrepreneurs and the self-employed, respectively, in Flanders and in Wallonia – in other words, very small, independent shop owners and retailers. The difficulty for these employer representatives is to achieve consensus between the various companies they represent, whose objectives and interests differ. Interest aggregation is a major challenge, according to the trade union bargainers we interviewed.

The retail sector is organised into seven statutorily recognised sectoral joint committees. The sectoral level is thus dominant but fragmented:

- (i) JC 201: independent retailers, covering 95,000 employees. This committee covers food retailers employing fewer than 20 employees, and non-food retailers employing fewer than 50 employees.
- (ii) JC 202.01: medium-size food businesses, covering 7,000 employees. This autonomous subcommittee includes companies with only one shop, but employing more than 20 employees. These are mainly franchises of larger stores.

- (iii) JC 202: retail of food products, covering 52,000 employees. These are large food retailers with at least two stores and more than 25 employees.
- (iv) JC 311: large retailers, covering 50,000 employees, including white- and blue-collar workers. These are large retailers employing more than 50 employees and sell only one or two kinds of goods (for example, clothes and shoes). Because of the very small number of blue-collar workers, the negotiations are carried out by white-collar workers' representatives.
- (v) JC 312: warehouses, covering 12,000 employees, including white- and blue-collar workers. These companies also employ more than 50 employees, but sell three or more kinds of goods. Here, too, negotiations are conducted by white-collar representatives.
- (vi) (JC 119): blue-collar workers in the food retail sector, covering 37,000 workers. This joint committee is not discussed here because it is very different from the core retail sector.
- (vii) (JC 313): pharmacists, covering 14,000 workers. This joint committee is not discussed here again because it is very different from the core retail sector.

Enterprises are allocated to a joint committee according to size (number of employees; FTE), based on the idea that the self-employed and small enterprises do not have the same resources and thus should not be compelled to meet the same standards. When larger enterprises found their way to Belgium in the 1950s, JC 312 was created to protect small enterprises from the power and influence of large store chains. Gradually, more forms of differentiation were addressed by establishing new joint committees. Currently, JC 312 provides the best (or, according to interviewees, 'least bad') working conditions, but only contains three large shops: Hema, Cora and Carrefour. Currently, the trade unions oppose the allocation of companies to joint committees on the basis of employment size and prefer business turnover as a threshold.

Even though collective agreements are concluded and applied by joint committees, negotiations for the five core joint committees in the sector take place mainly in two concertation committees. This division was developed at the request of the trade unions in the mid twentieth century to increase their influence and representational power.

JC 201 and 202.01 are taken together as representing small enterprises, while JC 202, 311 and 312 form a concertation committee for the large retailers. In general, working conditions are better in the large retailers than in the small ones. For example: the working week is 35 hours as opposed to 38 hours and on average there is a wage basket difference of 20–25 per cent.

Currently, the trade unions would prefer to abandon this negotiating structure because of the increased use of franchising by the larger retailers, which entails a shift of the personnel of these large retailers to the joint committees of small retailers (and the accompanying less favourable labour conditions). According to some trade unionists, collective bargaining by joint committees would be more effective and beneficial. Nevertheless, the current negotiation process in both concertation committees is described in the following paragraphs.

Collective bargaining in the retail sector is organised by means of two concertation committees, based on size of company. These committees are not legal entities, implying that agreements are always officially signed, in a second step, at an official meeting of the separate joint committees. This arrangement could be referred to as segmentation or deconcentration.

Historically, the standards in the committees of large enterprises are higher because trade unions agreed that the self-employed, with fewer resources, cannot meet the same standards. The interviewees indicate that negotiations are friendly in the concertation committee of small companies, but in the end only small steps can be achieved. This is mainly because they strongly insist on never matching or surpassing the standards of the large retailers. For example, two years ago they negotiated a wage margin of 0.8 per cent, which was transposed into a gross bonus of EUR 250 (0.8 per cent, not including social security charges/taxes) at the large retailers, but only EUR 188 (0.8 per cent including social charges/taxes in the calculation) for employees of the small retailers. Nevertheless, sectoral agreements are important for providing a generally agreed minimum. Because there are no statutory representative bodies in small enterprises, workers' representation is more limited and sectoral trade union bargainers, although they have more leeway with regard to bargaining position, have less mobilisation power. Guaranteeing a sectoral minimum framework is thus very important especially in the group of small retailers.

In the committee for large companies, interviewees stated that negotiations progress more slowly because employer representatives need to inform and consult their organisations before making decisions. The main difficulty, however, as indicated by the interviewees, is the increasingly rigid attitude of Comeos. Formally, Comeos declares that this is because of the heightened competition between firms (partly because of franchises) and the fact that retailers are first of all employers, implying that wage costs are an important factor and have to be kept low. Customer flows are another key factor often brought up by employers. These tendencies have caused a sectoral standstill in the past 12 years, and even a power shift: employer representatives now also formulate their demands and state from the outset that they will not exceed the standards set by small retailers. According to trade unionists, the introduction of franchises in the concertation committee of small retailers has indeed increased competition, but was merely a strategy on the part of large retailers to lower their standards. This has given rise to a tendency towards low general minimum standards. In recent years this trend has been reinforced by falling profit margins in the sector (due, among other things, to fluctuating and moderate sales figures).

A basic wage rate is laid down by the state in the form of a guaranteed minimum monthly income. Sectors are bound to these minima and their options for raising standards are limited. Given the frequent use of contracts with limited working hours, this guaranteed minimum is very important in the retail sector.

Biannually, the social partners (trade unions, employer representatives and government) conclude an interprofessional agreement, including a wage norm. A key element of this agreement is a declaration of intent to increase wages at an agreed pace. The wage



norm, however, has evolved from indicative to imperative, implying that the sectoral negotiations are limited. Specific agreements are made by each concertation committee and formally concluded by each joint committee.

All joint committees in the retail sector use a pivot indexation system, but the index varies between 1 and 2 per cent.

Sectoral job classification is linked to pay brackets and is used by a majority of companies. However, it has been described as ‘desperately outdated’. Only some large retailers define their company-specific classification. Trade unions have called for a renewal of the sectoral classification to harmonise wage conditions within and between joint committees. However, no action has been taken because this demands time, money and effort. This could cause grading difficulties, but currently trade unions are exhibiting common sense in their use of this ‘outdated’ instrument.

Every sectoral agreement includes a legally required and accorded extension which makes it binding for unaffiliated companies. Trade unionists consider this to be very important because of the breadth and variance in the retail sector, to limit (wage/cost-based) competition within the sector and to secure the (income) protection of all employees. Nevertheless, it is difficult for trade unions to monitor companies’ compliance, especially in the case of small retailers because there is almost no employee representation.

A peace clause is also always added to sectoral agreements, defining a two-year period during which the agreement may not be violated. However, for most agreements either trade unions or employers ask to breach the clause to discuss certain aspects once again. This is not linked to the trade union premium (see above). Under the trade union premium, as we have seen, trade union members get part of their membership fee refunded by a sectoral fund.

### **Decentralisation tendencies**

In general, the sectoral level is still the most important bargaining level, but it is losing impact. Underpinning this evolution are certain decentralisation tendencies.

*Decentralisation strictu sensu:* Interviewees stress that this rarely happens and that it should be avoided because full protection cannot be guaranteed. The only circumstances in which this happens is when companies ask to apply personal bonuses, based on collective agreement No. 90 (collective agreement on non-recurring results-linked remuneration). Even though trade unions refuse to organise this at the sectoral level, it is often asked for by small companies to boost employees’ commitment.

*Deconcentration:* Historically, deconcentration has been included in the sectoral bargaining structure. Different (sub-)sectoral joint committees covered different sectors (food and non-food) and various company sizes. However, as, on one hand, employers seemed to use this differentiation to indulge in ‘regime shopping’ and trade unions strove as much as possible for ‘equal’ workers’ rights, bargaining developed or became ‘concentrated’ in practice into a ‘centralised’ two-committee system. Even though



negotiations take place mainly in two concertation committees, trade unionists define these in terms of a rationalisation of effort, rather than as a newly inserted negotiation level. Therefore, they state that there is no tendency towards deconcentration.

*Delegation, empowerment:* Given the substantial variety in the retail sector, trade unionists find it important to leave some freedom of implementation. Therefore, they have noticed a tendency towards more delegation and empowerment. A minimum level or a framework is decided in the sectoral bargaining, offering some possibilities for made-to-measure implementation at the company level. For example, in the last sectoral agreements on purchasing power, the total value of the bonus was defined, but companies could choose between alternatives such as meal vouchers, gross bonuses or group insurance.

*Derogation, opting out:* This is allowed only in exceptional cases as part of drastic restructuring processes and can only impact agreements on purchasing power. Also, these cases are always announced and discussed during the relevant negotiations.

*Centralised retreat:* The interviewees indicate that this does not happen. However, the interviewed trade unionists mentioned multiple new topics of discussion in the sector: work on Sundays, reintegration of the long-term unemployed, student work and e-commerce. It is not always easy to make binding sectoral agreements on these matters. The discussion on e-commerce is particularly important. According to all interviewees, employer representative organisations discuss e-commerce only in relation to night work. While they state that trade unionists block all discussion of the issue, the latter argue that, according to existing regulations, retailers can operate only between 5 am and midnight, which they estimate to be sufficient for small retailers to organise e-commerce. Moreover, trade unionists acknowledge that they make specific arrangements at company level and that employers are satisfied with the current situation. Nevertheless, talks on revising the rules on night work are still ongoing, among others pressed by the federal government and the minister of labour. However, partly due to legal revision, night work related to e-commerce is now allowed in Belgium, but it still has to be arranged by company agreement and with the involvement of the works council and/or union representation at the workplace.

*Deliberate (or not) abstention:* The interviewees admit that this is sometimes the case in the retail sector, and that it is occurring more often than in the past. When issues are very complex and involve many partners, and the discussions are likely to be difficult, this is sometimes assigned to a work group, which is composed of all partners involved and can be expanded with the use of experts. Nevertheless, experience shows that such groups do not work particularly well. For example, they are used in relation to the wage classification system.

*Overruling, state intervention:* On one hand, the Belgian system implies a form of supersession by using interprofessional agreements and the wage norm that are laid down by the government and implemented by the social partners and companies. On the other hand, interviewees notice that state intervention has increased in recent years. They feel that the current government prefers to arrange things directly at the

company level, thus ignoring the sectoral level. For example, by making the wage norm imperative instead of indicative, the possibilities for sectoral negotiations are limited. The increased strictness of the wage norm for basic wage negotiations is, however, combined with rules that define exceptions (labour cost or income increases that are not bound or covered by the wage norm). The key example in this regard is the collective bonus system (organised by national collective agreement No. 90), for which there are also tax incentives.

The trade unions oppose this tendency because it hampers the protection of employees by lowering the degree of harmonisation of labour conditions and by limiting the possibilities for representatives to compare their company with similar ones. The interviewees fear that this encourages social dumping within the sector.

### **Conclusion**

In conclusion, collective bargaining and especially wage bargaining in the retail sector has traditionally been organised according to Belgian 'norms' by focusing on the sectoral level, acknowledging the role of the statutory minimum wage and applying automatic wage indexation. However, a differentiated or 'implicit' decentralising factor was built into the system by organising this wage bargaining in a series of joint committees (differentiated by occupation, type of trade and company size). In recent decades this differentiation was nevertheless counter-acted by 'centralising' tendencies. First, by coordinating joint committee bargaining in two informal committees and in a second step by an ever more supervening intersectoral wage norm. The latter decreases the room for sectoral bargaining, especially in recent years, when this wage norm was in addition superseded by state-imposed wage freezes. In addition to this general factor, the interviewed trade union bargainers observe stronger difficulties on the employers' side to keep interests aggregated and to come to the bargaining table with a strong mandate, as competition and restructuring are increasing in the sector. Partly to counteract this trend, particular employers – looking for stronger commitment and loyalty from their employees – are getting more and more interested in the decentrally-bargained variable pay system organised by an intersectoral, national framework collective agreement.

## **5. Conclusion**

Looking at the Belgian collective bargaining system in recent years in the perspective of decentralisation/centralisation we can conclude, first, that although Belgium is categorised in European comparison as very centralised, this global view should be corrected. Traditionally, the sectoral level has been very important, but for a series of important sectors, this level only provides a framework of basic regulations (for example, for the chemical industry, banking and so on). Multi-employer bargaining has, on one hand, always been very organised and pervasive, but on the other hand it also has also additional layers with sub-sectoral joint bargaining committees and a regional level. Nevertheless, the hierarchy between different levels and high coverage at central levels have always been respected and stimulated by legal instruments, avoiding opening clauses and promoting extension *erga omnes*.

Strong trade unions – in terms of membership, militancy and representation in the workplace – have always been an important factor in this system. It is perhaps no coincidence that in this context a political actor that wants to intervene in this organised system does not opt for decentralisation (which would only pit the social partners against each other as opponents in many more localities), but resorts to state intervention. The centralisation tendencies often mentioned in relation to the recent history of Belgian social dialogue are in this regard better understood as an attack on the traditionally highly-valued autonomy of the social partners to organise and set wages and working conditions. Stricter control, overruling or ignoring of collective bargaining and social dialogue have been on the increase since Belgian governments – perhaps under European surveillance – opted for a programme of austerity. In stronger terms, as decentralisation would not guarantee the proposed neoliberal reforms of flexibilisation and wage moderation in the strongly organised Belgian system, or would even be counterproductive, governments have opted for a more radical form of state intervention.

However, this does not mean that this organised system of social dialogue and collective bargaining is ‘dead’. It has rather reverted (temporarily?) to a ‘minimal’ approach. Instead of bipartite social dialogue that rules, as it were, alongside politics, it is in a constant tripartite battle situation, correcting or complementing the stream of new government labour and social regulations in the implementation phase. Although thus less maximal, that does not mean that the institutional structures themselves have been reformed. In addition, it leads to (new) forms of decentralisation in the system which may be indirect, unintended (by politicians) and perhaps less on the (international) radar.

- The continued wage moderation and recent wage freezes have been partly, but certainly willingly circumvented by bargaining on all types of (new) benefits (ecocheque, company cars, occupational extra-pension) and especially collective variable pay beyond the ‘blocked’ basic pay increase. It is an organised form of decentralisation as all parties agree at the central level which kind of premiums/benefits are bound by the wage norm or not.
- Labour reforms are accompanied with extra powers at the workplace level, not to substantially alter the new regulations, but to guide, help, control and monitor them in a procedural way. However, these new rights are not always granted in the form of collective bargaining authority, but in terms of information and consultation rights for union representation at the workplace (for example, works councils).
- Most of the time these decentralisation tendencies are ‘organised’ and ‘framed’ in higher-level agreements (see the envelope system in the metalworking sector). Sometimes, however, they are also a result of ‘retreat’ or ‘abstention’ by the higher level (one might mention the e-commerce night work regulations). However, derogation or opening clauses are not part of this decentralisation tendency and, as already stated, sectoral bargainers and actors have managed to maintain at least an intermediary role.

To summarise this Belgian story concisely, instead of decentralisation, collective bargaining in Belgium is being overruled and superseded by state intervention and

political reforms. This state centralisation, however, has increased the attractiveness of 'organised' decentralisation and deconcentration. Hence at the local level the imposed wage moderation is 'moderated', the agenda for workplace social dialogue is undergoing innovation and reform implementation is subject to guidance. As a result, Belgium's multi-layered industrial relations governance system has become more complex than it used to be.

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All links were checked on 18.12.2017..

## Annex

Table 6 lists the collective bargaining characteristics of 23 EU member states.

**Table 6** Level of collective bargaining, degree of centralisation, coordination, trade union density, coverage, employer organisation density and quality of labour relations

	Predominant level	Degree of centralisation/ decentralisation	Coordination	Trade union density in the private sector	Employer organisation density	Collective bargaining coverage rate
Austria	Sectoral	Organised decentralised	High	20–30%	≥ 90%	≥ 90%
Belgium	Sectoral/ national	Centralised	High	50–60%	80–90%	≥ 90%
Czech Republic	Company	Decentralised	No	10–20%	60–70%	40–50%
Denmark	Sectoral	Organised decentralised	High	60–70%	60–70%	80–90%
Estonia	Company	Decentralised	No	< 5%	20–30%	10–20%
Finland	Sectoral/ national	Centralised	High	50–60%	70–80%	80–90%
France	Sectoral	Centralised	Low	5–10%	70–80%	≥ 90%
Germany	Sectoral	Organised decentralised	High	10–20%	50–60%	50–60%
Greece	Company/ sectoral	Decentralised	No	10–20%	40–50%	40–50%
Hungary	Company	Decentralised	No	5–10%	40–50%	20–30%
Ireland	Company	Decentralised	No	20–30%	50–60%	40–50%
Italy	Sectoral	Centralised	Low	20–30%	50–60%	80–90%
Latvia	Company	Decentralised	No	5–10%	40–50%	10–20%
Lithuania	Company	Decentralised	No	5–10%	10–20%	5–10%
Luxembourg	Company/ sectoral	Decentralised	No	20–30%	80–90%	50–60%
Netherlands	Sectoral	Organised decentralised	High	10–20%	80–90%	80–90%
Poland	Company	Decentralised	No	5–10%	20–30%	10–20%
Portugal	Sectoral	Centralised	Low	10–20%	30–40%	60–70%
Slovak Republic	Company/ sectoral	Decentralised	No	10–20%	30–40%	20–30%
Slovenia	Sectoral	Centralised	No	10–20%	60–70%	60–70%
Spain	Sectoral	Organised decentralised	Low	10–20%	70–80%	70–80%
Sweden	Sectoral	Organised decentralised	High	60–70%	80–90%	≥ 90%
United Kingdom	Company	Decentralised	No	10–20%	30–40%	20–30%

## **Annex 2: Interviews conducted for the sectoral case studies**

### Retail

Chris Van Droogenbroeck – ACV

Delphine Latawiec – ACV

Myriam Delmée – ABVV

Jan De Weghe – ABVV

Tom Van Droogenbroeck – ACLVB

### Metal

Frans Biebaut – ABVV Metaal

Swat Clerinx – ACV LBC

Marc De Wilde – ACV Metea





# Chapter 4

## Varieties of decentralisation in German collective bargaining

Thorsten Schulten and Reinhard Bispinck

### 1. Introduction

Germany is well to the fore in terms of collective bargaining decentralisation in Europe (Keune 2011). In the international literature it is often regarded as a standard case of ‘organised’ or ‘controlled decentralisation’, within the framework of which the bargaining parties at sectoral level define the scope for derogations at company level via so-called opening clauses (Visser 2016; OECD 2017). In many European countries German experiences have served as an important reference point for reform of national collective bargaining systems.

The international perception of the German variant of decentralisation, however, is often rather one-sided and does not reflect German collective bargaining in all its diversity. There are at least two fundamental problems. First, its development is very much viewed through the lenses of major manufacturing industries, such as chemicals or metalworking, which industrial relations regimes differ very much from those in other sectors, such as private services (Dribbusch *et al.* 2017). In addition to a general overview of German collective bargaining and its decentralising tendencies, in this chapter we provide two in-depth case studies – one on the metal industry and one on retail trade – which provides a comprehensive picture of the differentiated world of collective bargaining in Germany.

Secondly, the concept of ‘organised decentralisation’ often takes too rosy a view and underestimates the level of conflict. As German experiences show clearly, collective bargaining decentralisation is not about a more or less ‘intelligent’ mode of regulation, but about different interests and power relations. It deals with the fundamental conflict between setting up a level playing-field for all companies and recognising the specific interests and circumstances of individual firms.

The trend towards decentralisation has fundamentally changed the German collective bargaining system. Organised and non-organised forms of decentralisation exist side by side, together with an overall trend toward the erosion of collective bargaining in some parts of the economy. While decentralisation often goes together with a shift in power from labour to capital, it sometimes creates new opportunities for revitalising union power.

## 2. Decentralisation of German collective bargaining – an overview

### 2.1 Basic features of German collective bargaining

The legal basis of collective bargaining in Germany is provided by the Collective Agreements Act of 1949 (*Tarifvertragsgesetz*) (Däubler 2016). Collective agreements can be concluded between employers' associations (or individual employers), on one hand, and trade unions, on the other. In contrast, works councils – the statutory employee representation bodies elected at workplace and company level – may conclude only works agreements (*Betriebsvereinbarung*), but not collective agreements. According to the Works Constitution Act (*Betriebsverfassungsgesetz*) works agreements 'may not deal with remuneration and other conditions of employment that have been fixed, or are normally fixed, by collective agreement' (Article 77, para 3). Germany has a so-called dual system of interest representation in terms of which unions conclude collective agreements, while works councils, as non-union bodies, have to regulate and monitor their implementation at company level.

Collective agreements are directly binding for all members of the bargaining parties concerned; that is, for employees who are members of the signatory unions and all member companies of the signatory employers' associations, or a single company in the case of a company agreement. In practice, employers bound by a collective agreement usually apply the agreed provisions to all employees, whether they are trade union members or not. Collective agreements can also be extended by the Minister of Labour to include those employers and employees in the relevant sector who are not directly bound by the agreement. In practice, however, the extension of collective agreements is very rare and takes place only in a limited number of sectors (Schulten *et al.* 2015).

According to the 'favourability principle' (*Günstigkeitsprinzip*), departures from collectively-agreed provisions are usually possible only when these favour employees. For example, a works agreement can provide better employment conditions than a collective agreement, but may not worsen them. However, the bargaining parties may agree on so-called 'opening clauses' (*Öffnungsklauseln*) in collective agreements that allow, under certain conditions, a derogation from collectively agreed standards, even if this changes employment conditions for the worse.

There are two basic types of collective agreements in Germany: association-level or sectoral agreements (*Verbands- or Branchentarifverträge*) and company agreements (*Firmentarifverträge*) for individual companies or establishments. By the end of 2016, the German Ministry of Labour had officially registered 73,436 valid collective agreements, of which 30,463 were concluded at sectoral and 42,973 at company level (WSI 2017).

### 2.2 German collective bargaining: structure and trends

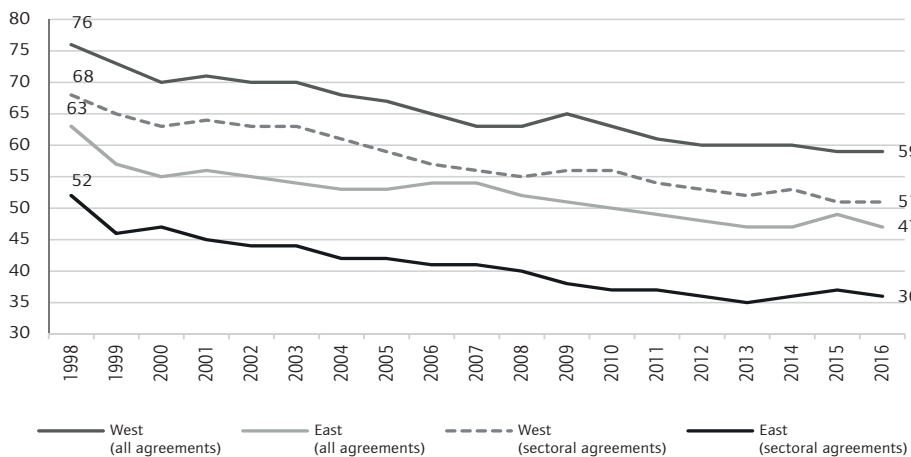
Traditionally, the German model of collective bargaining was associated with a comprehensive system of sectoral agreements and a high bargaining coverage. Since

the mid-1990s, however, it has undergone a series of profound changes that have led to an increasing fragmentation and partial erosion of the system (Schulten and Bispinck 2015; Addison *et al.* 2017; Oberfichtner and Schnabel 2017). Based on the data provided by the annual IAB Establishment Panel, which is carried out by the Institute of Employment Research (IAB) of the German Federal Employment Agency, between 1998 and 2016 the proportion of workers covered by collective agreements in western Germany decreased from 76 to 59 per cent, while in eastern Germany the proportion fell from 63 to 47 per cent (Figure 1). The partial erosion of collective bargaining is even more pronounced with regard to sectoral agreements, the traditional core of the German bargaining model. According to IAB data the percentage of workers covered by sectoral agreements decreased from 68 to 51 per cent in western Germany and from 52 to 36 per cent in the east of the country.

Among the 56 per cent of German workers who still had a collective agreement in 2016, 48 per cent were covered by a sectoral and 8 per cent by a company agreement (Figure 2). For about half of the 44 per cent of workers who are not covered by collective agreements, the companies claim that they take prevailing sectoral agreements as ‘orientation’ for their own in-house determination of wages and working conditions. The impact of the collective agreements is thus beyond the scope of formal bargaining coverage. As some recent studies have found, however, many companies that take their bearings from prevailing sectoral agreements, often provide for wages and conditions well below collectively agreed standards (Addison *et al.* 2016; Berwing 2016).

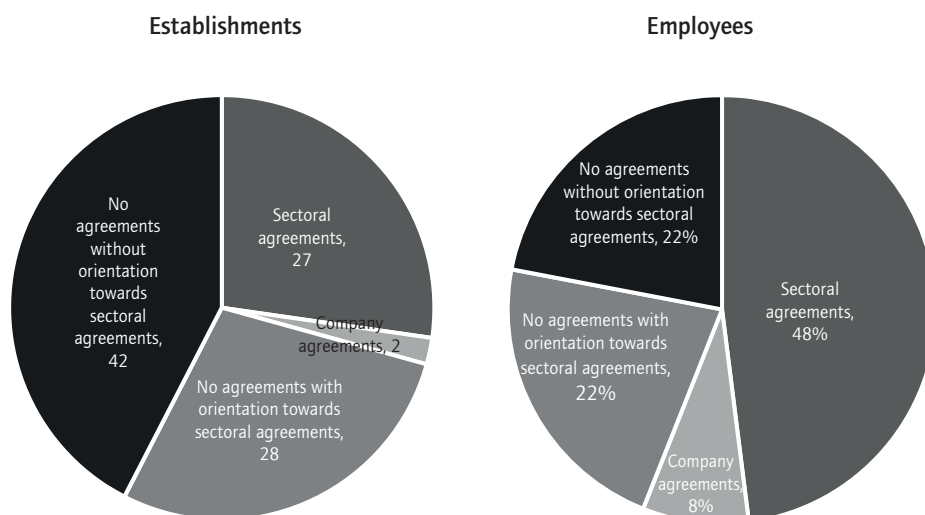
In general, larger companies are much more likely to be covered by collective agreements, while the majority of smaller companies have no agreement at all. Thus, the bargaining coverage of companies is rather low (Figure 2). In 2016, only 27 per

Figure 1 Collective bargaining coverage in Germany, 1998–2016 (workers covered by collective agreements as a percentage of all workers)



Source: IAB Establishment Panel (Ellguth and Kohaut 2017).

Figure 2 Collective bargaining coverage in Germany as a percentage of establishments and employees, 2016



Source: IAB Establishment Panel.

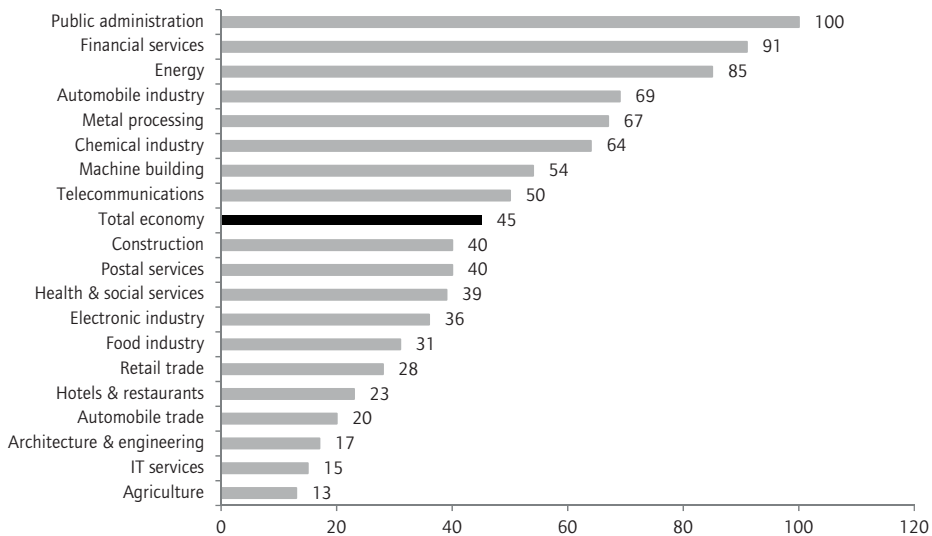
cent of companies were covered by a sectoral agreement, 2 per cent had a company agreement, while the majority – 70 per cent – of all companies were not covered by collective agreements (among them 42 per cent that claim to take prevailing sectoral agreements as orientation).

The IAB establishment panel has been the standard source for calculating collective bargaining coverage in Germany for years. More recently, the German Statistical Office has published an alternative calculation, based on the German Structure of Earnings Survey (SES). According to the latter, overall bargaining coverage is not 56 per cent of employees (as calculated by the IAB), but only 45 per cent (Statistisches Bundesamt 2016a).<sup>1</sup>

The advantage of the SES data is that they provide more detailed information on collective bargaining coverage in different sectors (Figure 3). In some branches, such as public administration, financial services or energy, the vast majority of workers – 80 per cent or more – are still covered by collective agreements. The same holds true for some core manufacturing industries, such as the automobile or chemical industries, in which around two-thirds of workers are still covered by collective agreements. Sectors such as construction, postal services and health and social services show a bargaining

1. There is no satisfying explanation for the difference so far. Both the IAB and the SES data are representative for all groups and sizes of companies. From conversations with the data providers it emerges that, due to differences in the methodology of the surveys, IAB data might slightly overestimate and the SES data slightly underestimate bargaining coverage, so that the real figure might be somewhere in the middle.

Figure 3 Collective bargaining coverage in selected sectors, 2014 (workers covered by collective agreements as a percentage of all workers)



Source: Statistisches Bundesamt (2016) using data of the German Structure of Earnings Survey (SES).

coverage of around 40 per cent. Finally, in a large number of private service sectors, such as retail trade, hotels and restaurants, automobiles or IT services, only a minority – less than 30 per cent – of workers are covered by collective agreements.

Finally, there is a close relationship between collective bargaining coverage and wage levels. Compared with other European countries, Germany exhibits a rather unusual pattern, whereby bargaining coverage increases with wage level. According to SES data, workers in the two lowest wage quintiles have a bargaining coverage of only 27 per cent. In contrast, 66 per cent of workers in the highest wage quintile are covered by a collective agreement (Bundesministerium für Arbeit und Soziales 2017: 74). This shows that the decline of German collective bargaining has been particularly marked in the low-wage sector, in which only a minority of workers are still protected by collective agreements. Studies have also identified the decline in bargaining coverage as the single most important reason for the growing wage inequality in Germany (Felbermayr *et al.* 2015).

### 2.3 Decentralisation of collective bargaining

The German system of collective bargaining has always been characterised by a highly differentiated interplay between sector- and company-level regulations. Trade unions and employers' associations agree on certain minimum conditions at sectoral level in order to limit competition on labour costs and to demarcate a level-playing

field. Management and works councils implement agreements at company level and typically negotiate additional social benefits. Apart from a relatively clear division of labour between the two bargaining areas, there were always some overlaps as the sectoral agreements include some opening clauses which allow room for regulation at company level. This started as early as the 1960s and 1970s with opening clauses on work organisation and additional payments and continued in the 1980s with opening clauses on working time, which were agreed in exchange for working time reductions.

The major push for the decentralisation of German collective bargaining came in the 1990s, against the background of a deep economic crisis in the aftermath of German unification. A growing number of employers started to criticise the system of sectoral collective agreements for being ‘too rigid’ and for not providing sufficient ‘flexibility at the company level’. Originally, the demands for derogations from sectoral agreements came particularly from companies in severe economic difficulties. In a context of increasing unemployment in Germany, sectoral agreements from the mid-1990s increasingly included ‘hardship clauses’ whereby companies obtained the right to derogate from sectoral standards in exchange for the safeguarding of jobs. At first, such deviations were possible only under relatively strict conditions. However, over time the criteria for opening clauses were no longer restricted to the danger of bankruptcy but were widened to embrace all kinds of situations and motivations, including even ‘improving competitiveness’ (Bispinck and Schulten 2010).

Demands for the decentralisation of collective bargaining came first of all from the employers, with considerable support from mainstream economics (for example, Ochel 2005). There was also a strong push for decentralisation from political parties, which sometimes called for a statutory opening clause or a revision of the favourability principle (Bispinck and Schulten 2005).

Among the German trade unions the issue of decentralisation was much more contested (Bispinck 2004a; Bahn Müller 2017). The Chemical Workers Union (IG BCE), for example, has taken a more proactive stance since the early 1990s and has agreed on some major opening clauses regarding wages, annual bonuses and working time. In this way, IG BCE was able to establish a system of controlled decentralisation whereby the union and not parties at the company have the final say on derogations. In the view of IG BCE this approach has helped the union to stabilise the entire bargaining system in the chemical sector (Erhard 2007; Förster 2008). In contrast, most other unions originally took a much more sceptical view and tried, if not to prevent at least to limit the spread of opening clauses, which were widely regarded as a fundamental threat to the concept of sectoral bargaining.

In practice, however, all unions were more or less ready to accept company deals with deviations from sectoral agreements, especially when the companies threaten the loss of employment. The debates with the unions came to a turning point in 2004 when the Metalworkers Union IG Metall concluded the Pforzheim Agreement, which includes a general opening clause and some procedural rules for controlled decentralisation.<sup>2</sup>

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2. On the Pforzheim Agreement see the section on the metal industry.

After this milestone agreement, similar opening clauses have been concluded in almost all major sectors (Bispinck and Schulten 2010). As a result, the use of opening clauses for derogations at company level became a new norm in German collective bargaining.

## 2.4 The use of opening clauses in practice

There are only a few studies and data sets with empirical information on the spread of opening clauses in German collective bargaining (Bispinck and Schulten 2003, 2010; Brändle and Heinbach 2013; Ellguth and Kohaut 2010, 2014; Amlinger and Bispinck 2016). One dataset with information on the use of opening clauses is the IAB Establishment Panel, which provides data for 2005, 2007 and 2011 (Ellguth and Kohaut 2014: 441). According to the IAB data, in 2011 20 per cent of all establishments covered by collective agreements, representing about 35 per cent of all workers, made use of some kind of opening clauses; 13 per cent used opening clauses regarding working time; and 10 per cent on pay issues (*ibid.*: 442). Usually, larger establishments use opening clauses more frequently than smaller establishments. There is no clear relationship between a company's resort to opening clauses and its economic performance; it is not limited to establishments in economic trouble (*ibid.*: 447).

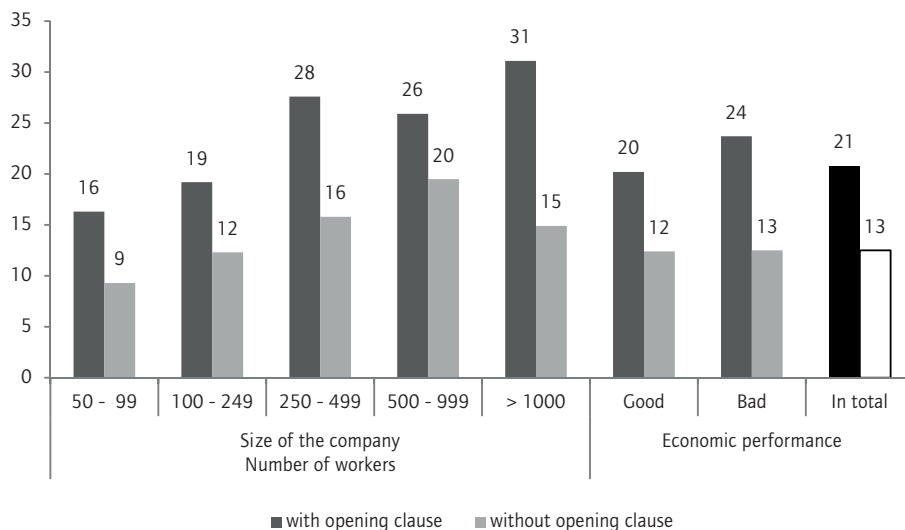
Another data source with information on the use of opening clauses is the WSI Works Council Survey, which is a representative survey of establishments with at least 20 employees and a works council (Amlinger and Bispinck 2016).<sup>3</sup> The results from the WSI Survey are similar to those from the IAB data. All in all, in 2015 21 per cent of all establishments were covered by collective agreements that made use of opening clauses. In larger establishments the frequency is somewhat higher than in smaller ones. There is no clear relationship to economic performance, as opening clauses were used by 24 per cent of establishments with 'bad' economic performance and by 20 per cent of those whose economic performance was 'good' (Figure 4).

The WSI Survey also contains information on companies that derogate from collective agreements without the justification of an opening clause (Figure 4). In total, 13 per cent of all establishments declared that they practice some form of 'informal decentralisation'. This probably marks the lower extreme due to a number of undetected cases. Again such establishments might be characterised by poor or good economic performance. The frequency of informal derogations increases with size of establishment, with the exception of very large companies (more than 1,000 employees), at which the frequency is somewhat lower.

In terms of sectors, the use of opening clauses is most widespread in manufacturing (28 per cent), transport and hotels and restaurants (23 per cent), investment goods and company-related services (both 21 per cent). Use is very much below average in construction and financial services (Figure 5).

3. Because of changes in the questionnaire the data are not fully comparable with earlier versions of the WSI Survey. For an evaluation of the earlier version see: Bispinck and Schulten 2003, 2010.

Figure 4 Derogations from collective agreements at company level, with or without opening clauses, 2015 (as a percentage of all companies covered by a collective agreement)



Source: WSI Works Council Survey 2015 (Amlinger and Bispinck 2016).

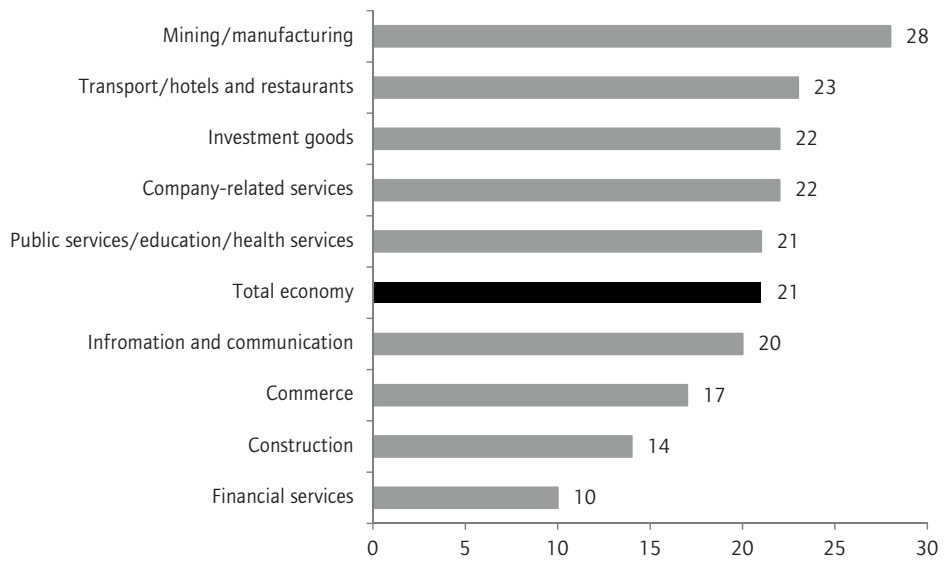
In terms of topics the opening clauses used most often concern working time, including provisions for reduction or extension of working time or for flexible working time arrangements. Of equal importance are opening clauses on wages, allowances and annual bonuses. Opening clauses are used relatively rarely with regard to apprenticeship pay or other issues (Figure 6).

## 2.5 Procedural rules on opening clauses

There are some significant differences regarding procedural rules for opening clauses. The standard form, which was developed in the first half of the 1990s in the chemical industry (Erhard 2007), follows the following procedure. First, the union and employer association agree to introduce an opening clause, its content and concrete conditions and procedure for its adoption. The content can be conclusive or it can define scope for derogation at company level. Usually, the parties at company level – management and work council – have to make a joint application to the sectoral bargaining parties, which make the final decision on the derogation. The basic idea underlying ‘controlled decentralisation’ is that companies cannot opt for derogation as they see fit. However, sometimes the sectoral parties also delegate competence for the final decision to the parties at company level. This is the case in particular when the issue is of minor importance.

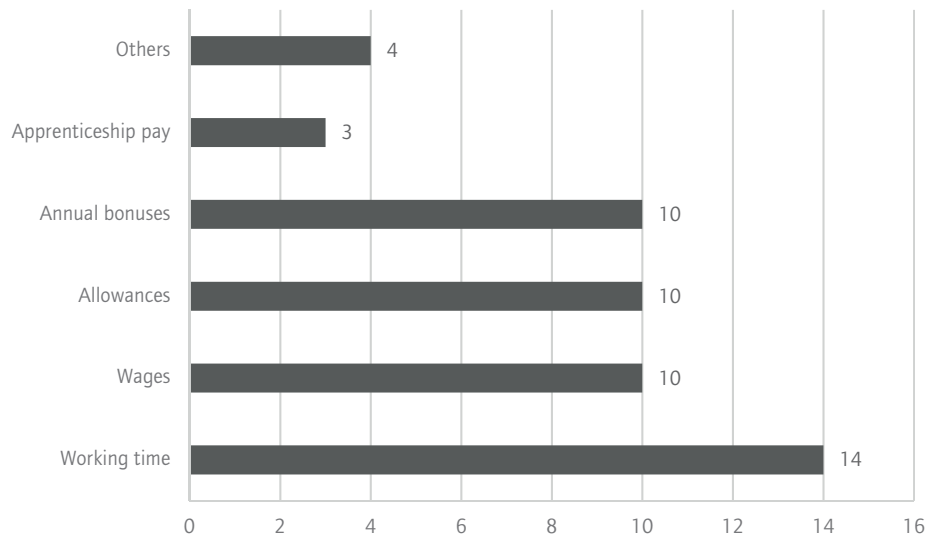


Figure 5 Use of opening-clauses in various sectors, 2015 (percentage of all companies covered by collective agreements)



Source: WSI Works Council Survey 2015 (Amlinger and Bispinck 2016).

Figure 6 Topics of used opening-clauses, 2015 (percentage of all companies covered by collective agreements)



Source: WSI Works Council Survey 2015 (Amlinger and Bispinck 2016).

many sectors have agreed on general opening clauses, which mainly define procedural rules but say nothing about the content of derogation. The latter is usually the result of bargaining between the union and the company with the participation of all actors at both sectoral and company level. Concrete derogations are often laid down in a company agreement. There are some further procedural rules which usually need to be recognised when using opening clauses:

- companies have to open their books to justify the need of derogations;
- derogations have to be terminated after a certain period of time;
- companies have to offer something in exchange for derogations (usually job security or new investment).

Finally, most trade unions also have internal coordination rules to control the use of opening clauses. Usually, every derogation has to be approved by a central coordination body, which has to check whether it is in line with the trade union's rules and principles and whether it has no negative consequences for other companies (for example, for the case of the Unified Services Union ver.di: Wiedemuth 2006).

### **3. Decentralisation of collective bargaining – the German metal industry**

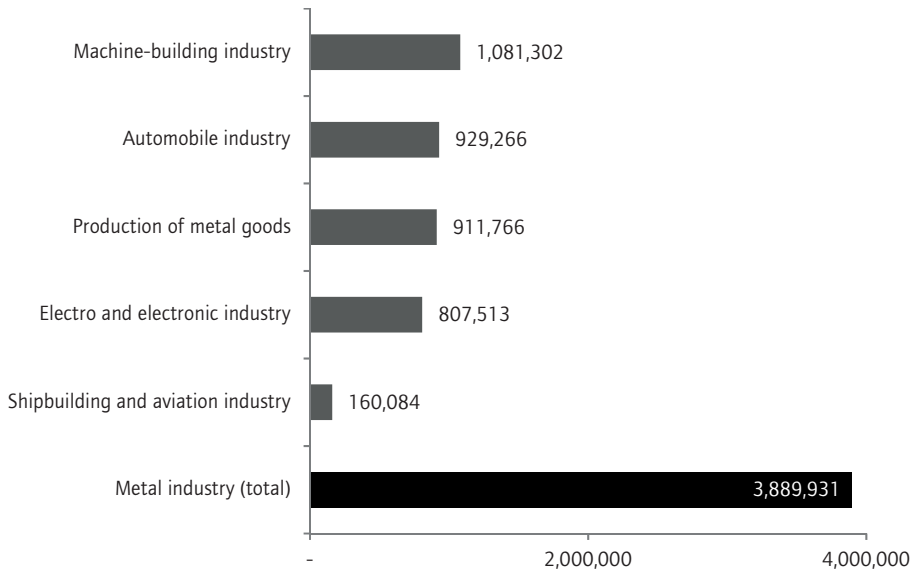
#### 3.1 Employment in the German metal industry – a sectoral profile

The metal industry is Germany's key industrial sector with an annual turnover of more than one trillion euros. The sector comprises more than 24,000 companies with almost 3.9 million employees (Gesamtmetall 2016: 2). The largest sub-sectors within the metal industry are the machine-building industry, the automobile industry, production of metal goods and the electro and electronic industry (Figure 7).

The German metal industry is heavily dependent on foreign markets as two-thirds of products and services are exported. Although there are a few large, well-known corporations, such as Volkswagen, Siemens, Bosch, Daimler and BMW, the industry is dominated by small and medium-sized enterprises (the famous *Mittelstand*). More than two-thirds of all metalworking companies have fewer than 100 employees, while only 2 per cent have a workforce of more than 1,000.

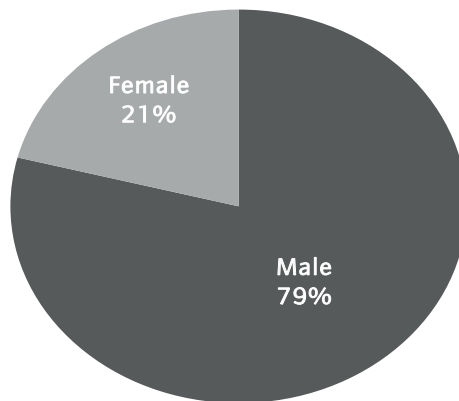
Regarding employment structure, metalworking is first of all a male-dominated sector: nearly 80 per cent of all metalworkers are men. In contrast to many other sectors the vast majority – 88 per cent – of employees work full-time, while only 12 per cent have a part-time or marginal part-time job (Figure 8).

Figure 7 Number of workers in the German metal industry, 2016



Source: Bundesagentur für Arbeit (2017), authors' calculations.

Figure 8 Structure of employment in the German metal industry, September 2016 (percentage of all metalworkers)



Source: Bundesagentur für Arbeit (2017), authors' calculations.

## 3.2 Trade unions and employers' associations in the German metal industry

The two main collective actors in the metal industry are the German Metalworkers Union, *IG Metall*, and the Federation of German Employers' Associations in the Metal and Electrical Engineering Industries, *Gesamtmetall*. *IG Metall* is the largest affiliate of the Confederation of German Trade Unions (DGB), with about 2.27 million members in 2016. Apart from the metal industry, *IG Metall* also represents some other sectors, such as the metal trade, the steel industry, the wood industry and the textile industry.

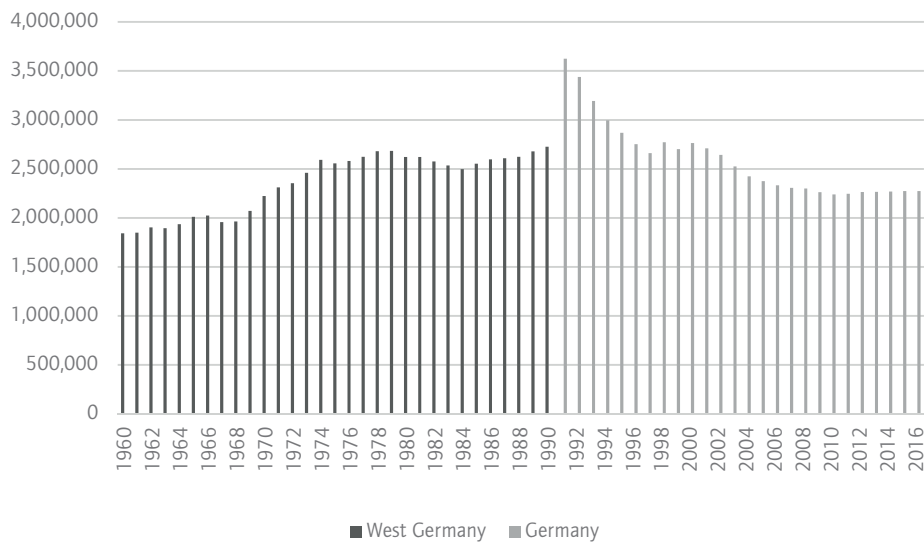
After its membership had peaked in 1991 due to German unification, *IG Metall* was faced by a severe decline, which was largely the result of strong deindustrialisation in eastern Germany and continuous job losses in the west (Bispinck and Dribbusch 2011, Figure 9). After 2005, the metalworkers' union intensified its organising policy in order to turn the tide. In conjunction with a reviving economy the union had finally managed to slow down the decline before it was hit by the crisis of 2008/2009. After the crisis *IG Metall* was even able to realise a moderate increase in membership, but the absolute figures remain below the pre-unification level.

About 30 per cent of the union's members are either unemployed or have retired. Almost 90 per cent of the active membership works in the metal industry. The union's main stronghold is the automobile industry, in which around 70 per cent of the employees are union members. At some car manufacturing plants union density remains at 90 per cent or even higher. Along the supply chain of the automobile industry, however, union density is weaker, with slightly more than 40 per cent of the employees being organised. Less organised are, for example, the electronic and IT industries, in which less than 30 per cent of employees hold a union membership card.

*IG Metall*'s institutional strength at workplace level is also closely related to the existence of works councils. According to the representative Establishment Survey of the Institute for Employment Research (IAB), in Germany works councils exist only in 9 per cent of all establishments, representing 41 per cent of all employees. Their existence depends primarily on company size: in establishments with more than 500 employees about 90 per cent have a works council (Ellguth and Kohaut 2017). In 2014 about 71 per cent of all works council members within the organisational domain of *IG Metall* were members of the union, some 28 per cent were unorganised and a marginal 0.3 per cent were members of the small Christian Metal Workers' Union or CGM (Christliche Gewerkschaft Metall). In larger companies with 500 or more employees 80 per cent or more of the works councillors are members of *IG Metall*.

The employers' association in the metal industry, *Gesamtmetall*, is the largest federation in the Confederation of German Employers' Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände, BDA), which is the peak organisation on the employers' side. *Gesamtmetall* is an umbrella organisation of a large number of regional employers' associations in the German metal industry. These regional associations are the bargaining partners of regional sections of *IG Metall* when it comes to negotiations on industry-wide collective agreements. Traditionally, all companies that are member of the employers' association were automatically covered by the sectoral collective

Figure 9 Membership of IG Metall, 1980–2016 (millions; until 1990: West Germany, from 1991: Germany)



Source: IG Metall.

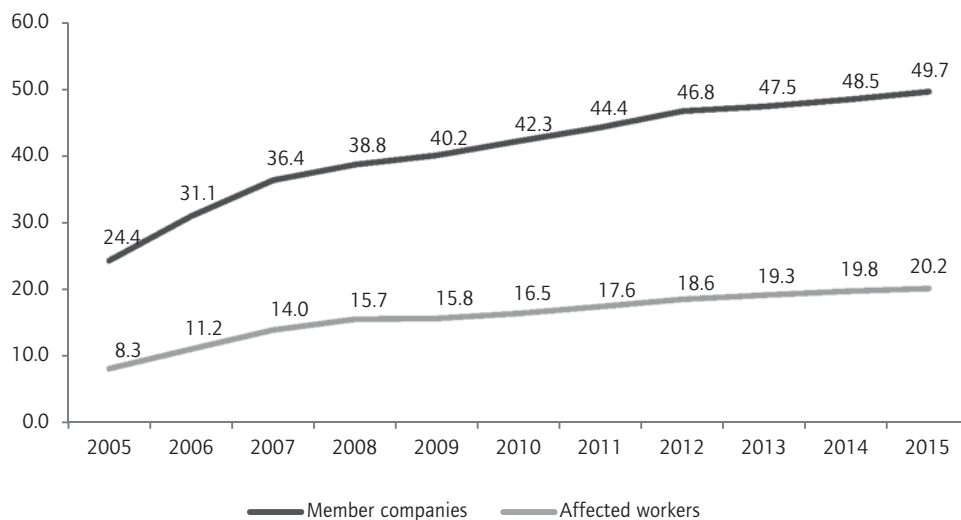
agreement. Since the 1990s, however, many employers' associations have introduced a special membership status, known as 'OT status' (OT = *ohne Tarifbindung*; 'not covered by the collective agreement'), which provides member companies with the association's full range of services, but relieves them of the duty to comply with the standards set by the industry-wide collective agreement. Gesamtmetall was initially against this type of membership but finally accepted it in 2005, acknowledging associations with 'OT' status as affiliates. Some companies take advantage of this special OT status but negotiate company-level agreements, often with the support of their employers' association. Others have withdrawn from collective bargaining, while some still take the sectoral collective agreements as orientation.

The number of member companies in Gesamtmetall with OT status has shown a continuous increase (Figure 10). About half of all member companies, representing about 20 per cent of the affected workers, now have OT status and thus are not obliged to accept the sectoral collective agreement in metalworking. In particular, small and medium-sized companies have used this status to withdraw from collective bargaining.

### 3.3 Collective bargaining in the German metal industry; structure and trends

The dominant pattern of collective bargaining in German metalworking is sectoral bargaining. The metal industry is historically subdivided into 21 regional bargaining

Figure 10 Members of Gesamtmetall with special 'OT' status, 2005–2015 (% of all member companies and affected workers)



Source: Gesamtmetall.

areas, in which the relevant employers' associations negotiate with the regional IG Metall organisations (IG Metall 2017: 12). The most prominent bargaining areas are in the federal states of Baden-Wuerttemberg and North-Rhine Westphalia, where the bulk of metalworking industry is concentrated. Collective bargaining in metalworking usually takes the form of pattern bargaining, whereby a pilot agreement is concluded in one bargaining area and then transferred – sometimes with some specific regional amendments – to the other bargaining areas. The sectoral collective agreements cover the whole range of sub-branches within the metal industry, including the automotive industry, machine-building and the electro and electronic industries. Only the iron- and steel industry, as well as the various metal trades have separate collective agreements.

The long-term development of collective bargaining coverage in the metal industry is difficult to describe as there are no consistent data series. Studies on bargaining coverage in Germany usually rely on data from the IAB Establishment Panel, which is a representative employer survey covering all branches and all sizes of company. The IAB Establishment Panel, however, does not provide figures for the metal industry but only for the whole manufacturing sector (Ellguth and Kohaut 2017). As a rough approximation to the metal industry figures are available for the sector 'capital goods and durable consumer goods', which covers most metalworking branches. On this basis, the figures indicate a relatively stable bargaining coverage of about 60 per cent during the past 8 years, which is only slightly above the national average (Table 1).

Table 1 **Collective bargaining coverage in industries producing capital and durable consumer goods, 2009–2016 (% of all employees or establishments)**

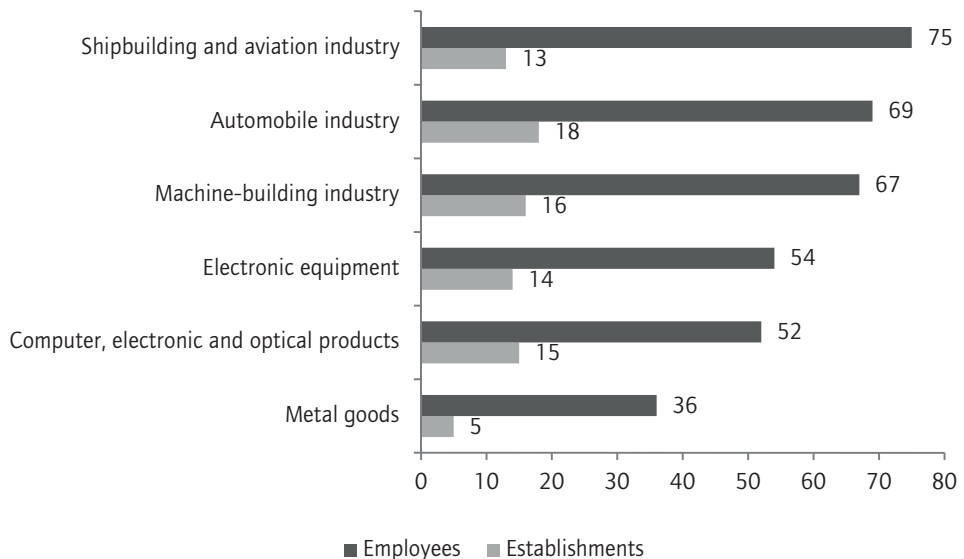
	2009	2011	2013	2015	2016
Employees	61	58	62	60	60
Establishments	32	24	22	26	21

Source: IAB Establishment Panel, special evaluation by the IAB for the authors.

Another source for measuring bargaining coverage is the German Structure of Earnings Survey (SES), which provides more detailed information but only for 2014 (Statistisches Bundesamt 2016). According to this, bargaining coverage of employees within the different sub-sectors of the German metal industry varies between 36 per cent in the production of metal goods and 75 per cent in the shipbuilding and aviation industry (Figure 11). In the automobile and machine-building industry coverage is 69 and 67 per cent, respectively. As far as bargaining coverage of the establishments is concerned, it varies between only 5 per cent in metal goods and 18 per cent in the shipbuilding and aviation industry.

A third source for calculating collective bargaining coverage in the metal industry is the membership data of the employers’ association Gesamtmetall, which goes back to 1960. According to these figures, sectoral agreements in metalworking have undergone

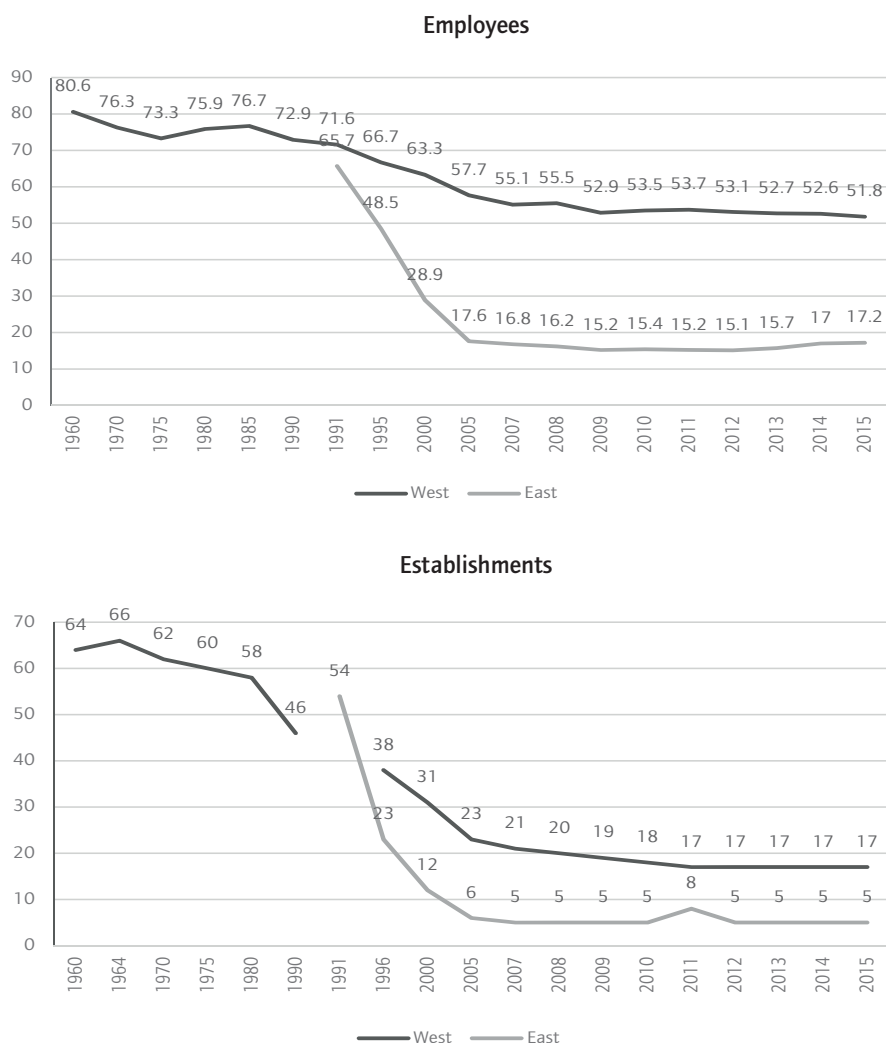
Figure 11 **Collective bargaining coverage in sub-sectors of the German metal industry, 2014 (% of employees or establishments)**



Source: German Structure of Earnings Survey (Statistisches Bundesamt 2016a).

a remarkable decline (Figure 12). While in 1960 about 80 per cent of all metalworkers in western Germany were covered by sectoral agreements, that had fallen to just over 50 per cent by 2015. The decline started in the 1980s and accelerated in the 1990s. It slowed only at the end of 2000s. Since then it has remained relatively stable at a low level. In eastern Germany the situation is even more dramatic. After a sharp decline in bargaining coverage in the 1990s, only around 17 per cent of eastern German metalworkers are still covered by a collective agreement.

Figure 12 Collective bargaining coverage by sectoral agreements in the German metal industry, 1960–2015 (% of all employees or establishments)



Source: Gesamtmetall, authors' calculations.



Turning to establishments, the figures are even more striking: only 17 per cent of western German and 5 per cent of eastern German metalworking companies are still covered by sectoral agreements. Although some establishments are covered by company agreements, the large majority of (mainly small-sized) companies in metalworking are not affected by collective bargaining.

### 3.4 Decentralisation of collective bargaining in the metal industry

The decentralisation of collective bargaining in the metal industry has a long history. Under the conditions of full employment in the 1960s, the trade unions demanded additional company bargaining (*betriebsnahe Tarifpolitik*) in order to obtain extra payments at company level and to regulate them within company agreements. At that time, the employers emphasised the value of sectoral agreements, which were seen as an important instrument for moderating wage increases. The picture changed with growing mass unemployment in the 1980s, when the employers started to demand more flexibility and (downward) derogations from sectoral agreements at company level.

The introduction and specific design of opening clauses as a form of ‘organised decentralisation’ has always been an issue giving rise to harsh conflicts and was sometimes even accompanied by industrial action. For a long time, IG Metall was very sceptical about using opening clauses, which were criticised for undermining the principal function of sectoral agreements, namely the determination of agreed standards for the whole sector and therewith the limitation of competition on wages and other labour costs (Bahn Müller 2017). In practice, however, the union was always open to negotiating special conditions for companies that were in real economic difficulties in order to safeguard employment. All in all, the process of decentralisation of collective bargaining in the metal industry stretches back over a period of more than 30 years (Bispinck 2004a; Haipeter and Lehndorff 2014). The main stages were as follows.

#### **From 1984: Exchange of working time reductions for working time flexibility at company level**

The decentralisation of collective bargaining in the metal industry started in the mid-1980s with the issue of working time. In exchange for a reduction of weekly working time, IG Metall made some significant concessions regarding more working time flexibility at company level. In the first years of working time reduction after 1984 the agreed standard of weekly working time of 38.5 hours had to be achieved only as an average. The bargaining parties later introduced a provision that up to 18 per cent of employees may, on a voluntary basis, have prolonged working time of 40 hours. In companies with a share of 50 per cent or more of high wage groups the 40-hour week may be applied to up to 50 per cent of employees. The same applies with regard to fostering innovation and countering shortages of skilled labour.

As a consequence, the 35-hour week, which was finally achieved in the western German metal industry in 1995, was never fully implemented for all metalworkers. For parts of the workforce it serves only as a reference value. Since 1994 the collective agreements provide additional regulations according to which working time can be reduced to 30 hours per week with corresponding lower pay in order to safeguard jobs. This was in

response to the sharp economic recession in 1992/1993, which threatened employment especially in the metal industry.

### **1993: Hardship clauses in eastern Germany**

Opening clauses concerning pay were introduced for the first time in 1993 in eastern Germany as a consequence of the deep transformation crisis that hit the metal industry in particular. After a very conflictual bargaining round with two weeks of strikes, IG Metall agreed to the introduction of a so-called hardship clause (*Härtefallklausel*) in the sectoral agreement. According to the clause, companies are allowed – under certain conditions – to deviate from collectively agreed pay. These deviations had to be negotiated not by the management and the works councils at establishment level but by the sectoral collective bargaining parties themselves. In practice, these provisions were used fairly often (Hickel and Kurtzke 1997).

### **From the mid 1990s: Derogations on pay in western Germany**

While IG Metall rejected employers' demands for formal adoption of the eastern German hardship clause also in the west, from the mid-1990s it started to accept more and more company derogations also in western German collective agreements. The derogation provisions were often fairly vague and did not contain procedural rules. The metalworking agreement in North Rhine-Westphalia, for example, had a provision under which 'in case of severe difficulties – for example, in order to prevent insolvency – the bargaining parties shall make efforts to come up with special regulations.' In the metalworking industry deviations from regional sectoral agreements became increasingly widespread during the 1990s (Haipeter and Lehdorff 2009: 33ff). While in eastern Germany the existence of the formalised hardship clause offered a defined procedure for regulating deviations at company level, in western Germany regional agreements contained only very general 'restructuring clauses' with no procedural requirements. As a result, a 'grey area' of company deviations emerged and grew (Bahnmüller 2017). Some deviations were backed by sectoral agreements; others de facto contravened collectively agreed standards, leading to a kind of 'wildcat cooperation' (Streeck 1984) at company level. Because of lack of transparency, IG Metall had de facto lost its power to control decentralisation at company level, which increasingly took on a 'disorganized' or 'wild' form.

### **2004: Pforzheim Agreement with the introduction of a general opening clause**

The situation changed fundamentally with the adoption of the Pforzheim Agreement, which was concluded in the metal industry in February 2004. The agreement was not only the result of a conflict in German metalworking but also of a more fundamental societal conflict about the future development of the German collective bargaining system (Bispinck 2004b). In the early 2000s, Germany was widely regarded as 'the sick man of Europe' as its economic performance was comparatively weak and its unemployment one of the highest in Europe. The prevailing opinion at that time was that the economic weakness was grounded in 'overregulation' of the labour market. Thus, in 2013 the Red-Green government announced its notorious 'Agenda 2010', which contains a comprehensive programme for weakening labour market regulation. As part of his famous 'Agenda speech' in the German parliament, former chancellor Gerhard Schröder also threatened to intervene in free collective bargaining through the

introduction of a statutory opening clause if the bargaining parties themselves were not able to reach agreement on more possibilities for companies to derogate from sectoral agreements. The Pforzheim Agreement was to certain extent the price the unions had to pay to avoid those interventions.

The Pforzheim Agreement contains for the first time a general opening clause for the whole metal industry, according to which companies can derogate from sectoral agreements in order to ‘secure existing employment and to create new jobs’ through improvement of ‘competitiveness, innovative capability and investment conditions’ (see Box 1). In contrast to earlier opening clauses, the Pforzheim Agreement says little about the content of possible derogations but contains mainly procedural rules. If a company wants to deviate from the sectoral agreement, the management and the works council have to make a joint application to the sector-level bargaining parties; that is, the regional organisations of IG Metall and Gesamtmetall. If the latter agree on the derogations, IG Metall negotiates a supplementary company agreement with the company. In principle, such company agreements can deal with all kind of issues, such as ‘cuts in special payments, deferral of claims, increasing or reducing of working hours with or without full wage compensation’. In practice, however, IG Metall usually accepted such company agreements only when the derogations are temporary and when the company gives a job guarantee for the period of derogation.

### 3.5 Decentralisation of metalworking collective bargaining in practice

The main impact of the Pforzheim Agreement has been the reorganisation – to a considerable extent – of the earlier process of wild decentralisation. With the definition of a general procedural framework the sectoral bargaining parties were able to regain control of the decentralisation process. For IG Metall this meant that it had to give up its resistance in principle to widespread use of derogations at company level and to accept

#### Box 1 Pforzheim Agreement, 2004

Collective agreement on competitiveness and securing of production sites for the metal and electrical industry, Baden-Württemberg, 25.2.2004\*

§ 1 ‘The aim of this collective agreement is to secure existing employment and to create new jobs in Germany. This requires improvements in competitiveness, innovative capability and investment conditions. The collective bargaining parties are committed to these goals and to their of shaping the framework for enhanced employment in Germany.

§ 2 The parties at establishment-level examine whether measures under the existing provisions are exhausted to secure and promote employment. The collective bargaining parties advise – at the request of the parties at establishment level – what possibilities exist within the framework of collective agreements. If it is necessary, taking into consideration the social and economic consequences, to secure a sustainable development of employment by deviating from collectively agreed regulations, the

Box 1 Pforzheim Agreement, 2004 (cont.)

collective bargaining parties, with the parties at establishment level, after joint examination, agree on supplementary derogations from collectively agreed minimum standards; for example, cuts in special payments, deferral of claims, increasing or reducing working hours with or without full wage compensation (if not regulated in the collective agreement). A precondition for this is comprehensive information with associated documents. (...) In the overall assessment possible consequences on competition and employment in the sector or region, as far as establishments with the same collective bargaining coverage are concerned, should be included.'

\* Since 2008 the Pforzheim Agreement has been part of a 'collective agreement on the safeguarding and increasing of employment' (*Tarifvertrag zur Beschäftigungssicherung und zum Beschäftigungsaufbau*).

Source: Translation by the authors.

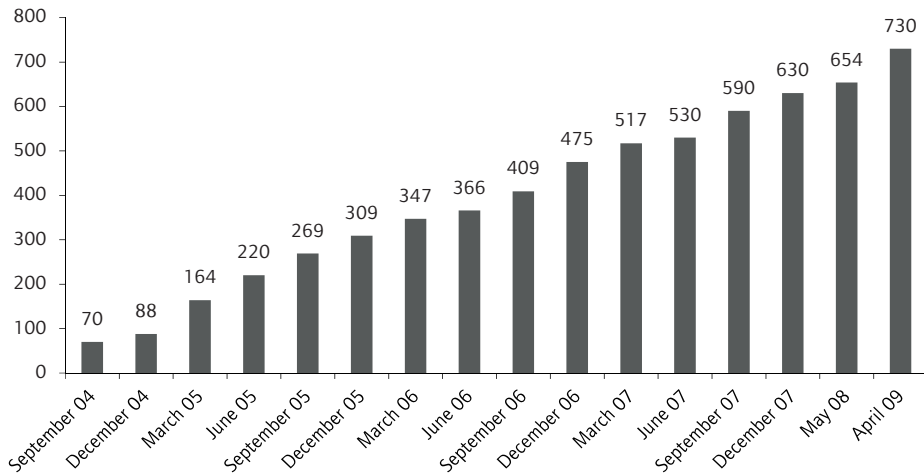
them as an established part of a more fundamentally revised bargaining system in the German metal industry (Bahnmüller 2017). This change of viewpoint, however, does not mean that the union automatically accepts all applications for derogation. On the contrary, decentralisation of collective bargaining often goes hand in hand often with tough conflicts at local level (see below).

As the Pforzheim Agreement gave both bargaining parties greater control over the process of decentralisation, they also have a much better knowledge of the scope of derogations. No coherent statistics are available, but from time to time both parties have published some information. According to data provided by Gesamtmetall, there was a steady rise in company-level derogations following the Pforzheim Agreement (Figure 13). In September 2004, only 70 cases were reported by Gesamtmetall, but by April 2009 the number had increased to 730.

The key topics addressed by derogation agreements were pay and working time. Between 2004 and 2006, about two-thirds of all agreements provided for company-level deviations on these two issues (Figure 14).

In exchange for employee concessions on pay and working time, employers have usually had to offer a quid pro quo (Figure 15). By far the most important issue for such 'counter concessions' is job protection, whereby the employer makes a commitment to refrain from compulsory economic terminations during the lifetime of the derogation agreement. In 2006, four out of five agreements contained a provision on job security (Haipeter and Lehndorff 2009: 39). Other important employer concessions have included extensions of workers' and unions' codetermination rights, and commitments to undertake new investment and retain operations at existing sites. Between 2004 and 2006, a rising proportion of derogation agreements entailed such employer commitments in return for deviations from agreed terms.

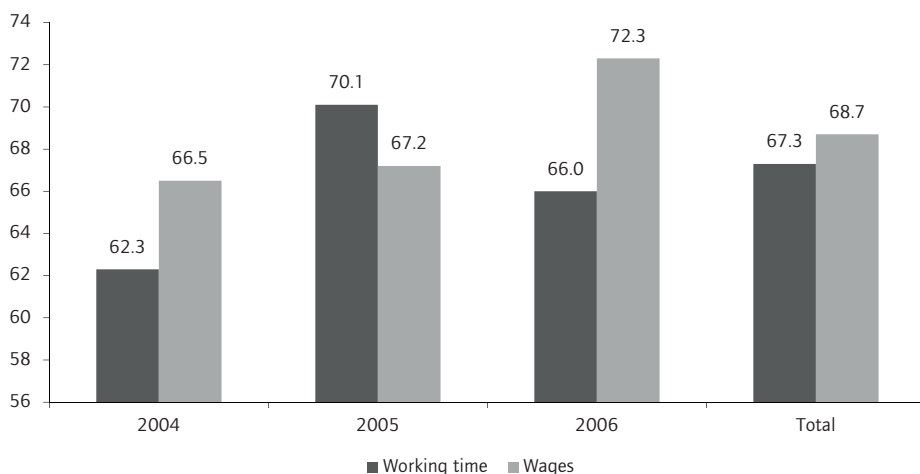
Figure 13 Number of company-level derogations from sectoral agreement in metalworking



Source: Gesamtmetall (2009).

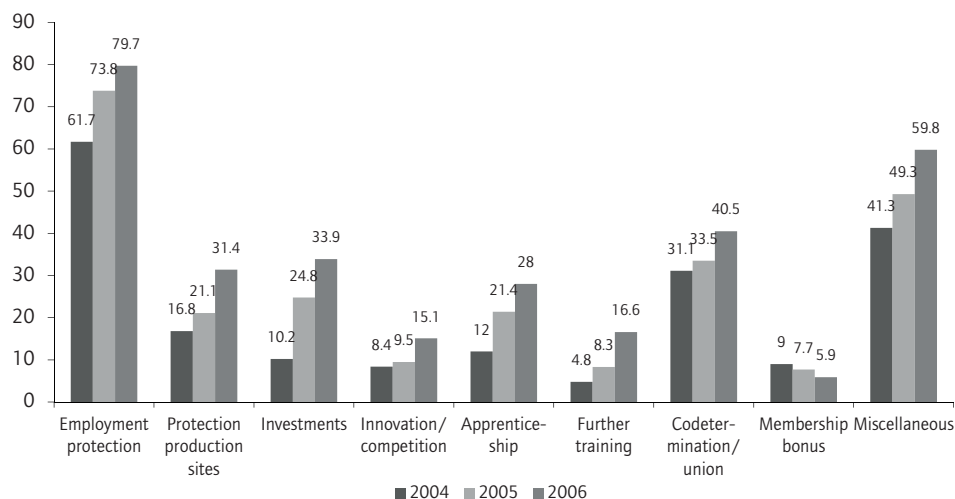
Only few years after the conclusion of the Pforzheim Agreement the global financial and economic crisis hit the German economy; the metal industry was most severely affected as orders and production felt dramatically. The unions and the works councils came under pressure to give support when companies got into financial difficulties. While the employers demanded wage restraint and other concessions, for the unions employment security was the top priority. In practice, companies made excessive use of flexible working time arrangements (running down of working time accounts) and short-time work (Herzog-Stein and Seifert 2010).

Figure 14 Issues addressed in derogation agreements in German metalworking, 2004–2006



Source: Haipeter and Lehndorff (2009: 37).

Figure 15 Share of counter-concessions by issue in all derogation agreements in German metalworking, 2004–2006



Source: Haipeter and Lehndorff (2009: 39).

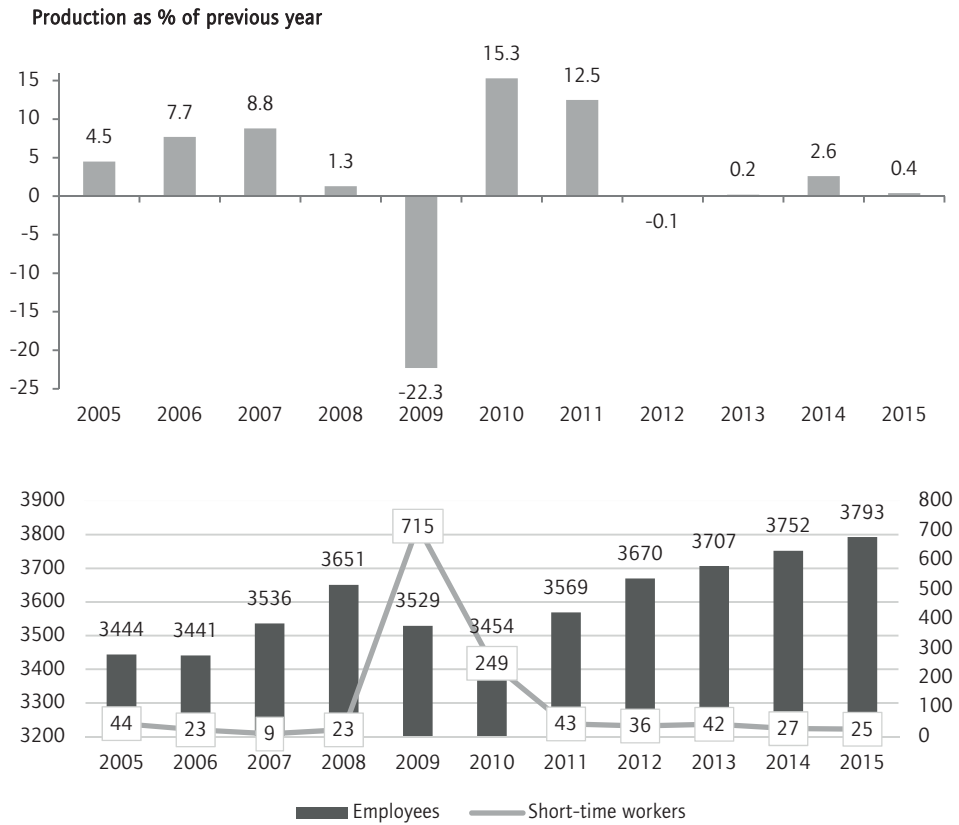
Despite a sharp cut in production the employment level in the metal industry remained relatively stable (Figure 16). A similar development was observed in other sectors. This ‘German jobs miracle’ was interpreted as proof of the efficiency of the built-in flexibility of the labour market institutions and regulations.

For more recent years the latest figures published by IG Metall (2016) cover 2012–2014 (2). One-third of company agreements regulate deviations from the sectoral agreements. In addition there are so-called recognition agreements (*Anerkennungstarifverträge*) that recognise the sectoral agreements, partially also with some derogations. Finally, there are regular company agreements without any relation to sectoral agreements. All in all, in 2014 nearly half of all companies under the sectoral agreement in metalworking, with about 60 per cent of the affected employees, were covered by a derogation or additional company agreement (IG Metall 2015: 126) (Table 2).

The issues regulated in the more recent derogation agreements are again at the top: working time followed by wages, bonus regulations and holiday allowance (Figure 17). Holidays themselves were part of the derogations only in exceptional cases.

The dominating concessions on the employers’ side were regulations concerning dismissal protection, followed to a much lower degree by provisions for the protection of production sites (Figure 18). The duration of derogation agreements ranges from one year and less up to 5 years and more. In the first half of 2014 about half of the agreements had a duration of more than two years. After expiration the derogation agreements are in many and prolonged or renegotiated.

Figure 16 Production and employees in M+E industry, 2005–2015



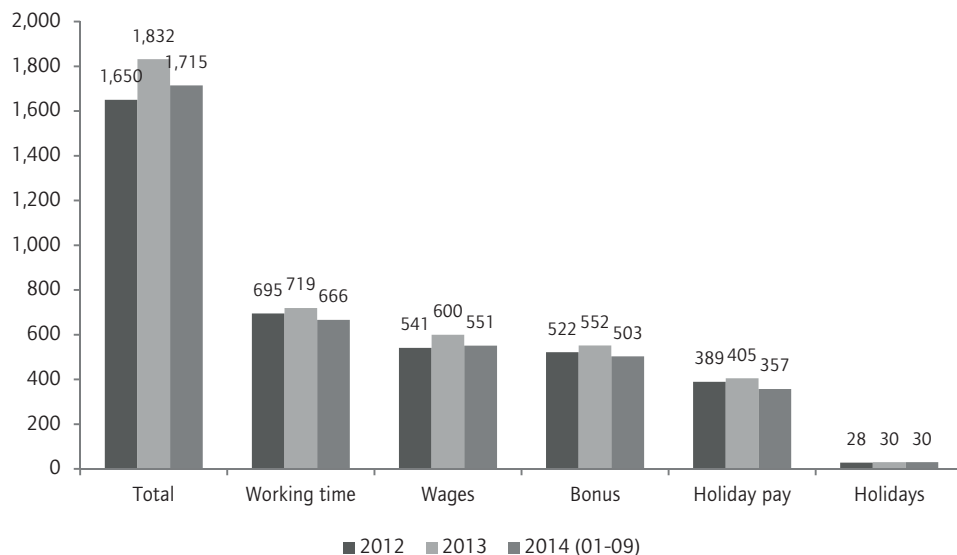
Source: Haipeter and Lehndorff (2009: 39).

Table 2 Company agreements in German metalworking sector

Type of agreement	2012	2013	2014 (1st half)
With derogations from sectoral agreement	1,396	1,538	1,450
% of all company collective agreements	32.9	33.9	33.6
Recognition agreements	522	520	516
Recognition agreements with deviations	254	248	238
Regular company collective agreements	2,072	2,204	2,164
Total	4,244	4,510	4,368

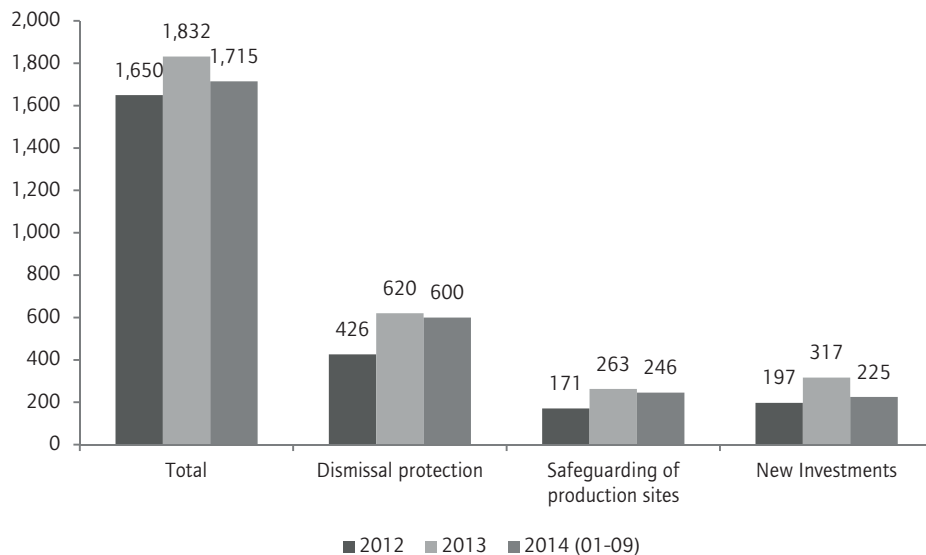
Source: IG Metall (2014).

Figure 17 Metal industry – number and issues of deviations, 2012–2014



Source: IG Metall (2014).

Figure 18 Metal industry – number and issues of counter concessions, 2012–2014



Source: IG Metall (2016).



Table 3 Opening clauses for company derogations within pay settlements, 2006–2016

Bargaining round	Provisions
2006	One-off payment of 310 € could be reduced to 0 € or doubled to 620 €
2007	Postponing of 0.7 % additional one-off payment and the second stage of wage increase of 1.7 % by up to 4 months possible
2008/2009	Postponing of the second-stage increase of 2.1 % by up to 7 months possible, as well as reductions in the additional one-off payment of 122 €, depending on the economic situation
2010	Pay rise of 2.7 % could be postponed or moved forward by up to two months
2012, 2013, 2015	No provisions in this regard
2016	Postpone or eliminate the lump-sum payment of 150 € and postpone the second-stage pay rise of 2.0 % by up to 3 months (at the request of the employers' association and based on IG Metall's decision)

Source: WSI Collective Agreement Archive.

### Opening clauses within regular pay settlements

Apart from the introduction of a general opening clause through the Pforzheim Agreement it has become more and more common to introduce also more specific opening clauses into the regular pay settlements (Table 3). According to these clauses companies received under certain circumstances the possibility to postpone regular wage increases or to reduce/postpone lump-sum payments. Between 2006 and 2016 opening clauses on pay were concluded in five of the eight bargaining rounds.

The use of these opening clauses at company level has usually to be approved by IG Metal or the works council. In most cases, there were only a limited number of companies which demanded the use these derogations in practice.

### 3.6 Outlook: Strengthening of union representation and revitalising sectoral collective bargaining

The trend towards the decentralisation of collective bargaining has affected the German metal industry for more than three decades. For a long time the unions tried to avoid or at least to limit the trend. The conclusion of the Pforzheim Agreement marked a turning point in the debate. Since then the decentralisation of collective bargaining via opening clauses has become the new norm in the German metal industry (Bahnmüller 2017). To a certain extent the Pforzheim Agreement has helped the bargaining parties to regain control over the decentralisation process. Regarding overall collective bargaining coverage in the German metal industry, however, it has at best helped to slow down but not to stop the decline. IG Metall has drawn two conclusions from this. First, it has tried to use the decentralisation process to strengthen its membership and bargaining power at company level. Secondly, it has started a broad campaign to reinforce sectoral bargaining and increase bargaining coverage.

Concerning the use of opening clauses, IG Metall has developed a new bargaining strategy according to which derogations are accepted only if the union members within the company were actively involved in the negotiations and explicitly approve the results (Haipeter 2009; Haipeter and Lehndorff 2014; Wetzel 2014). Hereby, the union tries to use the company bargaining process to recruit new members and strengthen its organisational base in the company. Sometimes the derogation agreements even contain somewhat better conditions for union members. In companies in which IG Metall has no or little membership it usually rejects demands for negotiations on company derogations.

More recently, IG Metall launched a broad campaign to increase collective bargaining coverage. Hereby, the union emphasises what its current president, Jörg Hofmann, calls the ‘magic triangle’ of union density (*Mitgliederstärke*), participation (*Beteiligung*) and collective bargaining coverage (*Tarifbindung*) (Hofmann 2016). Elements of the new strategy include:

- the strengthening of bargaining coverage in the core of the value chain where in recent years intensive processes of outsourcing, temporary agency work and contract work have enlarged the ‘white spots’ on the bargaining landscape;
- specific efforts in small and medium sized enterprises where bargaining coverage is traditionally low;
- a campaign on contract work in order to prevent wage dumping. The focus here is the contract logistics sector, in which IG Metall is interested not only in concluding company collective agreements but also in pushing through for a new sector-wide collective agreement.

In 2016 IG Metall for the first time also involved companies in the bargaining round that are not formally covered by collective agreements. In every bargaining region it systematically selected companies, at which it organised protest and warning strikes for the adoption of the sectoral collective agreement. At the end of the year the union was able to force 145 new companies with around 36,000 employees to join the sectoral collective agreement in metalworking (Bier and Rio Antas 2017). In contrast to the unions in other sectors as, for example, in the retail trade, IG Metall is not demanding an extension of the sectoral agreements in metalworking by the state, but wants to increase bargaining coverage by strengthening its own organisation at workplace level.

## **4. Decentralisation of collective bargaining – German retail trade**

### 4.1 Employment in the German retail trade – a sectoral profile

With more than 3 million employees working in around 340,000 enterprises the retail trade is one of the largest branches in Germany (Handelsverband Deutschland 2016a; Glaubitz 2017). By far the largest sub-sector is food retailing, which represents more than 40 per cent of overall retail turnover (Mütze 2016). The sector is fairly polarised, with a few large corporations, especially among supermarkets, pharmacists, fashion chains and department stores, and myriad small shops and enterprises. In 2011, 90

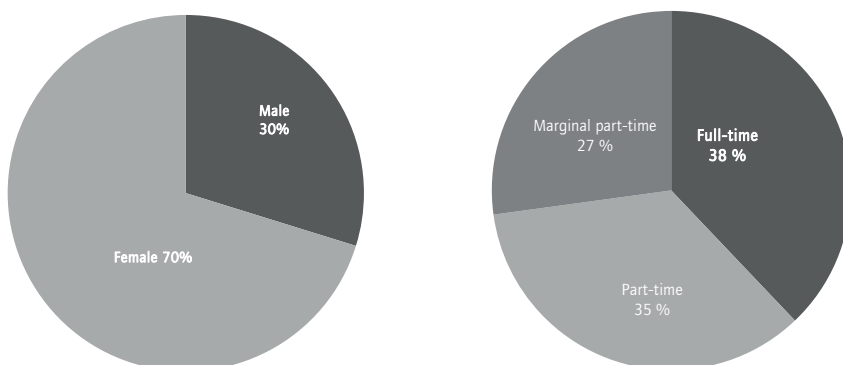
per cent of all retail enterprises had fewer than 20 employees, while only 1 per cent had more than 100 employees (Dummert 2013).

Large parts of the retail sector are fairly price sensitive, so that economic development is shaped by strong price competition. Against the background of an ongoing extension of shop opening hours, as well as continuously growing sales floor size, fierce competition has become more and more the dominant economic pattern in the sector (Glaubitz 2017). In recent years, the competitive pressure has been further intensified by the rapid growth of e-commerce (Handelsverband 2016b: 12). The fierce price competition has also become a major influence on employment conditions and labour relations in the sector, as labour costs are the second most important cost factor, after goods.

Turning to employment structure, the retail trade is first of all a female-dominated sector; around 70 per cent of all retail trade workers are women (Figure 18). Furthermore, there is a very high proportion of part-time (35 per cent) and marginal part-time workers (27 per cent). In Germany, the latter are also called ‘mini-jobbers’, with a special employment status according to which they are allowed to earn up to 450 euros a month at reduced tax and social security conditions. Finally, only a minority of 38 per cent of all retail workers are still hired on a full-time basis (Figure 19).

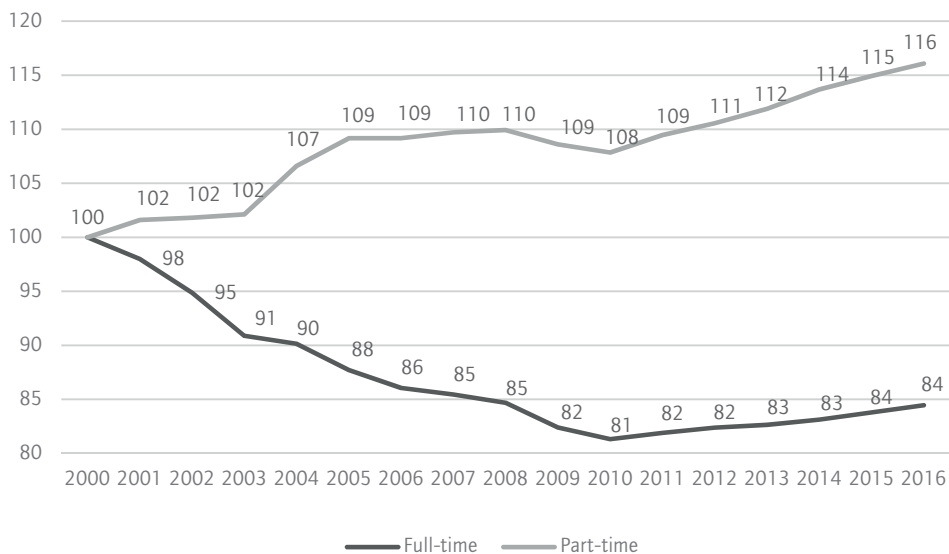
During the 2000s retail employment saw a significant shift from full-time to part-time work (Figure 20). Between 2000 and 2010 the number of full-time workers decreased by almost 20 per cent, while the number of part-time employees increased by around 8 per cent. Since 2010 the number of both full- and part-time workers has showed a steady increase, part-time work growing much faster than full-time. All in all, the retail trade has one of the highest proportions of (mainly female) part-time work in Germany.

Figure 19 Structure of employment in the German retail trade, September 2016 (% of all retail trade workers)



Source: Bundesagentur für Arbeit (2017), Authors' calculations..

Figure 20 Structure of employment in the German retail trade, September 2016 (% of all retail trade workers)



Source: German Statistical Office, GENESIS-Online Database ([www-genesis.destatis.de](http://www-genesis.destatis.de)). Authors' calculations.

The retail sector has a relatively high incidence of different types of precarious employment (Bundesregierung 2016, 2017; Glaubitz 2017). First of all, there is an extraordinarily high proportion of marginal part-time employment, which in many cases has replaced regular full-time or part-time jobs (Hohendanner and Stegmaier 2012). There are two main reasons for the widespread use of mini-jobbers: (i) it allows companies to save labour costs, as they only have to pay reduced social security contributions; moreover, marginal part-time workers are often ready to accept lower wages, as they do not have to pay tax for such employment. (ii) marginal part-time work gives employers much working time flexibility, which has become particularly important due to the extension of shop-opening hours. As a result, many mini-jobbers work in the evening or during the weekend or are even hired on an 'on-demand' basis (Fischer *et al.* 2015: 218).

A second type of precarious employment, which is being used more and more in the retail trade sector, is fixed-term employment. In recent years, the latter has become particularly widespread among newly hired employees (Table 4). In 2015, almost half of all newly hired workers in retail received only a fixed-term contract. This holds true for both female and male workers, which show no differences in this respect. In the same year, only 45 per cent of workers with a fixed-term contract were transferred to a permanent employment relationship (Bundesregierung 2017: 5).

Table 4 Proportion of newly hired workers in the German retail trade with a fixed-term contract (%)

Year	All	Women	Men
2010	38	39	37
2011	40	42	34
2012	41	44	36
2013	45	45	46
2014	49	51	46
2015	49	50	48

Source: IAB Establishment Panel, quoted from Bundesregierung (2017: 4).

#### 4.2 Trade unions and employers' associations in the German retail trade

The two main collective actors in the retail trade are the German Retail Federation (*Handelsverband Deutschland*, HDE) and the United Services Union (*Vereinte Dienstleistungsgewerkschaft*, ver.di). The HDE is the peak business organisation in the German retail trade sector, with various regional and professional trade associations, and represents about 100,000 enterprises.<sup>4</sup> The latter correspond to around 30 per cent of all retail enterprises. However, as most of the larger retail corporations are members of the HDE, the organisation represents a much higher share of the sector. The HDE is both a business organisation, which does political lobbying for the economic interests of the sector, and an employers' association which is involved in collective bargaining.

By far the most important trade union in the retail trade sector is Ver.di, which is the second largest trade union in Germany and affiliated with the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund*, DGB).<sup>5</sup> Ver.di represents, apart from the public sector, about 200 industries in private services and has about 2 million members (Dribbusch *et al.* 2017: 202). The union has a separate division for the whole commerce sector and a sub-division for the retail trade. In 2013 ver.di had about 264,000 members in the retail trade which corresponds to a union density of less than 10 per cent (Franke 2013). While union density is often somewhat higher in larger retail corporations, the union is almost absent from many of the small and medium-sized companies. The same holds true for the existence of a works council, which is often an important body for recruiting new union members. In the commerce sector overall only 9 per cent of establishments and 28 per cent of employees are covered by a works council (Ellguth and Kohaut 2017: 283). The relatively weak position of ver.di in the retail trade is partly also a result of the growing number of precarious retail workers, who are much more difficult to organise.

4. Figures from the HDE Homepage: <https://www.einzelhandel.de/>

5. There is a second small trade union, the DHV- Die Berufsgewerkschaft e.V., which has some influence in a few retail companies, but is only of minor importance in the sector as a whole. The DHV is affiliated to the Confederation of Christian Trade Unions (Christlicher Gewerkschaftsbund, CGB).

### 4.3 Collective bargaining in the German retail trade – structure and trends

At first glance the industrial relations regime in the retail trade seems to follow the traditional German model, with multi-employer collective bargaining at sectoral level. In comparison with manufacturing, however, industrial relations in the retail trade have become much more diversified and fragmented due to the specific economic structure and the dominant pattern of economic development and employment in the sector (Kalkowski 2008; Beile and Priessner 2011; Glaubitz 2017).

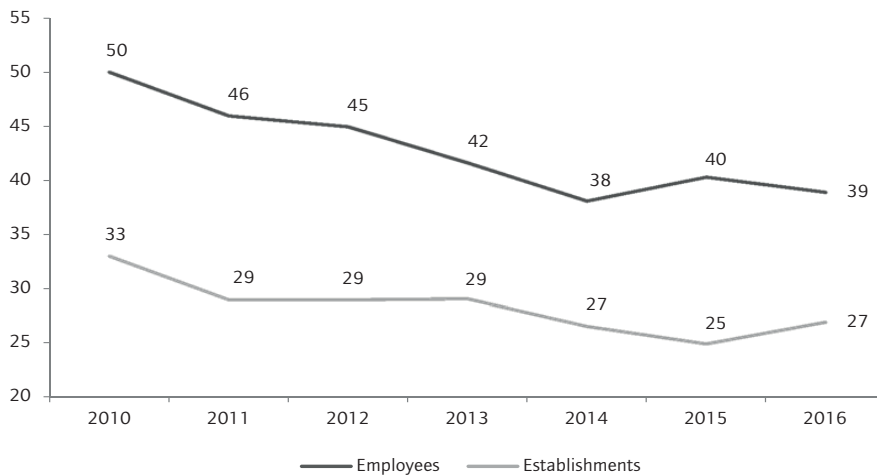
Collective bargaining in the German retail trade takes place at sectoral level; sectoral agreements are concluded for different regions. Currently, there are 14 regional bargaining units, which largely corresponds to the 16 German federal states (*Bundesländer*). The only exceptions are the federal states of Saxony, Saxony-Anhalt and Thuringia, which form a joint regional bargaining unit. Negotiations are held between the regional divisions of ver.di and the HDE, which are autonomous in concluding collective agreements at regional level. In practice, however, both organisations aim to coordinate their demands and negotiations at national level. If one region concludes a pilot agreement, the other regions usually follow with the same or similar agreements.

Traditionally, collective agreements in the retail trade were always declared universally binding so that they cover not only the bargaining parties but all enterprises in the sector. The practice of extension, which for a long time was supported by both the trade unions and the employers' associations, started in the mid-1950s and was carried on until the early 2000s. There was a joint belief among the bargaining parties that extension was necessary in order to create fair competition in the retail trade and to prevent downward pressure on wages and working conditions.

During the 1990s there was growing dissatisfaction with the collective bargaining system among some retail companies, which left the main employers' association or became members of competing organisations. In order to keep their members, in 1999 the main employers' associations started to introduce a new membership status, according to which member companies were no longer automatically bound by the sectoral collective agreements signed by the association (Behrens 2011: 174ff.). With the so-called 'OT' membership status (OT = *ohne Tarifbindung*, which means 'not bound by a collective agreement') the HDE established an organisational logic which was in fundamental contradiction to the principle of sector-wide extension of collective agreements. Thus, from the year 2000 onwards, the employers' associations refused to accept the practice of extension so that retail agreements were no longer generally binding.

As a result of the rejection of extensions, since the year 2000 collective bargaining coverage in the retail trade has declined dramatically (Felbermayr and Lehwald 2015). In 2010, only half of the employees and one-third of the establishments were still covered by a collective agreement. Between 2010 and 2016 collective bargaining coverage declined even further, down to only 39 per cent of workers and 27 per cent of enterprises (Figure 21). While before 2000 the extensions had ensured that the entire sector was covered by collective agreements, now only a minority are still involved in collective bargaining.

Figure 21 Collective bargaining coverage in the German retail trade, 2010–2016  
(% of establishments and employees)



Source: IAB Establishment Panel.

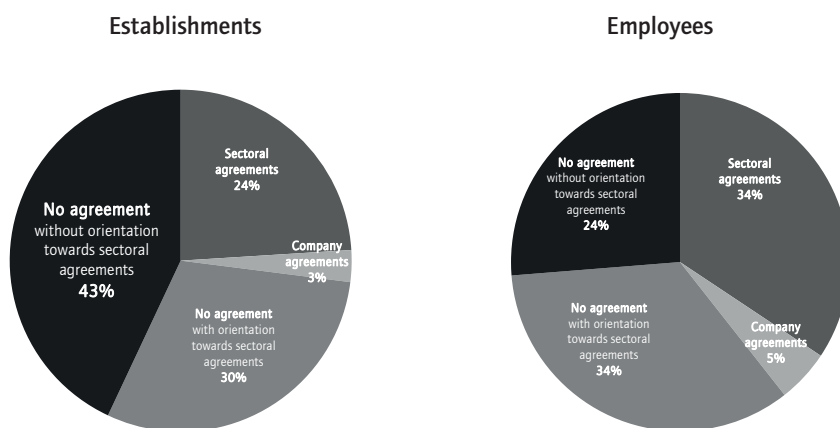
In 2016, the sectoral collective agreement in the retail trade covered only 34 per cent of the employees and 24 per cent of the establishments. In addition, 5 per cent of the employees and 3 per cent of the establishments had a company agreement, while a large majority – 58 per cent of the employees and 73 per cent of the establishments – were not covered by any collective agreement (Figure 22).<sup>6</sup>

Among the latter a significant number of companies declare that they take the existing sectoral agreements as ‘orientation’. In practice, however, this does not mean that they provide the same conditions as laid down in the collective agreements. According to studies by Addison *et al.* (2016) and Berwing (2016) companies that argue that collective agreements are taken as orientation, nevertheless often have much lower wages and working conditions than companies directly covered by the agreements.

In Germany, there is usually a strong correlation between size of company and bargaining coverage. Smaller companies are less likely to be covered by collective agreements, while it is rather rare that larger corporations are not covered (Ellgut and Kohaut 2017). In the retail trade the picture is somewhat more differentiated. On one hand, it confirms the general trend as the majority of small and medium-sized companies have no collective agreement. In addition, however, a significant number of large retail corporations have decided to withdraw from collective bargaining (Glaubitz 2017). Among them are some big players in e-commerce, such as Amazon or Zalando, in which ver.di has not been able to reach an agreement so far (Boewe and Schulten 2017). Other large companies,

6. According to data from the German Structure of Earnings Survey overall bargaining coverage in the retail trade is only 28 per cent (Statistisches Bundesamt (2016a). For a discussion of the different data sources see footnote 1.

Figure 22 Collective bargaining coverage in the German retail trade, 2016  
(% of establishments and employees)



Source: IAB Establishment Panel.

such as the warehouse chain Karstadt or the fashion store Esprit, also withdrew from collective agreements, but came back into the fold after a long struggle with the union. In contrast to that, C&A – the largest fashion chain in Germany – continues to reject demands for a collective agreement.

Finally, even significant parts of food stores and supermarkets have no collective bargaining. Although the two largest food chains EDEKA and REWE are formally covered by the retail trade agreements, most supermarkets that run under their brand names belong to formally independent merchants many of whom refuse to accept collective agreements (Verheyen and Schillig 2017).

#### 4.4 Decentralisation of collective bargaining in the German retail trade<sup>7</sup>

As in other sectors, the debates and conflicts about stronger decentralisation and differentiation of collective bargaining started in the retail trade in the 1990s. Within Ver.di, as well as in its predecessor in the retail trade, the Union for Commerce, Banking and Insurance (*Gewerkschaft Handel Banken Versicherungen*, HBV),<sup>8</sup> the issue of decentralisation has always been very much contested. In general, the union has been more reluctant to accept employers' demands for opening clauses or other forms of decentralisation in order to derogate from standards laid down in the sectoral collective agreements at company level. The rationale for the union's scepticism is grounded

7. This section is based on an evaluation of original collective agreements in the retail trade provided by the WSI Collective Agreements Archive.

8. Ver.di was created in 2001 as a result of a merger of five trade unions, one of which was the HBV.



chiefly in two considerations. First, the union emphasised that working conditions and, especially, pay were at a much lower level than in, for example, manufacturing, so that further cuts would not be acceptable. Secondly, it was afraid that decentralisation would further weaken the position of the workers considering the relatively low union density and low level of works council representation in the retail trade.

Despite the union's scepticism, some first attempts towards 'organised decentralisation' of collective bargaining in retail go back to the 1990s (Bispinck and WSI-Tarifarchiv 1999). Most were limited to east Germany, where after unification the economy got into great difficulties, with unemployment rates often twice as high as in west Germany.

From the second half of the 1990s onwards one major instrument for differentiation was the introduction of a special clause for small and medium-sized companies (the so-called *Mittelstandsklausel*) which still exists in all eastern German retail agreements. According to this clause, retail companies up to a certain size are allowed to provide a basic payment which is below the standard level agreed in the sectoral agreements. The retail pay agreement from 2015 for the Federal State of Brandenburg, for example, allows firms to reduce basic payments by 4 per cent in companies of up to 25 employees, by 6 per cent in companies of up to 15 employees and by 8 per cent in companies of up to 5 employees. All other eastern German agreements contain the same or similar provisions, but not those in western Germany, where they were never introduced.

Almost all regional retail agreements in both eastern and western Germany have some opening clauses on working time. While the regular collectively agreed working time varies between 37 and 39 hours per week (Bundesregierung 2017: 7), most regional agreements allow the extension of regular weekly working time up to 40 hours (or even 42 hours for special professions) at company level. The company has to compensate for basic pay, but does not have to pay overtime. Usually, the working time extension needs to be concluded in a works agreement between the works council and the management. Some regional agreements also allow for working time extension on an individual basis when there is no works council in the company.

After the conclusion of the famous Pforzheim Agreement in 2004, which includes a broad framework for company-level derogations in the German metal industry, there was general pressure on the unions in other sectors to accept similar agreements. In 2006 most regional bargaining units in the retail trade concluded so-called 'collective agreements to safeguard employment' (*Tarifverträge zur Beschäftigungssicherung*), which under certain circumstances allow temporary derogations from the sectoral collective agreements at company level. In order to avoid a difficult economic situation which might lead to job losses these agreements allow the works council and the management at company level to make a joint demand for such derogations. In this case, the parties at sectoral level – the union and the employers' associations – are obliged to negotiate about possible derogations, while the companies need to open their books in order to prove the state of their economic circumstances. If an agreement could be reached the unions and the company finally sign an additional company-level collective agreement which determines temporary derogations.

Similar to the Pforzheim Agreement the Agreements to safeguard employment in the retail trade only regulate the procedure for derogations, but say nothing about its concrete content where the bargaining parties are almost free to negotiate all kind of issues regarding pay, working time and annual bonuses. In practice, however, they usually follow the pattern of traditional concession bargaining, in which the union agrees on a reduction of labour costs in exchange for a certain job security. Before the union is allowed to sign such an agreement, however, it also has to follow its internal coordination procedures. Within Ver.di there is an internal rule that all collective agreements on derogations need to be approved by the unions' national collective bargaining department (Wiedemuth 2006).

In practice, the use of opening clauses and other forms of organised decentralisation is much less common in the retail trade than in other sectors (Amlinger and Bispinck 2016: 217). In contrast, the dominant form of decentralisation in the sector is still a more 'disorganised' decentralisation, where companies simply withdraw from the collective agreement. Attempts to achieve more organised forms of decentralisation were not able to stop the general trend toward a decline in collective bargaining. For a majority of the enterprises in the retail sector, however, it currently seems to be more attractive to abstain from collective bargaining, while the union often lacks the power to force these companies to the bargaining table.

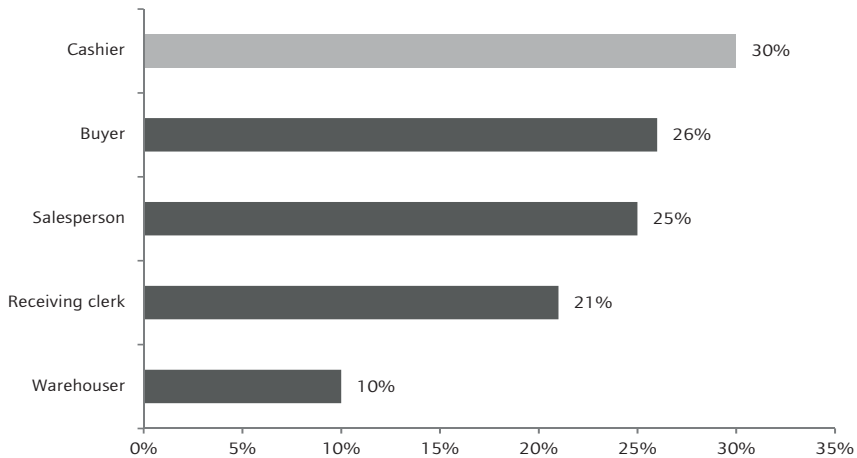
Only in a few cases – in some larger retail companies – could the unions conclude 'phase-in agreements' (*Heranführungs- oder Anerkennungstarifverträge*) where the company agreed to improve its conditions towards the sector-wide standards within a transition period and after that be fully covered by the sectoral agreement. Current examples are the fashion stores Esprit and Primark and the supermarket chain Real.

In the case of the large warehouse form Karstadt, which withdrew from collective bargaining in 2013 after getting into serious economic difficulties, a new company agreement was signed in 2017, according to which the company will again be covered by the sectoral collective agreements in the retail trade. However, for the next four years wage increases will not follow the sectoral agreements but will be related to company performance. In exchange, the company has guaranteed all current jobs and warehouses during the same period (Ver.di 2017).

#### 4.5 Impact of the erosion of collective bargaining in the German retail trade

The erosion of collective bargaining in the German retail trade has had an enormous impact on the working conditions and especially the wages of the affected workers. According to a study by Felbermayr and Lehwald (2015) workers covered by collective agreements earn, on average, between 20 and 30 per cent more than workers who are not covered. The average wage gap is particularly high among cashiers (30 per cent), followed by buyers (26 per cent), salespersons (25 per cent) and receiving clerks (21 per cent) (Figure 23). It is also much higher in small and medium-sized companies than in larger corporations (ibid: 39). Apart from pay, there are often significant differences

Figure 23 Collective bargaining coverage in the German retail trade, 2016 (% of establishments and employees)



Source: Felbermayr and Lehwald (2015: 39).

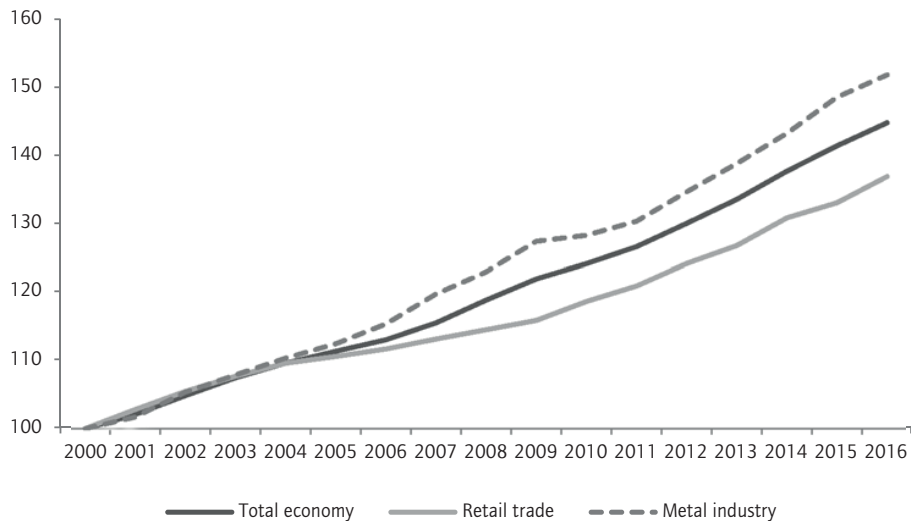
regarding other working conditions, such as working time and annual bonuses, which further deepens the collective bargaining gap.

The decline of collective bargaining in the retail trade has also contributed to the fact that wages in the retail trade have lagged significantly behind overall wage developments. Between 2001 and 2016 collectively agreed wages in the retail trade grew by about 37 per cent in comparison with 44.8 per cent in the economy as a whole and 51.9 per cent in the metal industry (Figure 24).

All in all, wage levels in the retail trade are significantly below wage levels in manufacturing, but also below the average wage level in the economy as a whole (Figure 25). The wage gap is particularly pronounced in companies covered by collective agreements, which underlines the weakness of collective bargaining in the retail sector. Concerning gross monthly median wages in companies with collective agreements, wage levels in the commerce sector as a whole (that is, retail trade plus wholesale trade and garages) are on average 23 per cent below the level in manufacturing and 11 per cent below the level in the economy as a whole. In companies without collective agreements the respective wage gaps are 12 and 5 per cent.

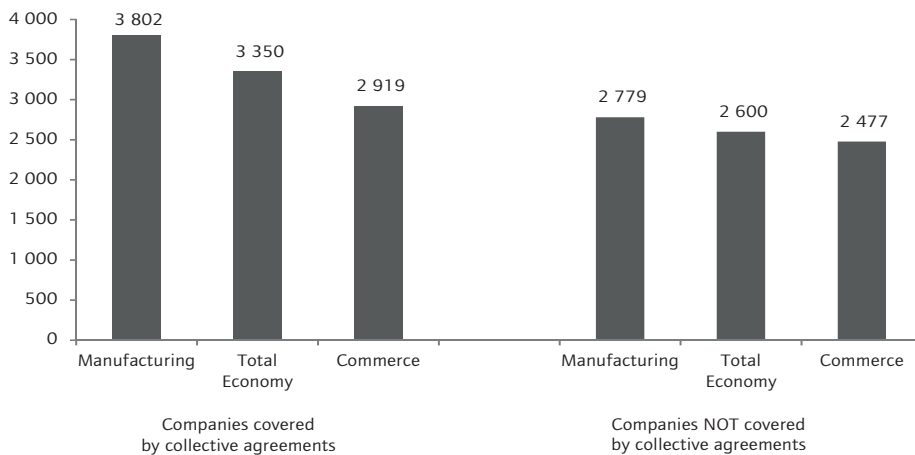
The retail sector also has a relatively large proportion of low-wage earners (Bundesregierung 2016: 16; 2017: 98f.). In 2014, about 22 per cent of all retail workers earned less than 8.50 euros per hour, so that they benefited considerably from the introduction of a national statutory minimum wage in January 2015 (Mindestlohnkommission 2016: 43).

Figure 24 Collectively agreed wages in the German retail trade, metal industry and total economy, 2001–2016 (2000 = 100)



Source: WSI Collective Agreement Archive.

Figure 25 Gross monthly median wages in German commerce,\* manufacturing and total economy, 2014 (full-time workers, euros)



Note: \* Commerce = Retail trade, wholesale trade and garages.

Source: Statistisches Bundesamt (2016b), German Structure of Earnings Survey 2014.

#### 4.6 Outlook: Collective bargaining in the retail trade at a crossroads: further erosion or stabilisation?

Developments in the retail trade constitute an extreme example of the general decline in German collective bargaining. After the retail employers' associations started to reject the long-standing practice of extension of collective agreements in 2000, collective bargaining coverage dropped sharply, so that currently only a minority – about 40 per cent – of retail trade workers are still covered. The erosion of collective bargaining has largely contributed to a significant change in economic development in the sector, which is now dominated by fierce competition. As collective bargaining is no longer able to take wages and working conditions out of competition by setting sector-wide minimum standards, there is strong pressure on labour costs, which has led to a deterioration of working conditions and an increase in precarious employment. All this gives companies a strong incentive to withdraw from collective agreements.

Therefore, collective bargaining in the retail trade is now at a crossroads. If the erosion continues, bargaining coverage may fall below the critical mass needed for sector-wide agreements. The result, sooner or later, would be a complete breakdown of sectoral bargaining, so that collective bargaining would remain only at company level in (mainly) larger retail corporations.

The alternative would be a re-stabilisation of collective bargaining in the sector. One approach to this end might be to strengthen the more organised forms of decentralisation in order to give companies more flexibility within collective agreements. Since the mid-2000s the retail sector has also had its 'Pforzheim agreements', with far-reaching possibilities for derogations at company level. The establishment of more organised decentralisation, however, was not able to stop the general decline in collective bargaining.

Another approach would be the reintroduction of collective agreement extension in the retail sector so that agreed minimum standards could become generally binding. The trade union ver.di is currently campaigning for this, which is now seen as the key to restabilising the collective bargaining system in the retail trade (Nutzenberger 2017).<sup>9</sup> The employers' association HDE, however, has so far rejected the demand for a reintroduction of extension and has claimed that it has 'no acceptance' among its members. The HDE criticised, in particular, what it characterises as the 'old-fashioned' wage systems in the sectoral agreements, which the employers' association regards as a major obstacle to increasing bargaining coverage in the sector (HDE 2017).<sup>10</sup>

Moreover, the HDE is opposed to the extension of collective agreements in principle as this would call into question its OT status. However, some HDE member companies take a different view. The head of the Schwarz Corporation, for example, which represents,

9. For more information on the ver.di campaign for the extension of collective agreements in the retail trade: <https://handel.verdi.de/themen/tarifpolitik/ave-kampagne>

10. Negotiations on a 'modernisation' of the wage systems in retail trade have taken place since the 2000s (Kalkowski 2008).

among others, the second largest German discount chain, Lidl, has openly called for the retail sectoral agreements to be declared generally binding, so that all companies are competing on a level playing field (Stockburger 2017).

The coming years will show whether the erosion of collective bargaining in the retail trade will continue or whether the bargaining parties will be able to restabilise the system. With regard to the latter, it is becoming obvious that a strategy directed towards organised decentralisation is not sufficient as it is much easier for companies to withdraw from collective bargaining than to follow a regulated derogation process. For the moment, the reintroduction of extension might be the only instrument able to stop further erosion and to stabilise the bargaining system. The latter, however, needs much broader acceptance among retail employers, which it will probably obtain only with 'modernisation' of collectively agreed wage structures.

## 5. Conclusion

The trend towards decentralisation has fundamentally changed the German system of collective bargaining. It comprises various developments in different sectors and companies, making the overall picture fairly diverse. On one hand, there are sectors in which the bargaining parties have established new forms of organised decentralisation. Here, sectoral bargaining is still dominant and the derogations are under the control of bargaining parties at sectoral level. The metal industry and even more the chemical industry are the most prominent examples of this. The chemical industry may come closest to the ideal type of organised decentralisation: the use of opening clauses is fairly limited and has clearly helped to stabilise collective bargaining in the sector.

Experiences in the metal industry, however, are much more ambiguous. On one hand, the collective bargaining parties were to a certain extent able to regain control over the decentralisation process, as the Pforzheim Agreement established new binding coordination procedures. On the other hand the decline of bargaining coverage in metalworking continued, while derogations at company level became so widespread that sectoral agreements often determine only a framework but not actual pay and conditions.

Finally, the retail trade sector is an example of the dominance of unorganised decentralisation. After the employers had withdrawn from the regulated system of extended collective agreements, bargaining coverage declined dramatically. Today, only a minority of retail workers are still covered by a collective agreement. Although the sector has created all the instruments needed for a more organised form of decentralisation, they are rarely used in practice.

The different paths towards decentralisation in Germany reflect the different economic conditions, the different structures of companies and employment and – not at least – the different power relations in the various sectors. The majority of German workers are experiencing decentralisation as a further weakening of their position. As Nienhüser and Hofffeld (2008, 2010) have shown, there are wide differences in how the trend towards

Table 5 Decentralisation of collective bargaining as seen by managers and works councillors (%)

Deviations from sectoral agreements	Managers	Works councillors
... strengthen the influence and power of the management	95	91
... strengthen the influence and power of the works council	89	43
... take into account better the situation of the establishment	93	51
... can help to secure jobs	82	32
... lead to lower wages	33	79
... take up unnecessary time and resources	33	67
... lead to more conflicts	40	78
... overburden the management	14	39
... overburden the works council	42	64
... strengthen the power of the unions at the establishment	21	13
... weaken the power of the unions at the establishment	69	83

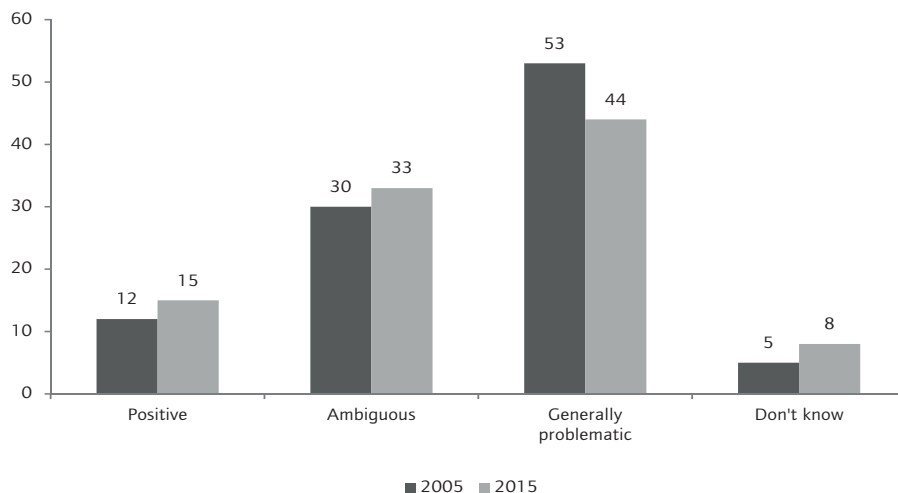
Source: Nienhüser and Hoßfeld (2010).

collective bargaining decentralisation is perceived by the actors at company level (Table 5). The large majority of managers take a fairly positive view, as, from their standpoint, decentralisation strengthens the position of both management and works councils, takes better account of the business situation and weakens the power of the union at workplace level. In contrast, the majority of works councillors are much more sceptical. For them, the main winners of bargaining decentralisation are management; only a minority of works councillors believe that this process strengthens their own position. Only 32 per cent of employee representatives consider that decentralisation could help to secure jobs, as against 82 per cent of managers. A large majority of 78 per cent of works councillors, but also 40 per cent of managers, believe that the decentralisation of collective bargaining leads to more conflicts at company level.

The sceptical or even negative view of the employees has also been confirmed by data from the WSI Works Council Survey (Figure 26). Since the late 1990s a stable majority of works council members have seen bargaining decentralisation as ‘ambiguous’ or ‘generally problematic’, while only 12–15 per cent welcome this trend. Again, decentralisation is seen by a large majority of employee representatives as a process that mainly strengthens the employers’ bargaining. According to the survey, conducted in 2015, 33 per cent of works councillors see decentralisation as ‘ambiguous’, while 44 per cent view it as generally problematic. Quite often works councillors have felt ‘blackmailed’ by their companies to accept concessions, and, as they could no longer refer to binding standards at sectoral level, have lost an important instrument of resistance.

Three decades of experience with collectively agreed opening clauses have changed the basic structure of collective bargaining in Germany. The widespread introduction of these clauses triggered a process of decentralisation that has shifted an increasingly

Figure 26 View of the works councillors on the decentralisation of collective bargaining  
Decentralisation of collective bargaining is regarded as ...



Source: WSI Works Council Survey 2015 (Amlinger and Bispinck 2016).

large part of bargaining responsibilities to company level. This has led to a significant loss of regulatory power on the part of both employers' associations and trade unions. Collectively agreed standards, once seen as formally inviolable norms, have now become objects of renegotiation at company level, with varying degrees of involvement on the part of the signatories of sectoral agreements. As a consequence, unions must now engage much more directly with the needs and requirements of companies, and works councils have less scope to take refuge in the mandatory character of sectoral regulations when confronted by management calls for local concessions. This requires more coordinating efforts from the unions in order to avoid the erosion of standards in individual sectors. The functional differentiation between unions and works councils, which has been fundamental to the German dual system of interest representation, has become increasingly blurred.

Despite the hazards and side-effects of decentralisation, trade unions have sought to use the process as a starting point to build organisational power at workplace level through greater involvement of rank-and-file members in the process of renegotiation. Research shows that there are positive results in some cases, but little evidence that this strategy has been realised across-the-board (Haipeter 2009; Haipeter and Lehndorff 2014; Bahn Müller 2017).

Moreover, only about 9 per cent of all establishments, with around 41 per cent of all employees, currently have a works council (Ellguth and Kohaut 2017: 283). There is an important 'representation gap', in particular in small and medium-sized firms, depriving unions of a vital prerequisite for a proactive workplace strategy. Without adequate employee representation at the workplace and company level, however,



there is a clear danger that the decentralisation of collective bargaining will de facto strengthen unilateral decision-making by management.

Finally, the decentralisation process has increasingly undermined the effectiveness of sectoral collective agreements and their basic function: namely, to take wages and other working conditions out of competition. At the same time, it is questionable whether decentralisation has stabilised the German bargaining system. While this might be the case in some sectors, overall there is a parallel trend of decentralisation and further decline of bargaining coverage. Therefore, the current debate in Germany on strengthening collective bargaining is not about decentralisation but about strengthening union power, on one hand, and increasing the political support for the bargaining system (for example, through more extensions), on the other.

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# Chapter 5

## The decentralisation of collective bargaining in France: an escalating process

Udo Rehfeldt and Catherine Vincent

### 1. Introduction

In France, social dialogue has hardly existed without either government intervention or an acute social crisis. Political interference both reflects and maintains the loose links between social partners. As a result, the key role of state intervention and a long-standing mutual distrust between employers and trade unions mainly explain the relative weakness of the French collective bargaining system.

However, in the years of rapid economic growth, a powerful system of sectoral bargaining, by general use of extension procedures, spread the agreed benefits from one sector of activity to another and from company to company. Since the mid-1980s, annual bargaining on wages and working time has been compulsory in any company hosting one or more trade unions. In the meantime, employers have chosen to privilege company-level bargaining to weaken the constraints imposed by legislation or even by sectoral bargaining. This early process of decentralisation accelerated after the 2004 law implemented a limited reversal of the hierarchy of norms. This overhaul of collective bargaining, introducing more autonomy at company level, was also desired by some union confederations.

Within the economic crisis, reforms were passed to reduce labour regulation and increase labour market flexibility. In order to implement their employment policies and to ensure flexibility, governments have favoured both national multi-sector and company-level bargaining. If the sectoral level remains a place for determining employment and working conditions, the regulatory capacity of sectoral agreements has declined. The last reforms of 2016 and 2017 were intended to hasten this movement and to generalise derogation from sectoral agreements.

### 2. The overall development of decentralised bargaining

#### 2.1 Main developments up to the crisis: early decentralisation but the traditional pillar – sectoral bargaining – is still alive

Compared with a number of other European countries, collective bargaining was established rather late in the day in France (in 1950). In the following decades, the

extension mechanism<sup>1</sup> imposed the sectoral level as the pillar of the French bargaining system and enabled all employees in a sector to enjoy the advantages, mainly on wages, that had been negotiated by unions and employers' organisations. Although collective bargaining in France can legally take place at three levels<sup>2</sup> – the multi-industry level, sectoral level and company level, in descending order of priority – from the 1950s to the 1980s, industry-wide bargaining was the most common level at which collective agreements were negotiated; company-level bargaining took place only in large companies.

In the 1950s and 1960s, the extension mechanism, along with the technical support provided by the Ministry of Labour through joint consultative committees, ensured the rapid diffusion of locally bargained benefits to the entire workforce within industries. The social advantages attained at multi-industry level took precedence over any inferior content of the latter two. In other words, the most favourable clause must prevail over any other one that is less favourable from the employees' perspective (derogation *in mejus* or 'favourability' principle).

However, the role of the state remains one of the most peculiar features of the French collective bargaining system both because of the collective bargaining rules of procedure it raises and its economic policy or administrative action. A first characteristic to be noted is the broader and much more detailed scope of the Labour Code in France than in any other European country, mainly regarding working time and health and safety. A second is the coordination between bargaining level and state intervention. Wage-setting mechanisms are an illustrative example.

The legal minimum wage or 'SMIC' (*salair minimum interprofessionnel de croissance*) represented the gravitational pull for wage bargaining at sectoral level and set the pace for annual wage increases. In some ways, it has the same effect as centralised national wage agreements in other countries. At industry level, trade unions and employers' organisations have always negotiated the conventional minimum wages – which correspond to the wage floor for a given set of qualifications – not actual wages, as is the case in, for example, Germany. Therefore, sectoral level actors are not the only stakeholders regarding wage policies because room for manoeuvre is left for bargaining at company level. Agreed wages for blue- and white-collar workers – that is, those negotiated at industry level – are concentrated around the minimum wage. Increases granted to the lowest qualification levels often achieve compliance with the minimum wage only with difficulty.<sup>3</sup> Companies juggle with bonuses and other parameters to adjust their wages to the legal constraint. This underlines the weight of

1. This procedure was implemented in 1936. The contents of sectoral agreements extended by the Ministry of Labour are binding on all the employers in a similar activity, with or without registered membership in a professional association. This extension procedure helps to offset the weakness of employee representation, as well as the employers' lack of incentives to bargain.
2. The Collective Labour Agreement Act of 1971 legalised the triple level where collective bargaining took place.
3. In 2012, the percentage increases granted at sectoral level remained similar to increases in the minimum wage. Despite the obligation provided by the 22 March 2012 law to open up sectoral-level wage negotiations within three months if the grid of 'conventional minimum wages' has at least one lower coefficient than the SMIC, in June 2012, 15 per cent of the 300 bargaining sectors covering more than 5,000 wage-earners still had a grid with at least one lower coefficient (Ministère du Travail 2013).



the state mechanism of wage settlements to define hierarchies and wage developments. Such a mechanism of wage settlement reflected at first a ‘virtuous circle’, which explains the similar patterns of real wages and productivity evolution over time (Husson *et al.* 2015). The sectoral collective agreement remains important for the determination of wage hierarchies, as it serves as a reference for extending increases throughout the wage scale. This regulatory capacity of sectoral agreements differs according to sector, however (Jobert 2003). In some industries, its regulatory function is still central, as it creates real wage convergence in all companies (for example, in the construction and petrochemical sectors, but also in industries composed of very small businesses, such as auto repair shops). In most other areas, particularly in the major one – the metal sector – trade union strength in large companies has enabled extension to the smaller ones. The driving force of sectoral collective bargaining has been eroded over the course of successive reforms in recent decades.

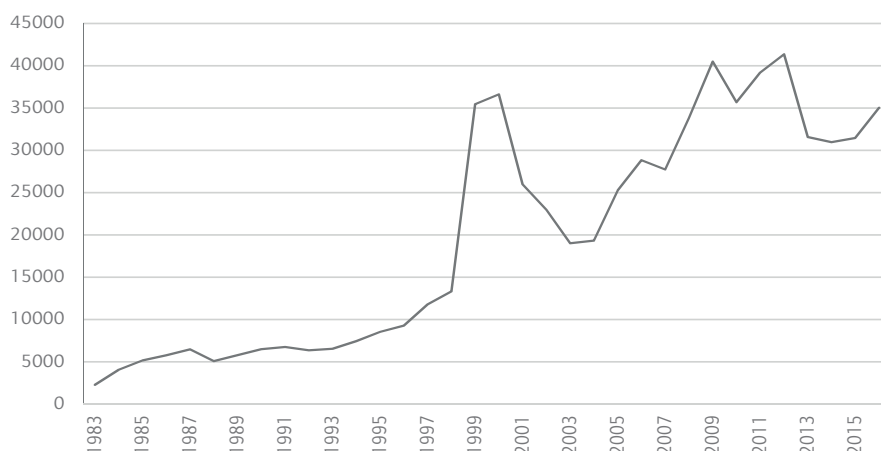
### **1980–2000: early decentralisation of collective bargaining, coordinated by law and the ‘favourability’ principle**

The French bargaining coverage rate of 92 per cent in the private sector is today among the highest in the OECD countries; in the early 1980s, it never exceeded 80 per cent. Taking advantage of the 1981 Socialist political change, in line with a series of laws aimed at developing employees’ rights, strong impetus was given to fostering collective bargaining. Since the Auroux Law of 1982, annual bargaining on wages and working time has been compulsory at sector level and in any company hosting one or more unions. Even so, no settlement is required. The law also strengthened the rights of unions and employee representatives at workplaces. Company-level bargaining was regarded positively by trade unions – above all, the CFDT – as a way to invigorate workers’ participation and to enable union delegates to better defend and represent employees’ concerns.

During the following two decades, the role of sectoral bargaining changed as it faced competition from the company level as a venue for establishing norms: what Morin calls ‘a new space for norm production’ (Morin 1996). Derogations from statutory working time were introduced and other compulsory topics added at company level from the 2000s (for example, forward-looking management of jobs and skills in 2005, gender equality in 2006, financial participation and profit sharing in 2008 and employment of young/old workers in 2013). Nevertheless, coordination among the different levels was still ensured by the ‘favourability’ principle.

The significant increase in company-level bargaining was triggered by a change in the outlook of employers’ organisations in the late 1990s, when they discovered the charms of company bargaining, at which they can take advantage of the weakening of the trade unions (Figure 1). The sectoral-level bargaining remained determinant for labour regulation in SMEs, while large companies took the opportunity of greater company-level autonomy and relaxation of centralised labour market regulation on working time. Company-level bargaining became a way of life for employers all the more easily because the balance of power now favoured them at the company level. This priority given to the company slowly eroded solidarity among workers in the same industry.

Figure 1 Number of company-level agreements signed annually, 1983–2012, France



Source: Ministry of Labour.

At the end of the period, the Aubry laws on the 35-hour week (1998 and 2000) managed to foster company bargaining on working time reduction and enabled *quid pro quo* agreements whereby workers would accept greater flexibility in exchange for working time reduction and public financial support.

### 2000–2016: a less and less coordinated collective bargaining system

From 2000, in order to gain flexibility and to circumvent – and eventually get rid of – the domination of sectoral agreements, the main employers' organisation (MEDEF) advocated company agreements, with or without trade union mediation. In July 2001, four union confederations – CFDT, CFE-CGC, CFTC and FO – and the three employers' organisations agreed on a 'common position', setting out their wishes with regard to reforming the rules on collective bargaining. The central plank of this proposed reform was the introduction of a 'majority principle'. This text did not contain a clear reversal of the hierarchy of norms, which had been demanded by the employers' organisations. The overhaul of collective bargaining, also desired by some trade unions, finally occurred in May 2004, when a Right-led government transposed into law the 'common position' of 2001, but also introduced a reversal of the hierarchy of norms. This is the main reason why all trade unions opposed the new legislation. The May 2004 law and an August 2008 law brought the following changes:

- A majority criterion was introduced: an agreement shall take effect only if the signatory unions gained at least 30 per cent of the votes at the previous workplace elections and only if the agreement was not opposed by the majority unions at the level concerned.
- Plant-level agreements could derogate from higher-level bargaining agreements, even with regard to less favourable provisions for workers, except in four areas: agreed minimum wages, classifications, vocational training and supplementary

social protection. At the same time, three provisions made it possible to frame – or even limit – resort to such derogations. First, industry-level negotiators could ‘lock up’ other topics and exclude them from company-level derogations. Second, derogations could eventually be cancelled by an industry-level joint committee. Third, the law granted the majority unions the right to challenge the validity of opt-out company agreements.

- Bargaining possibilities were extended to companies without union representatives.

Since 1966, five trade union confederations – CGT, CFDT, FO, CFTC and CFE-CGC – have been deemed representative at the national level labelled by the government. Any union affiliated to one of these nationally representative confederations had the right to participate in collective bargaining at the sectoral and company levels. An agreement was considered valid as long as it was signed by just one of these representative unions. The 2008 law redefined the criteria for the representativeness of the different unions. Workplace elections now became the decisive criterion. In order to take part in collective bargaining, a union had to obtain a minimum of 10 per cent of the vote at the workplace level and 8 per cent at the sectoral and inter-sectoral levels. This law took effect in 2010 for workplace bargaining and in 2013 for the other levels.<sup>4</sup>

The March 2014 law, amended in 2016, for the first time introduced criteria for the representativeness of employers’ organisations. It does not base representativeness on an electoral criterion, but on membership. In order to be considered representative at the sectoral and inter-sectoral levels, these organisations must prove that they represent 8 per cent of the contributing companies or 8 per cent of the corresponding number of employees.<sup>5</sup> As on the union side, a representative employers’ organisation that represents more than 50 per cent of the employees can now challenge the validity of a collective agreement.

In practice, the legal options with regard to derogation offered by the 2004 law were not often used by the social partners because most sectoral agreements prohibited derogation and maintained the hierarchy between sectoral and company levels. Despite this restriction by sector-level actors, the new collective bargaining architecture provided room to manoeuvre for company-level bargaining. Returning to the example of agreed wages, the importance of the company in determining wages has increased since the mid-1990s and has weakened the leading role of sectoral agreements. The erosion of the driving force of sector-level negotiations with regard to real wages induced a tightening up of bargained wages, by compressing the wage hierarchy downwards (Delahaie *et al.* 2013). Henceforth, large companies sought to negotiate minimum wages at sectoral level to preserve some leeway on actual wages, either through company-level negotiations or individualised compensation (profit sharing, employee savings). By the early 2000s, performance-related pay had progressively replaced general wage increases and brought about a form of wage management whose purpose is to adjust labour costs

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4. The election results are aggregated every four years for the sectoral and inter-sectoral levels by the Ministry of Labour. The results were published for the first time in March 2013, and for the second time in March 2017. All five union confederations mentioned continue to be representative at the national inter-sectoral level.

5. The Ministry of Labour published the results on employers’ representativeness in April 2017.

Table 1 Legislative reforms and reform proposals, 2000–2017, France

	MEDEF demands 2000	'Common position' 2001 (without CGT)	Legislation 2004, 2008, 2013, 2015	El Khomri law 2016	Macron ordinances 2017
Derogation	From sectoral agreement and from law	No derogation from sectoral agreement unless signatories decide otherwise	2004: from sectoral agreement, unless forbidden by the agreement; forbidden also for agreed minimum wages, job classifications, supplementary social protection and multi-employer vocational training funds	Priority to company agreements except 'agreed collective order', supplementary or subsidiary role for law First step: only working time, paid holidays and weekly rest second step: other topics after expert commission 2017–2018	Priority to company agreements unless forbidden by sectoral agreements on 4 topics, forbidden on the same 5 topics + fixed-terms contracts
Majority principle based on elections	–	At sectoral level: right to oppose for unions with 'numerical majority' At company level: sectoral agreement must choose between 50% majority or right to oppose	2004-8: right to oppose for majority unions; supplementary condition: 30% majority 2013: 50% majority for derogation agreements in company with economic difficulties	Working time: 50% majority at company level Signatory unions with 30% can ask for ratification by referendum	50% majority for all agreements Signatory unions with 30% can ask for ratification by referendum Employers can take the initiative for ratification by referendum (if signatories unions allow it)
Bargaining if no union delegates	Mandated employees or elected representatives	Sectoral agreement chooses between mandated employees and elected representatives	2015: Elected representatives, otherwise mandated employees	–	<20 employees: ratification by referendum of the employer's proposal 20< employees> 50: Elected representatives, or mandated employees >50 employees: Elected representatives, otherwise mandated employees

Source: Authors' elaboration.

and offer incentives for higher performance (Barreau and Brochard 2003; Castel *et al.* 2014). These individualising devices may themselves be subject to negotiation in the company, but a significant difference may arise between agreements signed in leading companies and the content of the corresponding sectoral agreements. This erosion of sectoral bargaining as a result of the decentralisation of bargaining towards company level and in the current context of wage moderation is not specific to France, however (Delahaie *et al.* 2012).

## 2.2 A quantitative look at collective bargaining since the onset of the crisis

Regarding the development of collective bargaining in 2010–2015, it is difficult to distinguish the general effects of the economic difficulties – which jeopardised the signing of agreements as they undermined the opportunity for reciprocal concessions – and the specific consequences of labour market and collective bargaining reform. Nevertheless, analysis of the available statistical sources and quantitative reports highlights a remarkable stability of the number of collective agreements in recent years. Similarly, the actors involved in negotiating and signing agreements have not changed much, despite the legal possibilities for negotiations with non-union representatives at the workplace level.

### 2.2.1 Sectoral and company bargaining in the crisis

Bargaining activity at sectoral level has been broadly stable over the past decade. Since 2000, between 1,100 and 1,400 agreements have been signed each year at national, regional or territorial level. Between 2009 and 2012, the number of agreements annually signed reached a very high level, with more than 1,300 agreements concluded each year. In 2013, the number of agreements fell significantly to around 1,000, a figure repeated in 2014 and 2015. This slight decrease is explained mainly by the decline in agreements on wages and working time. In 2015, the number of wage agreements decreased by 9 per cent due to low inflation (0.1 per cent in 2014, 0 per cent in 2015) and a very moderate SMIC rise.

Table 2 Evolution of wage agreements at sectoral level, 2005–2015, France

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
% of wage agreements	44.8	46.5	47.6	47.1	34.5	36.5	40.5	45.6	41.6	38.2	34.6

Source: La négociation collective en 2015, Ministry of Labour.

In 2015, 671 sectors had valid collective agreements but only 300 of them covered more than 5,000 employees. At the national level, at least one agreement was signed in 70 per cent of these sectors.

Regarding the workplace level, as stated above, the number of agreements increased substantially between the 1980s and the 2010s, from 3,900 in 1984 to 34,000 in 2011. In France, unlike other countries, the crisis did not have a negative impact on

Table 3 Number of sectoral agreements binding more than 5000 employees in 2015, France

Total		Metal industry		Construction	
Number of agreements	Employees covered	Number of agreements	Employees covered	Number of agreements	Employees covered
299	14 073 000	68	1 629 700	57	1 196 500

Source: Ministry of Labour DGT (BDCC).

the dynamism of company negotiations. On the contrary, the number of agreements concluded each year continued to increase, despite a slight decline in 2014. This growth was due partly to the reactivation of crisis agreements, with or without conflict. Although France has not experienced massive use of temporary short-time working, as in Germany, 23,000 companies nonetheless used such devices in 2009. The major car producers, such as PSA and Renault, in particular negotiated so-called competitiveness-employment or short-time working agreements (see Part 3 on the metal sector).

In 2015, 36,600 workplace agreements were signed between employer and employee representatives,<sup>6</sup> in line with 2014. While the agreements on employment and complementary health dried up, the signing of agreements on workplace gender equality started to increase due to the renewal of numerous triennial agreements on this subject. In 2014, negotiations took place in only 15 per cent of workplaces with more than 10 employees; however, they were employing 61.5 per cent of the workforce. Negotiations started in 84 per cent of workplaces with trade union delegates. Agreements were signed in 11.7 per cent of all workplaces and in 68.6 per cent of those with union representation.

Table 4 Evolution of the number and the topics of workplaces agreements, 2012–2015, France

	2012	2013	2014	2015
Number of agreements	38 799	39 363	36 528	36 624
Number of agreements signed by union delegates (DS) or mandated employees	31 310	31 514	30 965	31 449
% of DS/mandated agreements on:				
Wages	36	33	33	38
Working time	23	21	21	24
Employment	9	17	13	11
Profit-sharing, participation	18	19	16	19

Source: La négociation collective en 2015, Ministry of Labour.

6. That includes agreements signed by union delegates, elected representatives and employees mandated by trade unions.

### 2.2.2 Who are the negotiators? Union unity at workplace level

Since early 2000s, successive legislation has extended the possibilities for non-union representatives to negotiate at workplace level if there is no union delegate. However, the vast majority of agreements were still signed by union delegates. In 2015, almost 85 per cent of all workplace agreements were signed by union delegates, 14 per cent by elected employee representatives and a few by mandated employees. The slight but constant decrease in the number of agreements signed by elected employee representatives (–7 per cent in 2015) is numerically compensated by the increase in those signed by union delegates (+1 per cent in 2015).

Agreements are generally signed by all the trade unions present at the workplace. To neutralise the effect of each union's presence on the number of agreements they sign, the Ministry of Labour calculates their 'propensity to sign'. This is the signature rate of an organisation calculated in the companies where it has a union delegate and where, therefore, it has or has not signed the existing agreements. The CFDT appears to be the organisation whose union delegates sign agreements most frequently, but the other organisations are very close behind (see Table 5). The CGT is characterised by a slightly lower propensity but it is not comparable to that at the sectoral level. Indeed, the propensity to sign at multi-sectors at sectoral levels of the three main confederations is very different. In 2015, the CFDT signed 86 per cent of them, FO 68 per cent and the CGT only 35 per cent.

## 2.3 Collective bargaining reforms under pressure from the crisis

Many developments in industrial relations since 2008 have been indirectly linked to the economic crisis. Reforms of bargaining systems have continued under pressure from the employers' organisations against a trade union movement which has been more and more weakened by economic stagnation and the employment situation. The Socialist government that came to power under the Hollande presidency in 2012 proclaimed its willingness to strengthen participation rights, but these were implemented in a very ambiguous way. The government ended by imposing a reform of collective bargaining procedures against the majority of the trade unions and of public opinion.

Table 5 Unions' 'propensity to sign' company agreements (%)

	2012	2013	2014	2015
CFDT	94	94	94	94
CFE-CGC	92	92	91	92
CFTC	90	89	89	89
CGT	85	85	84	84
FO	90	90	89	90
Other unions	16	15	16	18

Source: La négociation collective en 2015, Ministry of Labour.

### 2.3.1 A brief revival of tripartite concertation

The onset of the 2008 crisis had the effect of reactivating a policy of tripartite concertation abandoned since the failure of the tripartite summit in 1998 under the socialist Prime Minister Jospin. This policy first started with the right-wing governments under the Sarkozy presidency and was continued by the Socialist president elected in 2012, François Hollande, when he announced that he would lead a policy of systematic concertation with the social partners and organised annual tripartite summits called ‘Social Conferences’. But even with all this, the negotiations between the employers’ and trade union confederations were placed under threat of legislative action and framed by government ‘roadmaps’ whose features were often very close to the employers’ demands. Last but not least, these negotiations frequently revealed deep disagreements among the trade unions.

The first Social Conference was convened on 9–10 July 2012. The government presented a roadmap for a negotiation that was supposed to end before the close of 2012. Its main goal was to secure employment. This negotiation resulted in a ‘national inter-sectoral agreement’ (ANI) on competitiveness and job security, signed on 11 January 2013 by the employers’ organisations and three trade union confederations (CFDT, CFTC and CFE-CGC). The CGT and FO refused to sign the ANI but could not challenge its validity, as they represented only 49.6 per cent of employees in workplace elections. The content of the agreement was very complex and comprised a large number of subjects on which the negotiators had agreed reciprocal concessions. The main element was the possibility of bargaining workplace agreements in order to secure employment which may temporarily (for a maximum of two years) derogate from sectoral agreements on wages and working time. To be valid, these workplace agreements must be signed by trade unions representing more than 50 per cent of the employees in the workplace elections. As promised, the government transposed the ANI into a ‘Law on securing employment’, adopted by the Parliament in June 2013. Again, very few companies took advantage of this opportunity for derogation; only ten new-type agreements were signed by the end of 2016.

In 2014, Hollande wanted to renew the experience and asked the social partners to negotiate a ‘pact of responsibility and trust’ in support of his policy of labour cost reduction in order to enhance competitiveness and facilitate job creation. In March 2014, three trade unions – CFDT, CFTC and CFE-CGC – signed such an agreement with employers’ organisations. However, the CFE-CGC afterwards withdrew its signature because, like the CGT and FO, it considered that the agreement did not contain quantitative commitments by the employers on job creation. The agreement remained only a ‘joint opinion’ for which there is no majority criterion of validity and was obviously a political failure.

The failure of concertation recurred in 2015, when negotiations on the ‘modernisation of social dialogue’ were declared unsuccessful. These negotiations took place on the basis of a catalogue of employers’ demands to ‘simplify’ workplace employee representation, partly supported by the government. This time, even the CFDT, the CFTC and the CFE-CGC refused to sign the proposed agreement, because the employers’ organisation CPME refused to grant, in return, the possibility of appointing regional union representatives



authorised to negotiate collective agreements for small companies without union delegates. The government was thus obliged to draw up its own bill, which was adopted in July 2015 as the Law on social dialogue and employment. This legislation largely takes up the employers' demands. Among other things, it authorises companies to derogate, by a majority agreement, from the legal obligations of consultation and negotiation, modifying terms and periodicities. It also introduces regional joint inter-sector committees for very small companies, but with no ability to negotiate agreements.

### **2.3.2 An overhaul of collective bargaining without concertation**

We have seen that decentralisation of the collective bargaining system has been reinforced since 2004 by successive legislative reforms, with both right-wing and left-wing majorities. These reforms were preceded by concertation with the social partners that generally satisfied the demands of the employers' organisations, with the consent of part of the trade unions. The CGT was opposed to most of these reforms, except the one concerning representativeness. Since 2013, FO has joined the CGT in this opposition. We have also seen that, up to now, very few of the provisions authorising derogatory agreements has been put into practice; a very small number of companies have made use of them despite a difficult economic context and an employment crisis.

Unsatisfied with this state of affairs, Prime Minister Manuel Valls commissioned a commission of experts in April 2015, to make 'bold' proposals to 'go further' than the previous reforms. The commission was supposed to draw on the experience of other countries and also take into account recent reports by think tanks on the same subject, most of them in favour of the prioritisation of company agreements by introducing a general derogation principle. The experts commission's report (Combrexelle 2015), presented in September 2015, advocates reversal of the hierarchy of norms, giving priority to company agreements in order to ensure 'proximity regulation'. During a four-year experimental period, four areas should be opened up to derogation: wages, working time, employment and working conditions, including derogation from legislation on the 35-hour week and overtime payments. Sectoral agreements should define an 'agreed collective order' for matters not open to derogation by company agreements. All other standards of a sectoral agreement would apply only in the absence of a workplace or company agreement. As a safety net, all company agreements should need to be signed by the majority unions.

Prime Minister Valls welcomed the report as a whole. He departed from the recommendations only on a single point, stating that 35 hours and overtime should not be open to derogations, thus giving a pledge to the left-wing of the Socialist Party and the trade unions. Without fair concertation,<sup>7</sup> the minister of labour, Myriam El Khomri, prepared a bill reforming collective bargaining. The first draft bill, presented in February 2016, incorporated almost all of the experts Commission's proposals. It also introduced some measures that were not part of the recommendations, such as the reduction of severance payments for employees who make a complaint about unfair dismissal and the possibility for minority unions (representing at least 30 per cent of the workforce)

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7. In early November, the minister of labour invited the social partners to negotiate a 'method agreement' before the end of 2015 to 'inspire' the future law, but they declined this invitation and the topic was not included in their annual autonomous bargaining programme.

to impose an employee referendum in order to validate a workplace agreement signed by minority unions, thus preventing the majority unions from challenging its validity.

This draft provoked rejection by all the trade union organisations, this time including the CFDT, as well as by the main leaders of the Socialist Party. The government agreed to withdraw the draft and negotiate some changes with the CFDT. In particular, the reduction of severance payments was finally dropped, to the dissatisfaction of the MEDEF. The new version of the bill led to numerous strikes and mass demonstrations organised by a coalition of CGT, FO, and some autonomous and student unions over a period of four months. According to opinion polls, the bill was also rejected by a majority of the population but was finally adopted by the Parliament in August.

The El Khomri Law, which runs to hundreds of pages, has not reduced the complexity of the French Labour Code. The announced reversal of the hierarchy of norms is, in a first step, limited to working time and overtime pay, paid holidays and weekly rest. Regarding these topics, the Labour code is rewriting as follows:

- (i) the ‘fundamental principles of labour law’, which would be imperative and guaranteed by the Constitution,
- (ii) areas open to derogation by sectoral or company agreements, with a ‘minimum legal framework’, and
- (iii) legal standards that would apply only in the absence of a collective agreement.

The ‘redesign’ of the rest of the Labour Code according to the same principle was to be entrusted to a labour law expert commission is supposed to present its conclusions by 2018. Labour minister El Khomri did not have the time to set up this commission, however, because of the presidential elections of May 2017.

### **2.3.3 President Macron's ordinances: a turning point for decentralisation?**

The rejection of the El Khomri law by public opinion certainly contributed to the elimination of the Socialist candidate in the presidential elections of 2017 and to the election of Emmanuel Macron. What is astonishing, however, is that Macron managed to surf victoriously on the wave of rejection of reforms that he had himself largely inspired both as advisor of President Hollande and as Minister of the Economy. During the election campaign, Macron announced that, once elected, he would prioritise continuing labour law reform, and even accelerate it.

In order to avoid long debates in the parliament and possible demonstrations, the new labour minister Muriel Pénicaud has prepared a framework law (*loi d'habilitation*) which in July was passed in parliament by a majority of the new presidential party and what is left of the traditional parties of the right. This law authorises the government to execute its reform project through ordinances (government decrees). These were adopted in September 2017. The vote was preceded by formal consultations with the unions and the employers, one by one. These consultations did not make it possible to get a clear picture of what will be in the government decrees, however. A twofold overhaul emerged from texts clearly developed by and for companies: an unprecedented transformation of industrial relations since the Auroux law on the collective bargaining system and

workplace representation; a step forward in labour market deregulation (a ceiling on damages in case of complaint, dismissal regulation). The employers' organisations clearly support the project and its acceleration, but this time most of the unions are firmly opposed. However, only the CGT has completely rejected the project and even called for industrial action against it in September and October. It later received some support from FO for mobilisation.

As far as collective bargaining is concerned, in line with the El Khomri law, the ordinance on 'the strengthening of collective bargaining' has generalised shared competencies between the law and sectoral and company agreements. Moreover, the leading role that the government claimed to give to company agreements has resulted in, on one hand, reinforcement of its legitimacy, and on the other, facilitation of its implementation in SMEs without unions.

Regarding competencies in standard-setting, the division is as follows:

- Formally, the role of sectoral agreements has been reinforced because there are now thirteen topics with regard to which derogations are forbidden. However, this reinforcement has taken place at the expense of the law and not at the expense of company agreements (Canut 2017). In addition, a company agreement may implement different provisions from those of the sectoral one if it provides 'at least equivalent guarantees'. This formula has replaced the classic formula in the Labour Code which required 'provisions more favourable for employees' ('favourability principle'). The effectiveness of this guarantee will be conditional on jurisprudential interpretation of the new formulation.
- The sectoral 'lock up' facility was unlimited under the 2004 law. From now on, this facility is reduced to four areas, mainly concerning occupational safety and disabled workers. A weakening of sectoral bargaining is evident here.
- The primacy of company agreements concerns everything that does not fall into the two previous blocks, which is considerable. For example, all remuneration rules are governed solely by the company agreement, with the exception of agreed minimum wages, classifications and overtime premia.

Regarding the validity of company agreements, the requirement for being signed by a majority of unions will be widespread as of 1 May 2018.<sup>8</sup> The other change introduced is openly regressive: in the event of an agreement approved by unions that obtained at least 30 per cent of the votes in workplace elections, the initiative to organise a referendum among employees, which in the 2016 law belonged only to the signatory unions of the agreement, has now been extended to the employer, on condition that the signatory unions do not oppose it.

Last but not least, regarding negotiation in workplaces without unions, different regimes have been introduced depending on size of workplace. Negotiation is then possible on all topics:

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8. The El Khomri law provided for this generalisation by 1 September 2019.

- Up to 20 employees in enterprises without employee representatives: the employer can propose an ‘agreement’ drafted unilaterally that must be approved by at least two-thirds of the staff.
- From 20 to 49 employees: two possibilities are open without priority. The agreement can be signed by elected representatives if they represent the majority of votes or it be signed by employees mandated by a union.
- Over 50 employees without employee representatives: the agreement can be signed by elected representatives, otherwise mandated employees.

These new rules clearly indicate that the purpose of the ordinances is to further undermine the role of trade unions in collective bargaining.

### **3. Decentralisation of collective bargaining in the metal sector**

#### 3.1 The sector and its economic context

In this section we will consider the metal sector exclusively from the point of view of collective bargaining, which does not exactly correspond to the sector defined in the national economic statistics. The conventional metal sector (*métallurgie*) has the following subsectors:

- metallurgy and manufacturing of metal products,
- manufacturing of data processing and electronic products,
- manufacturing of electrical equipment,
- manufacturing of machinery and equipment,
- automobile industry,
- manufacturing of other transport equipment,
- shipbuilding,
- railway equipment,
- aeronautical and space construction,
- repair and installation of machinery and equipment.

Collective agreements (including the steel industry) covered 1,663,100 employees by the end of 2013; 26 per cent of them belonged to the category of professional and managerial staff (*cadres*), 27 per cent were ‘intermediate professions’ (technicians and so on), 8 per cent white-collar workers and 39 per cent manual workers. Furthermore, 22 per cent of the employees were women, 15 per cent under 30 years old, 3 per cent had fixed-term contracts and 21 per cent were part-time employees (Ministère du Travail, 2017: 632).

The metal industry has suffered from a long-term process of de-industrialisation and has come under heavy competitive pressure. In the past twenty years, the sector has lost one-third of its employment. This process is a result of a lack of innovation and investment in France, on one hand, and delocalisation of production, on the other. The business downturn since the economic and financial crisis of 2008 has added to these difficulties. Two types of strategy were developed by French companies to gain

competitiveness: a ‘high road’ strategy aimed at gaining new markets by developing new products and upgrading skills, and a ‘low road’ strategy aimed at reducing production costs, especially labour costs. Very often both strategies are developed at the same time. This puts collective bargaining under constraints, because the employers seek to erode past union achievements by introducing more flexibility, especially on working time, more mobility and more productivity, and also dampening wage dynamics. The unions, on their part, have set new priorities, in order to obtain guarantees on employment and skills. This explains the growing number of collective agreements focused on employment and training.

Since 2016, France has been in economic recovery. After a period of wage moderation, wage bargaining has benefited from this situation (Ministère du Travail 2017). In 2015 and 2016 basic wages in the metal sector increased 1.5 per cent per year, more than the average basic wage growth in the private sector (1.2 per cent). Given consumer goods inflation of 0.2 per cent in 2015 and 0.6 per cent in 2016, purchasing power grew only modestly. Managerial and professional staff did better (+1.9 per cent in 2016) than manual workers (1.4 per cent) and white-collar workers (1.3 per cent).

### 3.2 The actors

In 2013, trade union representativeness was decreed for the first time by the Ministry of Labour on the basis of the previous workplace elections. Only four unions – CGT, CFDT, FO and CFE-CGC – passed the 8 per cent threshold in the metal sector, but not the CFTC. This union continued to participate in the sector bargaining, however, because it had passed the threshold at the national inter-sector level and was allowed by the 2008 law to do so for a transitional period – 2013–2017 – because it was affiliated to a representative confederation at the national inter-sector level. In 2017, the CFTC, like the autonomous unions UNSA and Solidaires, again did not reach the threshold of 8 per cent and now risks being excluded from collective bargaining. Therefore, the CFTC metal federation has appealed to the government to lower the 8 per cent threshold by decree. Alternatively it will try to merge the metal sector with another bargaining sector in order to preserve its representativeness. It has obtained support from the UIMM, who successfully asked the government, in order to gain time, to delay publication of the decree with the official results of representativeness in the metal sector.

Whereas at the national inter-sector level, the CFDT is now the most representative union and has surpassed the CGT, it is still only second in the metal sector, but very close to the CGT, which has lost 3 percentage points. The CFDT has also lost some votes, however, whereas the CFE-CGC – the union of managerial and professional staff – has gained nearly 3 percentage points and now occupies third place, with a percentage nearly double what it obtained at the inter-sector level.

The picture is somewhat different at the local level, where most collective bargaining takes place. Here, CGT and CFDT are representative in all 76 bargaining regions. The CFTC has kept its representativeness in 20 regions, whereas FO has lost it in four.

Table 6 Union representativeness in 2017 according to the 2013–2016 elections, France

	Voting population	Participation	CFDT	CGT	FO	CFE-CGC	CFTC	UNSA	Solidaires
Total private sector	13,244,736	42.76%	26.37%	24.85%	15.59%	10.67%	9.49%	5.35%	3.46%
Metal sector	1,178,053	67.85%	25.35%	26.39%	16.17%	19.09%	7.42%	2.71%	1.59%

Note: As explained above, these are not official figures yet, because the sectoral breakdown of the figures on union representativeness still awaits publication by the Ministry of Labour. Officially, representativeness is only known with regard to the employers.

Source: FGMM-CFDT.

UNSA is representative in two regions and Solidaires in one. The CFTC has kept its representativeness at the national sectoral level for managerial and professional staff, where the CFE-CGC has representativeness of 45.9 per cent.<sup>9</sup>

On the employers' side, the situation in the metal sector is a peculiar one, compared with other sectors. There is one employers' organisation that participates in the collective bargaining: the UIMM (*Union des industries et métiers de la métallurgie*), which is affiliated to the national confederation MEDEF.<sup>10</sup> It represents 42,000 companies in the metal sector, but exclusively for collective bargaining and social dialogue. These companies are members of 10 industrial federations, according to sub-sector (automotive, electrical and so on). These federations represent their economic interests and are, in turn, affiliated to the UIMM. The UIMM was founded in 1901 and is the most powerful and influential French employers' organisation, although it has lost some of its influence within MEDEF to the expanding companies of the service sector.

In the steel sector, there is another employers' organization, GESIM (*Groupement des Entreprises Sidérurgiques et Métallurgiques*), which was created in 1981 by two employers' associations representing 22 steel companies in Lorraine and northern France. Like the UIMM, it acts only in the area of social affairs and negotiates a proper national convention collective (CC) and its amendments for its members. It cooperates with the employers' association A3M, which represents the economic interests of all steel and mineral companies. Both are members of the UIMM.

Under a law introduced in 2014, employer organisations' representativeness is measured by membership. In order to participate in collective bargaining, an employers' organisation must represent at least 8 per cent of all affiliated companies or 8 per cent of the employees. In April 2017 the Ministry of Labour presented the results of its investigations for the first time. The UIMM has a representativeness rate of 100 per cent in the whole metal sector, both at national and local levels. The same goes for GESIM.

9. This situation is again very different from the rest of the private sector, where the CFDT is the first union in this category (in 2017: CFDT 27.0 per cent, CFE-CGC 19.4 per cent, CGT 19.3 per cent, FO 13.4 per cent and CFTC 9.2 per cent).

10. Until 2012, the UIMM had a double affiliation: to MEDEF and the confederation of small and medium companies CGPME (now CPME).

### 3.3 Procedures and outcomes at sectoral level

According to French labour law, two types of collective agreement are negotiated at the sectoral level: the so-called *conventions collectives* (CC) and the *accords collectifs*. The CCs lay down the regulatory system governing work (wages, terms and conditions of employment, working conditions, social welfare). They are considered to be the ‘law of the industry’. The *accords collectifs* treat only specific, mostly single topics.

In the metal sector, 76 *conventions collectives territoriales* (CCT) are negotiated at local (mostly *département*) level, sometimes for several departments, sometimes only for part of a *département*. For professional and managerial staff, there is a nationwide CC.

*Conventions collectives* generally have unlimited duration. However, the minimum wages for the different qualification levels are renegotiated annually and take the form of amendments to the CCT. There are still major differences in the wage structure and wage levels of the different CCTs. However, today none of the minimum wages in the metal industry are below the legal national inter-sector wage (SMIC). All CCs and CCTs, including their annual amendments, and most national agreements are extended by the Ministry of Labour in order to become applicable *erga omnes*.

The signatory parties of CCTs and annual amendments differ according to region and time of signature. For instance the CCT for Moselle goes back to 1955 and was initially signed only by FO and CFTC. However, they were later joined by the other representative unions.

The national CC for professional and managerial staff was signed in 1992 by CFDT, CFE-CGC, FO and CFTC. Its latest amendment was signed in 2010 by all five representative unions.

As already mentioned, there is also a special national CC for the steel industry, signed in 2001 by the employers’ organisation GESIM and by all five representative unions. It covers 17,715 employees, which represent only part of the sector, the rest being covered by the extended CCTs of the metal sector. GESIM has never asked for an extension of its CC, which contains higher social standards than the CCTs of the metal sector. Until 2013, the annual amendments were signed jointly by all five unions; those of 2015 and 2017 only by FO, CFE-CGC, CFTC and CFDT. For its professional and managerial staff, the GESIM member companies apply the CC of the metal sector negotiated by the UIMM.

Since 1970, a series of national sectoral agreements on specific topics have been signed with the UIMM and are generally extended by the Ministry of Labour. The most important recent agreements are as follows:<sup>11</sup>

11. The full list and the texts of all national agreements in force can be found in chronological order on the UIMM website: <https://uimm.fr/textes-conventionnels/accords-nationaux-metallurgie>. The texts of all agreements signed can be found on the CFTC website: <http://www.cftcmetallurgie.com/fr/accords-nationaux-de-la-metallurgie,23.html>. They are documented by topic on the FGMM-CFDT website: <http://www.cfdt-fgmm.fr/conventionmetal.php>



- National agreement of 26 April 2010 on social dialogue (signed by FO, CFE-CGC, CFTC, CFDT and CGT). This agreement settles such matters as procedures for the validation of company agreements signed by elected employee representatives, the creation of specialised joint committees, including an Observatory on Collective Bargaining, as well as guarantees concerning the careers and remuneration of employee representatives and union delegates.
- National agreement of 17 May 2010 on forward-looking management of employment and skills (signed by FO, CFE-CGC, CFTC and CFDT).
- National agreement of 12 December 2013 on disabled employees (signed by FO, CFE-CGC, CFTC and CFDT).
- National agreement of 8 April 2014 on gender equality (signed by FO, CFE-CGC, CFTC and CFDT).
- National agreement of 21 October 2014 on apprenticeships (signed by FO, CFE-CGC, CFDT and CFTC).
- National agreement of 13 November 2014 on lifelong learning (signed by CFE-CGC, FO, CFDT and CFTC), amended 10 January 2017.
- National agreement of 27 June 2016 on the negotiation procedures for a renewal of the system of collective bargaining (signed by FO, CFE-CGC, CFTC, CFDT and CGT).
- National agreement of 23 September 2016 on employment (signed by CFE-CGC, FO, CFDT and CFTC). This agreement replaces the one on forward-looking management of employment and skills of May 2010.

Before 2004, it was sufficient for a collective agreement to be signed by just one representative union in order to be valid. This explains why in 1996 the UIMM was able to sign a national agreement on the reduction of working time, allowing more overtime, with only two unions, despite the strong opposition of the two main unions CGT and CFDT. In 2004 a supplementary condition for validity was introduced by law: such an agreement must not be opposed by an arithmetical majority of the number of representative unions, that is, three out of five. As a consequence, the UIMM began to sign national agreements with a coalition of FO, CFE-CGC and CFTC. In 2003, the conditions of validity were changed again. Now agreements had to be signed by a union or unions that represent at least 30 per cent of the representative unions (as determined by the workplace elections) and must not be opposed by representative unions that represent more than 50 per cent. As a consequence, UIMM began to sign national agreements with a coalition of CFDT, FO, CFE-CGC and CFTC. Exceptionally, the procedural agreements on social dialogue of 2010 and on collective bargaining of 2016 were signed by all five representative unions. It remains to be seen how the CFTC's loss of representativeness will affect coalition building on the union side in negotiations over the next four years.

### 3.4 Collective bargaining at the company level

Since the Auroux laws of 1982, annual negotiations are mandatory at company level. They generally lead to company agreements, in particular in the bigger companies. As the amendments to the *conventions collectives* fix only the level of agreed minimum



wages, these company agreements have a decisive impact on the evolution of real wages, together with the growing practice of wage individualisation.

In 2015, 4,310 company agreements were signed by union delegates in the metal sector which correspond to 10 per cent of the companies in the sector. As these agreements are negotiated mainly by the biggest companies, they cover 1.17 million employees, around 70 per cent of all employees.

Neither the unions nor the employers' organisation UIMM have a detailed knowledge of the contents of the company agreements. There is an obligation to send these agreements to the Ministry of Labour, which publishes an analysis in their annual reports on collective bargaining (last edition: Ministère du Travail 2017). But these reports give only a global breakdown on the themes of the agreements and do not get down to the sectoral level. The union federations of course perform their own analysis and some have set up databases on company agreements. They can, however, obtain information only on companies in which their representatives are present and have to take the initiative to inform local federation structures about the negotiations and their outcomes. The national federations have direct knowledge of company agreements only in relation to large multi-workplace companies that sign national agreements. Information is more complete on annual wage negotiations at the company level, on which the federations send out regular reminders by e-mail to complete their databases. As the number of topics for mandatory bargaining has increased in recent years, it is more and more difficult for the union federations to ensure exhaustive monitoring of these negotiations. Many unionists complain that these mandatory negotiations exhaust local representatives who lose time needed for bargaining on more urgent topics.

Most company agreements concern wages and working time. In the big companies, especially in the automotive and electronics sector, more comprehensive agreements are negotiated on qualitative topics, in particular on employment. Only two companies in the sector have signed an 'agreement on the conservation of employment' within the meaning of the law on employment protection of 2013, which allows modification of individual employment contracts in exchange for a temporary employment guarantee. Other companies, in particular in the automotive sector, have signed so-called 'competitiveness-employment agreements', which are a French version of concession bargaining. Such agreements have no particular legal foundation, but are just ordinary company agreements in which the unions exchange guarantees on employment against the lowering of social standards contained in past company agreements.

### **Renault**

The most interesting of these 'competitiveness agreements' is the one signed by Renault in February 2013, in which the management made the commitment that it would not close down any site in France. The plan for 7,500 job cuts (15 per cent of the French workforce) by 2016 would be implemented through 'natural wastage' (resignations, retirements and early retirements) without forced redundancies or a voluntary leave programme. Car production would be increased from 500,000 to 700,000 in 2016. In

exchange, three of the four representative unions<sup>12</sup> in Renault – CFDT, CFE-CGC and FO,<sup>13</sup> but not the CGT – agreed to increase working time (to 1,603 hours per year) and to a temporary freeze on wages in 2013, followed by wage moderation in 2014 and 2015, depending on the group’s financial situation and economic performance. They also agreed to the elimination of time saving and training accounts. Mobility between sites was to be reinforced, on a voluntary basis, through mobility incentives. In exchange, the management made a commitment to improve profit-sharing and employee share ownership. The agreement also contains provisions for monitoring, in particular through the introduction of an Observatory.

The general economic recovery has helped Renault to fulfil its commitments, so that the objective of 700,000 cars produced in 2016 was even surpassed and profitability enhanced. According to an outside evaluation (Pellet and Urbejtél 2017), this performance, together with an improvement in working conditions, contributed to restoring confidence between the signatory unions and the management. They signed a new agreement on employment in January 2017, which will cover the three years 2017–2019. Again the management committed itself not to close any of its French production sites and moreover will create 3,600 additional permanent jobs and renew 6,000 youth employment contracts. It will invest massively in the French plants, with the aim of increasing productivity from the current 60 cars produced per employee per year to 90. In parallel, working conditions will be improved via a ‘zero accident safety policy’.<sup>14</sup> In exchange, the unions accepted the possibility of raising working time by one hour per day during peak business periods, up to a ceiling of eight days per month and 50 days per year. These new flexibility measures are to be negotiated at local establishment level.

### **PSA Peugeot Citroën**

After the collapse of the automotive market after the 2008 crisis, the financial situation of the other big French car producer, PSA Peugeot Citroën, was even worse than the one at Renault. In June 2011, PSA announced a vast restructuring plan and its intention to eliminate 8,000 jobs and close down two production sites in France, one in Aulnay (Paris region) and that of its subsidiary for commercial vehicles Sevelnord in Hordain (northern France), after Fiat had ended its partnership with this subsidiary. Finally PSA negotiated a new partnership with Toyota and decided to keep the Sevelnord plant open. This allowed the management to sign a competitiveness agreement for Sevelnord in July 2012 with CFE-CGC, FO and the autonomous company union SIA-GSEA, but without the fourth representative union at the plant, CGT. By this agreement, the management made a commitment to exclude lay-offs for the plant’s 2,800 employees for a period of three years, eventually renewable for two years. In exchange, the unions accepted a pay freeze for two years, compensated by a reduction of weekly working time,

12. Union representativeness on the basis of the 2011 workplace elections in Renault was as follows: CFE-CGC 29.7 per cent, CGT 25.2 per cent, CFDT 19.2 per cent and FO 15.6 per cent. The other unions did not reach the 10 per cent threshold. In the 2015 elections, CFC-CGC gained 2.3 per cent and CFDT 1.3 per cent, whereas FO lost 2.6 per cent and CGT 0.9 per cent.
13. It is interesting to note that FO, which at the national level was, like CGT, opposed to derogatory agreements on principle, agreed to sign the agreement with Renault, and also later with PSA.
14. The agreement contains provisions on forward-looking management of employment and skills, for which negotiations are mandatory every three years.

an increase in profit-sharing and an additional bonus. They also agreed more working time flexibility, in particular possible working on Saturday and the introduction of a 'daily production guarantee' (if the daily production goals are not met, the management can impose up to 20 minutes' additional overtime). The agreement also introduced new rules for mobility, including temporary staff loans to other companies, which cannot be refused unless for family reasons. A transfer to a less qualified job, which can only be temporary (with a maximum of one year) and cannot entail a reduction in pay, requires the employee's written consent.

The situation of the 1,400 workers of the Aulnay plant could not be solved in the same manner. Here the management maintained its intention to close the plant and deigned only to negotiate a social plan for voluntary departures, early retirement and financial support for internal and external mobility, which was accepted by the unions CFE-CGC, CFTC, FO and GSEA. CGT and CFDT called for a strike, which was to last four months, without being able to change the plant closure, although it ended in May 2013 with an agreement that prolonged production for eight months and enhanced financial compensation.

The Sevelnord agreement paved the way for a triennial agreement for the whole PSA group, which was signed in October 2013 by FO, CFE-CGC, CFTC and SIA-GSEA.<sup>15</sup> This time, however, the management gave no formal guarantees on the level of employment, which explains the refusal of CGT and CFDT to sign. The agreement, a document of 212 pages called a 'new social contract', replaces 11 previous company agreements, including those on forward-looking management of employment and skills, quality of life at work and social dialogue. In the agreement, the PSA management committed to producing 1 million vehicles per year in 2016 and to make a global productive investment of 1.5 billion Euros in its French factories in the period 2014–2016. At least 75 per cent of its R&D activities will be carried out in France, and the level of subcontracting will remain below 20 per cent until 2016. In exchange, the unions accepted that there would be no general wage increase in 2014 and that possible later increases would depend on the group's performance. Furthermore a bonus, granted after 20 years in the company, will be cut. Overtime pay for work on Sundays will be lowered to the legal standard. In return for these wage cuts, PSA made commitments on future profit sharing and the purchase of vehicles. The unions also accepted more working time flexibility. An important part of the compensatory time regime passed from individual choice to unilateral management regulation. The range of weekly working time was to be increased, leading to less overtime pay. The possibility of part-time work two or three years before the end of a career will be introduced on a voluntary basis. Training priorities were to be aimed at supporting internal mobility between trades within a site or between sites. However, collective internal mobility was used only as a last resort when no local solution has been found. Temporary external mobility to another employer may be organised through suspension of the employment contract for two years. Finally, the agreement announced some improvement in strategic information and consultation, in

15. Union representativeness in the PSA group on the basis of the 2012 workplace elections was as follows: CGT 22.6 per cent, FO 18 per cent, CFE-CGC 17.2 per cent, SIA-GSEA 14.7 per cent, CFDT 13.8 per cent and CFTC 11.7 per cent. In the 2016 elections, FO gained 2.5 per cent and now achieved first place, CFC-CGC gained 2.2 per cent and CFTC 1.7 per cent, whereas SIA-GSEA lost 4 per cent, CGT 3 per cent and CFDT 0.2 per cent.

particular through the International Strategic Joint Committee and through employee representation on the company board (a legal obligation since 2013).

In February 2014 the French state and a Chinese company became the major shareholders of PSA, alongside the Peugeot family, which definitely saved the company from bankruptcy. PSA recovered financially<sup>16</sup> and in July 2016, it signed a new triennial competitiveness agreement with the four signatory unions of the previous agreement, which were joined by CFDT. In it, PSA committed to hiring 1,000 permanent employees by 2019 and promises to make investments for the production of 1 million cars per year in France and for the launch of eight new models. In exchange, the unions made concessions for more flexibility of work organisation, including night-time working on a voluntary basis. Employees may work eight days more than is stipulated in the employment contract without earning overtime pay.<sup>17</sup> This time, however, no wage freeze was demanded, and the management promised to open annual wage negotiations on the basis of 1 per cent over the inflation rate. The agreement also included a commitment that studies on working conditions would be carried out in cooperation with the unions.

### 3.5 Trade union strategies for the future of collective bargaining at the sectoral and company levels

Since the end of the 1990s, UIMM and the unions have tried to harmonise the different classification schemes of the different CCTs, for which there is no longer any economic justification. They were, however, unable to conclude these negotiations. CGT and CFDT have also asked for a common national CC, including common classification schemes for both the professional staff and the rest of the employees. CFE-CGC recently modified its position on this topic, because it has a growing membership outside the category of professional and managerial staff, in particular among technicians. UIMM agreed to reopen negotiations on this topic, as it has realised that the classification schemes in most CCTs are obsolete. In June 2016, UIMM and all five representative unions signed a procedural agreement for renegotiation of the whole collective bargaining system in the metal sector. It contains a list of topics on which to negotiate, a negotiation agenda and a method of validation. There are 11 negotiation topics:

- (i) the architecture of the future collective bargaining system;
- (ii) the classification schemes;
- (iii) working time;
- (iv) health and safety, working conditions;
- (v) individual working contracts;
- (vi) employment and vocational training;
- (vii) social protection;
- (viii) remuneration and employee savings;

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**16.** In February 2017 PSA was even able to buy Opel-Vauxhall from General Motors. In March 2017 PSA got the support of the unions FO, CFE-CGC, CFDT, CFTC and SIA-GSEA for this purchase.

**17.** As in the case of Renault, PSA's working time standards remain above those of the collective agreement for the metal sector.

- (ix) social dialogue at the company level;
- (x) the scope of the future CCs;
- (xi) the entry into force of the agreement and transitional provisions.

The negotiators meet every two weeks to negotiate topic by topic. However, there will be no agreements by topic but only one final agreement to be validated at the end of the negotiation cycle, which UIMM has fixed for the end of 2017, but will more likely be the end of 2018.

The negotiations started on topics (i) and (ii), which are, however, very complicated because legally the social partners at the local level are completely autonomous. There are three possible methods to pass from local CCTs to a common national CC, and the negotiators of each local CCT can choose between one of the three methods. The union federations will ultimately give instructions on how to handle this problem.

From the Law on Employment Security of 2013 to the El Khomri Labour Law of 2016, French legislation has put forward the aim of giving further impetus to company bargaining by allowing derogations from sectoral agreements. To satisfy some of the trade union criticisms, the El Khomri law has also assigned new tasks to bargaining at the sectoral level. It requires that every bargaining sector must set up a ‘permanent joint committee on bargaining and interpretation’ (*Commission paritaire permanente de négociation et d’interprétation* – CPPNI). This committee is to have several missions:

- the monitoring of working and employment conditions;
- the publication of an annual report on company agreements dealing with working hours, annual leave and so on;
- the interpretation of branch agreements for the courts that request it.

UIMM proposed to delegate the task of reporting to the ‘observatory on collective bargaining’, which was set up jointly by the national agreement on employment of April 2010, and to set up similar observatories at the local level. The unions welcomed such a decentralised structure because it would have the effect of ‘professionalising’ local union representatives. The unions also welcomed UIMM’s proposal as an opportunity to transform this observatory into a tool for qualitative analysis of what is really negotiated at company level, an objective previously rejected by UIMM, arguing that it has no extensive knowledge of company agreements in the metal sector.

Concerning company agreements, there is considerable negotiating autonomy among local union representatives. This explains why there is such a variety of agreements and of signatory parties. Sometimes local representatives ask the federation for a model agreement. The federations are, however, reluctant to provide one because companies’ economic situations differ so much. This can justify different approaches to what should be negotiated and what concessions should be made. Therefore they establish only check lists of possible topics. Some of the controversial topics between unions, and even inside one union, are the introduction of mobility leave in an agreement on forward-looking management on employment and skills. It is difficult to establish a common union rule on that, because local activists must judge whether such a concession is compensated

in a complex agreement by advances for employees in other areas. Some unions take a more rigorous stance, refusing to accept concessions of any kind. Often, taking such a radical position is a relatively painless display of union principles, as the employers generally find other unions to sign such agreements. On the other hand, only in very rare cases do union federations replace union delegates who sign a company agreement that are considered a breach of internal union rules.

## 4. Decentralisation of collective bargaining in the retail sector

### 4.1 Introduction

With almost 2.2 million employees in around 500,000 enterprises, the retail trade sector (see Box 1) represents 12 per cent of the total labour force and 10 per cent of gross added value. It is therefore one of the largest economic sectors. Nevertheless, it has never played a leading role in French industrial relations, in contrast to, for example, the metal sector. There are various reasons for this: the preponderant weight of very small establishments, a low-skilled and low-wage labour force and, above all, the historic weakness of unionisation in the sector. However, because of the dynamism of job creation in this sector, but mainly because it constitutes a field of experimentation for new forms of atypical job. Since the Auroux laws of 1992, annual negotiations are mandatory at the company level. They generally lead to company agreements, in particular in the bigger companies. As the amendments to the *conventions collectives* fix only the level of conventional minimum wages, these company agreements have a decisive impact on the evolution of real wages, together with the growing practice of wage individualisation, retail trade is a key target for French trade union organisation. It is also a sector that is experiencing strong organisational changes. Although the first department stores (*grands magasins*) date back to the second half of the nineteenth century, with the establishment of the Bon Marché and the opening of the Felix Potin grocery stores, the concept of mass retailing, in the contemporary sense (retail sales of all types by store networks to an end customer), is a much more recent economic activity. Major global distribution groups, including several French multinational companies, are only about fifty years old. During the recent decades of rapidly rising purchasing power, with massive access to consumption, distribution has grown remarkably, knowing how to exploit every opportunity to constantly improve profitability. The retail

#### Box 1 Definition of the retail sector

The retail trade sector corresponds to Section 47 of the French activity classification (NAF). It represents 29 per cent of the turnover of all trade (including wholesale trade and e-commerce).

Within the retail trade, there are three main sub-sectors: food-based stores (meat, fruit, vegetables, and frozen food), household goods stores (furniture, household appliances and computers) and stores selling personal goods (clothing, perfume, books, glasses, pharmacies).

sector has experienced a tough transformation of management and logistics techniques, the computerisation of cashier tasks, the creation of discount stores and attempts to diversify into services. However, retail activity has been slowing down for several years. In a context of economic crisis, a number of factors have contributed to this deceleration: the growth of e-commerce, especially for non-food goods and changes in consumer purchasing behaviour, which tend to favour purchases of electronic equipment (mobile phones, multimedia, and computers). To adapt, alongside strong price competition, the retail trade has launched new strategies: ongoing extension of shop opening hours, new digital technologies and the establishment of smaller-scale convenience stores in city centres that better meet consumer needs.

#### 4.2 Employment in the French retail trade sector: demanding working conditions and low wages<sup>18</sup>

Employment creation remained positive in the retail trade sector, although less dynamic than before the crisis (+ 2.1 per cent from the end of 2009 to the end of 2013), while it was declining in the wholesale trade and in many other sectors.

The sector is significantly polarised, with a few large enterprises, mainly multinational companies in supermarkets, DIY stores, fashion chains or department stores, and a large mass of small shops. In 2012, 90.6 per cent of all retail enterprises had fewer than 10 employees (see Table 7).

Table 7 Proportion of establishments by number of employees (%)

	0	1–5	6–10	>11
Food	45.9	40.1	5.5	7.6
Household goods	48.8	40.9	5.4	4.9
Personal goods	37.8	53.1	6.7	2.4
Other	69.3	26.6	2.8	1.4
Total	47.2	43.4	5.5	3.9

Source: Insee, Clap (Connaissance localisée de l'appareil productif), 2012.

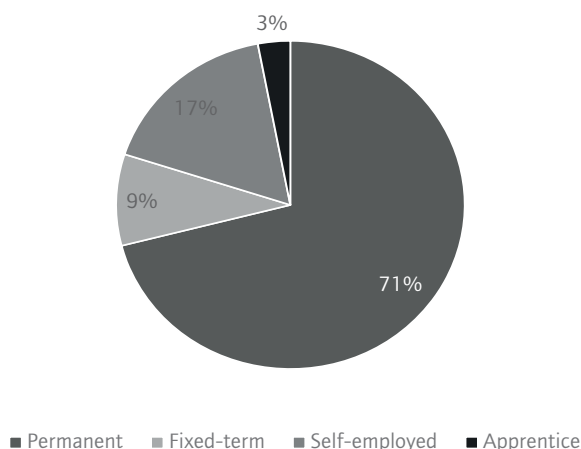
The largest sub-sector is food retailing with 45 per cent of the workforce, followed by personal goods stores with 32 per cent. Despite this predominance of very small establishments, in 2013, 61 per cent of employees of the retail trade (full-time equivalent) worked in retail group outlets. The stores are often part of chains, in particular in clothing, footwear or perfumery.

Regarding job structure, the proliferation of atypical contracts is characteristic of the retail trade sector (see Figure 2), more because of the number of self-employed than the number of fixed-term contracts (9 per cent in the retail sector compared with 7 per cent for the private sector).

18. Unless otherwise specified, data in this section are taken from the INSEE Employment survey.



Figure 2 Structure of employment in the French retail sector (2012)



Source: Insee, Enquête emploi 2012.

The number of self-employed rose by 6 per cent during the crisis (2009–2013), three times faster than all employment in the sector. However, this growth has been less vigorous than in other trade sectors or in the economy as a whole. Again, between 2009 and 2013, payroll employment grew by 1.4 per cent, mainly in the food trade.

Most employees in the sector are unskilled. In the retail sector as a whole, 67.8 per cent are unskilled white-collar employees and only 8.9 per cent are blue-collar workers; 73.5 per cent and 10.5 per cent, respectively, in food retailing. The largest occupational categories consist of nearly 900,000 people composed of store cashiers (180,000), clothing and sporting goods sellers (140,000), food sellers (110,000), non-specialised sellers (100,000) and self-service and storekeepers (just under 100,000).

Nearly one-third of those working in the retail trade are under 30 years of age and 60 per cent are women, compared with 22 per cent and 39 per cent in the private sector as a whole. Some typical retail jobs are overwhelmingly performed by women: 85 per cent of cashiers and self-service employees and 76 per cent of salespeople are women. Women are, on the other hand, slightly in the minority among managers.

Due to the activity's dependence on customer flow, the common denominator of retailers is their subjection to substantial time organisation constraints, implicitly experienced at all levels of the company. Thus, companies must constantly adapt their workforces to fluctuations in the number of customers, whether on an annual, monthly, weekly or daily basis. The use of part-time work is the most frequent way of devoting maximum working time to customer service and thus reducing wage costs. Some 28 per cent of retail employees work part-time. This is much higher than in the private sector as a whole (15 per cent). As in other sectors, part-time work is more important for women than for men (39 per cent versus 10 per cent). Part-time employment is closely related to



job: half of cashiers and self-service employees and 32 per cent of salespeople are part-timers. Involuntary part-time work is also typical of supermarket and large retailers (44 per cent of all part-timers) and related jobs (41 per cent for cashiers and self-service employees). The phenomenon is more pronounced among young people: almost half of young part-time retail workers want to work more. However, the rate of part-time work varies from one store to another, ranging from 15 per cent to almost the whole workforce. This diversity in human resource practices can be explained by a combination of several factors. Some brands have developed pro-active policies to reduce the use of part-time work with quantified thresholds, often embodied in company agreements.

Working time is also characterised by its great flexibility; 29 per cent of people working in retail have schedules that vary from week to week, compared with 22 per cent in private sector as a whole. Irregularity of schedules concerns supermarkets and cashiers and self-service employees in particular. Because these occupations are predominantly filled by women, they are most affected by irregular schedules.

Almost nine out of ten people employed in this sector (88 per cent) work on Saturdays or Sundays, usually or occasionally (52 per cent in the private sector as a whole). As for Sunday work, 37 per cent of employees work at least occasionally on Sundays and 19 per cent usually (24 per cent and 10 per cent, respectively, in the private sector as a whole).

Finally, low wages are particularly prevalent in the retail sector. Fruit and vegetables, grocery and dairy products, hairdressing and retail, clothing and textiles are the sectors in which the average wages of workers and employees are lowest and the proportion of employees paid around the legal minimum wage (SMIC) is the highest (between 20 and 32 per cent).

All these unfavourable aspects of working conditions represent strong claims and bargaining stakes for the trade unions in the sector.

### 4.3 Trade unions and employers' organisations in the retail trade sector

In such a heterogeneous sector it is not surprising that employers' representation is fragmented. Differences among employers can be found at all levels, including their histories (department stores in the nineteenth century and the electronics trade), traditions (small grocery stores and supermarkets) and forms of business (butchers, bakers, branches of multinational companies). Consequently, different and even opposing economic and social interests are defended in the various employers' organisations.

The major food retailers and specialised retailers are found in FCD (Federation of Trade and Distribution) which belongs to MEDEF. As a member of MEDEF, department stores and popular stores, because of their specific history, have their own federation, UCV (City Centre Department Stores Union). Small shops, whether independent or chain-owned, prefer federations that specialise in their activity: FEH (federation of clothing retailers) and FEC (federation of footwear retailers), for example. These federations

are generally members of CPME (confederation of SMEs). It is interesting to note that in order to better defend their economic interests some employers' federations have created groupings. The Trade Alliance, for example, groups UCV, FEH and FEC. In the social field, on the other hand, employers' organisations are striving to keep negotiations divided among the various sub-sectors.

Craftsmen have also set up employers' organisations specific to their specialty, but which, in order to increase their influence over the public authorities, have joined forces in two major confederations: CGAD (General Confederation of Food Retail), to which all food handicraft traders belong, and CNAMS (National Confederation of Crafts and Services), to which non-food traders (hairdressers, furnishings, florists) belong. These two confederations are founding members of the employers' confederation of the craft sector, which is now called U2P. In the retail sector, most of the larger retail companies, as well as the small craft ones are members of an employer organisation.

Regarding trade unions, we find the same organisations as in the other sectors. CFDT, CGT and CFTC have a unique federation for the trade sector. Only FO has two: FEC (Federation of Employees and Managers) and FGTA (Federation of Food Workers) who share the field in the retail trade. The results of the representativeness elections give a good picture of the unions' presence in the different trade bargaining sectors. The weight of each of these organisations varies greatly by sub-sector and depends on their

Table 8 Trade union representativeness in the main collective bargaining sectors of the retail trade, France, 2017 (%)

	Voting rate	CFDT	CGT	FO	CFTC	UNSA
Supermarkets	64	22	21	25	16	3
Department stores	72	29	33	12	7	3
Clothing (two separate branches)	36	29	21	12	17	10
Non-food retail shops	15	32	22	9	19	3
Pharmacies	12	16	18	22	8	18
Furnishing	40	30	23	15	17	5
Hairdressing salons	5	12	23	22	7	27
DIY stores	52	30	21	16	22	—
Groceries, delicatessens	7	19	34	13	7	7
Clothing stores	6	21	28	16	16	9
Household appliances	51	21	19	12	26	2
Stationery, bookshops	26	27	19	7	24	10
Sports goods shops	23	17	19	6	30	25
Butchers	7	7	52	13	8	11

Source: Ministère du Travail, Représentativité par branches professionnelles, 2017.

individual histories. None of the five representative trade unions is significantly ahead of the others.

It is worth noting the very low voting rate recorded in the craft sectors and in the small shops. On the other hand, participation in elections is high in sectors composed of large enterprises and close to that of other sectors.

Due to the extension procedure, collective bargaining coverage is high in the trade sector, but the degree of workplace employee representation is generally low compared with cross-sectoral national averages (see Table 9). Trade union membership is also lower in the trade sector: 6 per cent in 2013 compared with 8 per cent in the private sector as a whole. As in other sectors, union density is slightly above average in large retail enterprises, while trade unions are almost absent from small and medium-sized shops.

#### 4.4 Sectoral collective bargaining: structure and outputs

With the exception of department stores and supermarkets, which have a long tradition of sectoral bargaining and where the trade union presence is of long standing, sectoral bargaining in the retail trade is more recent than in industry. In order to benefit from public support for employment and training, it has developed on a corporatist basis at the initiative of employers' organisations. The collective bargaining landscape is fragmented, with 84 collective agreements, of which only 29 cover more than 5,000 employees (see Table 10).

Bargaining at sectoral level is not very dynamic. First, it is often supported by the Ministry of Labour through mixed joint committees (CMP, see box 2). Of the 88

Table 9 Presence of at least one employee representative or union in workplaces with 11 or more employees in 2011 (%)

	Trade sector	Private sector
<b>Workplace representation:</b>		
11–49 employees	47	50
> 50 employees	96	94
Total	56	60
<b>Union delegate:</b>		
11–49 employees	20	21
> 50 employees	64	67
Total	28	31

Source: Ministère du Travail, Dares, *Enquête REPONSE 2010–2011* ; volet 'représentants de la direction'.

instances of sectoral bargaining followed by a CMP, 35 belong to the trade sector (in red in Table 10), thus most retail sub-sectors, including some chains of stores and large companies. In the view of the trade union federations, the large food retailers sector is the only one with negotiations that lead to agreements with innovative contents.

Secondly, a major common characteristic of other bargaining sectors is the weakness of their agreements' content: they provide very few benefits to employees in addition to those provided for by the Labour Code. The sectoral agreements are signed on legally binding topics: vocational training, senior employment and so on. In an area as important as wages, for example, union organisations achieve only modest annual increases for employees. The agreements signed merely upgrade the classification levels below the SMIC. The following levels are generally very low. The result is a narrowing of the wage range. One union federation official interviewed described sectoral bargaining as a 'minimum service' for employers. This strategy allows the employers' federations to keep their members and leave room for manoeuvre to large companies to negotiate their own agreements.

Sectoral collective agreements systematically prohibit derogations by company agreements as provided for in the Fillon Act of 2004. All trade union organisations in the sector refuse to sign agreements that do not provide for this prohibition clause. For

Table 10 Sectoral collective agreements covering more than 5,000 employees in the retail trade (2015)

Bargaining sector	Employees	Bargaining sector	Employees
Supermarkets	669 300	<i>Opticians, glasses stores</i>	34 700
<i>Pharmacies</i>	119 100	Laundries	31 900
<i>Clothing branches</i>	111 600	Perfumeries	23 700
Non-food retail shops	107 200	<i>Shoe branches</i>	21 700
Hairdressing salons	98 700	<i>Florists</i>	21 400
DIY stores	74 100	<i>Hardware stores</i>	19 600
Groceries, delicatessens	70 800	<i>Jewellery, watch shops</i>	18 000
Clothing stores	66 800	Garden centres, pet shops	17 500
<i>Household appliances, computers</i>	63 900	Pastry shops	16 100
Furnishing trade	63 000	Meat shops	15 900
<i>Stationery, bookshops</i>	57 000	Shoe stores	10 400
Sports goods shops	56 700	Confectionery, chocolate shops	10 400
Bakeries	43 600	<i>Fishmongers</i>	10 000
Butchers shops	39 300	Consumer cooperatives	9 500
<i>Department stores</i>	37 200		

Note: In italics: sectoral bargaining with CMP.

Source: La négociation collective en 2015. Bilan, Ministère du Travail.

Box 2      **What are CMPs?**

In the event of difficulties or blockages in the bargaining process, Labour Code article L.2261-20 allows requests to a mixed-joint committee (CMP) chaired by a state representative. The purpose of the CMP is to assist in the negotiation of legally binding texts in a sector, by resolving difficult situations with the help of a third party's technical and legal competence. The CMP is composed of representative union and employers' organisations in the sector concerned and chaired by a representative of the Ministry of Labour. The Ministry may initiate a joint committee in two cases: at any time, on its own initiative or when an employer or trade union organisation so requests.

the moment, this lock has been effective and derogations remain limited. However, the latest legislative developments that make negotiation at company level prevail over that of the sector with regard to working time weaken trade unions' strategy, especially on Sunday work.

#### 4.5 Decentralisation of collective bargaining: new issues in a renewed legal context

In France, there is a strong correlation between size of enterprise and the existence of collective agreements. Smaller enterprises are less likely to sign their own agreements but are covered by sectoral agreements. By contrast, most large enterprises are covered by workplace agreements. The retail sector follows this pattern.

Industry and services are the two sectors with the highest number of company agreements signed by union delegates, accounting for 34.4 per cent and 37.7 per cent, respectively. Although the volumes of agreements signed in these two sectors are very similar, service companies employ more than twice as many employees as industrial firms (44.9 per cent versus 17.7 per cent). Trade, accommodation, food and transport companies, which employ just under one-third of the labour force in the private sector sign only 23.6 per cent of agreements. In the trade sector (wholesale, retail, sales and car repair) 3,338 company agreements were signed by union representatives in 2015 out of a total of 31,200 (10.7 per cent of the agreements signed for 16.8 per cent of the labour force). As a result, in bargaining sectors with many SMEs, such as small retail, national sectoral agreements mitigate the lack of negotiations at company level.

Compared with major industrial groups, for example, the agreements signed with major retailers offer little benefit to their employees. In many cases, they only take over the sectoral agreement by adding provisions such as complementary health care or training schemes, but only very rarely are there wage benefits. For company HR departments, bargaining issues concern mainly the organisation of work schedules. The latest labour laws give them new opportunities in this field.

Hitherto, Sunday work and the extension of opening hours have been the main issues in company negotiations, for both employers and employees. Opening options on Sundays widened with the Macron law of 2015, as did opening ranges with the El Khomri law of 2016. In both cases, derogations are conditional on the conclusion of a collective agreement which provides compensation for employees or, as regards work on Sunday, with a unilateral decision of the employer after a ballot among the employees. In this legal context, most department stores and specialised chains or retailers have attempted to reach agreements on this subject. The union federations have divergent positions on Sunday work. CGT and FO are against it in principle and give strict instructions on the issue to their union delegates.<sup>19</sup> Conversely, CFTC and, above all, CFDT make the signing of agreements conditional on the quality of the counterparties offered to employees.

As a result, the situation varies by company. Some have successfully concluded agreements, such as BHV. Others, faced with the unions' refusal to sign, have attempted a ballot but failed to achieve the result they wanted (FNAC). Others preferred to abandon negotiations (Galeries Lafayette, for example).

More generally, the link between the sectoral and company levels in the retail trade has changed only in very large firms. However, regarding recent and upcoming legal changes, and in particular the introduction of the ballot, the balance of power is increasingly unfavourable to trade unions in enterprises. In the rest of the sector, the sectoral agreements remain the reference for small employers, all the more so because their contents are not particularly advantageous for employees.

## 5. Conclusion

Although it has earned a degree of centrality in French industrial relations, sector-level collective bargaining has never achieved integrative capacity and the normative significance it can boast in some other European countries. Extensive state regulation – mainly through the extension procedure, the favourability principle and statutory minimum wages – has ensured vertical and horizontal coordination of collective bargaining. Starting with the Auroux law (1982), the French collective bargaining system has evolved since then through a state-led decentralisation. The aim of the government's policy was twofold. Company competitiveness was supposed to be enhanced by fostering workplace agreements better adapted to the firm's needs. In the meantime, the 'proximity' of these agreements would guarantee better protection for employees. In the first phase this was done without affecting the favourability principle. The reforms accelerated in the late 1990s and 2000s and led to deeper institutional change. Some reforms, such as increasing the number of compulsory negotiated topics at company level – initially limited to wages and working time – favoured the trade unions. Others gave more strength to the employers, in particular expanded scope for derogation mechanism or the extending of bargaining competence to non-union

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19. Checking these instructions is not always easy and may sometimes end with the withdrawal of the delegate's mandate.

representatives, both existing institutions (works councils and employees' delegates) and entirely new institutions (employees mandated by branch unions). As a result, company-level bargaining has developed dynamically over recent decades, without hampering the development of collective bargaining at the sectoral and multi-sectoral levels.

Our general study and our case studies on the metal and retail sectors show that, encouraged at all levels by legislation, the content and scope of bargaining has been diversified. However, legal stimulation of company level derogation or bargaining without unions has not produced significant effects in practice. Unions are still the main (and mostly exclusive) bargaining partner and have succeeded in negotiating company agreements significantly above the standards of the sector-level agreements. Nevertheless, decentralisation has had the effect of increasing inequalities among and within sectors. Some differentiation can be observed. In the metal sector, only minimum wage standards are agreed at sectoral level, leaving room for big companies to bargain their own real wage development and additional compensation, whereas in the retail sector company agreements play only a limited role. Here negotiations at the company level presently concentrate on working time, especially Sunday work. In the metal sector, which is strongly exposed to international competition and to the business cycle, the crisis stimulated the negotiation of new types of agreement at company level in order to secure employment. It is important to stress that none of these negotiations needed any legal encouragement on derogation, as the agreed provisions of these employment-securing agreements were not less advantageous than the sectoral agreements, but only compared with previous company agreements.

In a context in which employment has become a major public problem, both right- and left-wing governments have tried to obtain the social partners' support for labour market reforms, pushing them to negotiate flexibility at national inter-sectoral level. After 2012, the PS-led governments reaffirmed the objective of labour market flexibility as a means of regaining competitiveness and reducing unemployment, sticking to a supply-side vision of the economy. Pressure for structural reforms also came from the European Commission. In order to get additional deadlines to meet the stringent public budget criteria, the government partly implemented the 'country specific recommendations' for France, which in 2015 suggested the facilitation of derogations in order to reduce labour costs and link wages to productivity. This was initiated by the El Khomri law, voted in the last phase of the socialist government, and was immediately followed by the Macron ordinances. Both have utterly changed the French collective bargaining system. They represent a legal turning point towards decentralisation by derogation in order to stimulate competitiveness, growth and employment. Regarding employment creation, this rationale seems to be contradicted by a series of international comparative studies. Studies by the ILO (2012) and the OECD (2012) show that it is impossible to establish any clear link between the decentralisation of collective bargaining and a country's economic and employment performance. They do show, however, that decentralisation has negative effects on bargaining coverage, income equality and wage dynamics among sectors, which can produce negative indirect effects on growth and employment.

It remains to be seen how industrial relations will evolve at company level. Will a substantial number of employers use the new legal tools in order to cut costs and extend work schedules under the threat of plant closures or redundancy plans? Or, will it, like some of the big companies so far, continue to follow a 'high road' model of competitiveness by maintaining good relations with trade unions as a precondition for cooperative work relations and the enhancement of productivity and quality production?

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# Chapter 6

## Italian collective bargaining at a turning point

Salvo Leonardi,<sup>1</sup> Maria Concetta Ambra<sup>2</sup> and Andrea Ciarini<sup>3</sup>

### 1. Introduction

In the past eight years the Italian system of industrial relations has been undergoing a prolonged transitional phase (Carrieri and Treu 2013; Barbera and Perulli 2014; Leonardi and Sanna 2015; Guarriello 2014; Gottardi 2016). The numerous events that have occurred have changed some of its traits within a relatively short period. The various causes are both exogenous and endogenous, economic as well as institutional. The main exogenous factors are globalisation, the financial crisis and the economic downturn, as well as interventions by international institutions in national policy-making. This scenario is to some extent shared with other countries and is currently exerting pressure on different models of industrial relations (Katz and Darbishire 2000) towards neoliberal convergence (Streeck 2009; Baccaro and Howell 2011). Under growing pressure from so-called ‘New European Economic Governance’ (NEEG), many national lawmakers – and especially in the Southern European countries (Rocha 2014; Cruces *et al.* 2015; Leonardi 2016) – have stepped up deep labour law reforms, with the purpose of reducing the traditional prioritisation of multi-employer bargaining and the favourability principle, allowing company-level agreements to derogate *in pejus* from higher bargaining levels or even labour legislation (Marginson 2014; Van Gyes and Schulten 2015; Bordogna and Pedersini 2015; Cella 2016).

The endogenous factors include the structural weakness of the Italian economy, with its macroeconomic imbalances, territorial and social dualisms, stagnating productivity and competitiveness, inadequate development of human capital and very segmented labour market. However, problems in the field of industrial relations are also relevant. In the European Commission’s 2016 country report on Italy, the national collective bargaining system is described as ‘unclear and unspecified’. Based on collective agreements binding on only the signatory parties, its effects are uncertain and of limited impact. Extension *erga omnes* is not automatic, the assessment of trade union representativeness is not yet operational, and bargaining at the enterprise level and productivity rates remain underdeveloped (European Commission 2016).

Most of the Commission’s remarks are on target. The Italian collective bargaining system is in fact a complex and precarious mishmash of obscurely stratified conventional and

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1. Author of all sections except Section 5.  
2. Author of Section 5.2.  
3. Author of Section 5.1.

statutory interventions. The public sector, large-scale private industry, banks, craft industry and SMEs, as well as agriculture all have their own systems, with framework agreements that often remain in place even though they have expired, without being properly updated or replaced.

Meanwhile, the country has been suffering what the Governor of the Bank of Italy and other commentators have described as *the worst years in its peacetime history*. Between 2007 and 2013, in particular, GDP fell by 9 percentage points, industrial production by 25 per cent and investment by 30 per cent, while the unemployment rate has doubled and productivity has stagnated. Social distress persists, productivity remains low and workers are still not feeling any positive effects from a very timid economic recovery (+ 1.5 per cent is expected for the end of 2017). Between 2009 and 2016, real wage dynamics (adjusted for inflation, which is still low) remained lower than in the pre-crisis years. Wages decreased by 2.3 per cent in 2011–2012, when inflation was higher than expected, but increased by more than 2 per cent in 2013–2015, when the cost of living fell markedly (by 0.5 per cent per year, on average), below what had been laid down in the collective agreements (Banca d'Italia 2017). The unemployment level is still almost double that of the pre-crisis years, while precarious work continues to hinder progress with productivity and private consumption growth.

In this chapter, we describe how all these challenges are affecting and transforming some of the key features of collective bargaining in Italy. The recent state interventionism on the labour market and industrial relations has posed a serious challenge to the traditional primacy of multi-employer bargaining and has exacerbated an insidious process of segmentation with regard to labour standards and protections.

Currently, the debates between the social partners and policy-makers concern three co-related issues in particular:

- (i) the political role of the unions and social dialogue, in a period in which tripartite concertation – a pillar of the economic recovery in the 1990s – has repeatedly been given up for dead;
- (ii) the relations between law and collective autonomy in the process of laying down new rules on industrial relations as a whole;
- (iii) the new structure of collective bargaining in a time of epochal changes for labour and the economy.

Generally speaking, the core issues and achievements seem to be as follows:

- (a) how a new reformed collective bargaining system can enhance productivity and national economic performance, which have stagnated for too long; and
- (b) whether, in this context, Italian collective bargaining can still be described as organised – or rather, disorganised – decentralisation (Traxler 1995).

As we will try to demonstrate, the collective bargaining system has preserved a certain degree of organised coordination, despite some attempts to dismantle it, as has been the case in other EU member states during the same period. Social dialogue remains

fairly lively and reactive, as clearly shown by the inter-confederal agreements on representativeness and collective bargaining (2011–2014). The system's capacity and efforts to reform itself should also be appreciated, as should the willingness of the three main union confederations to overcome harsh divisions between 2009 and 2011. These developments deserve to be adequately supported by the state through auxiliary legislation that – transposing the best outcomes of social dialogue – restores to the whole system the certainty, transparency and enforceability that are currently missing.

The situation is very open and evolving and over the coming months we may well see more clearly whether the turmoil of these long, critical years is reaching an end.

## 2. The structure of collective bargaining in Italy: actors, norms and processes

Similar to other Latin countries, the Italian system is based on the principle of trade union pluralism, rooted in the ideological conflicts emerging from the ruins of the Second World War. Since the late 1940s, there have been three central union confederations: the General Italian Confederation of Labour (CGIL), the Italian Confederation of Workers' Unions (CISL) and the Italian Union of Labour (UIL).<sup>4</sup>

Italian trade unions can still draw on significant power resources (Leonardi 2017). Union density has declined in Italy, too, but the downward trend has been slower and much more contained than elsewhere. It was 41 per cent in 1980 and is now estimated at 38 per cent (Cazes *et al.* 2017).<sup>5</sup> This is still one of the highest rates in the world (ICTWSS 2015), behind only Belgium and the Nordic countries. The data could be overestimated, however, because there is an underlying risk that in the internal system for obtaining a membership card, workers could be registered twice. As a result, observers and trade unionists tend to restrict themselves to more cautious estimates, not exceeding 32 per cent (with reference only to the three largest confederations). Italy still has the highest number of trade union members in absolute terms (over 11 million) because of the high number of pensioners who remain affiliated.

The employers' organisational density is estimated at around 50 per cent. Employers' associations are organised according to the size, sectoral type, legal status and political orientation of the affiliated companies, which intersect in various ways.<sup>6</sup> Umbrella confederations are organised – on both the workers' and the employers' sides – in a number of sector/branch peak federations. There are roughly a dozen on the trade

4. Unions of minor importance include UGL, originally close to the post-fascists, a plethora of professional 'autonomous' unions, which are particularly strong in the financial sector, public services, schools and transport, and also radical left-wing unions (USB), significant only in individual branches or plants.
5. There are 6 million active members in the three main confederations alone, out of a total of 17 million dependent employees.
6. The Italian employer landscape is much more fragmented than in the rest of Europe (Bellardi 2016), where the historical and most influential umbrella confederations are *Confindustria*, which affiliates medium-large manufacturing enterprises, *Confapi* (SMEs), *Confartigianato* and *CNA* (craft sector), *Confcooperative* and *Lagacoop* (cooperatives), *ABI* (banks), *ANIA* (insurance), *Confcommercio*, *Confesercenti* (trade) and *Confagricoltura* (agriculture).

union side, but hundreds on the employers' side. This is one reason why there are so many national sectoral agreements, as we shall see. In a single manufacturing sector, there might be at least four national collective bargaining units, according to firm size and type: large, small or medium, craft industry and cooperatives.

The Italian industrial relations system has a high level of voluntarism, at least in the private sector, while in the public sector most aspects are governed by the law. The 1948 constitutional provisions concerning the registration of trade unions and the attribution of bargaining capacity at sectoral level in proportion to the number of members, legal regulation of the right to strike and workers' rights to participate in company decision-making have never been transposed into law. After the Fascist era, in the new democratic system trade unions remained reluctant to be subjected to state control over their internal organisation, while they opted for collective autonomy with regard to strikes and collective bargaining, rejecting state statutory interventionism. Nevertheless, as a result of the spectacular increase in union power after the 'hot Autumn' of 1969, legislation was enacted in the form of the Workers' Statute (Act No. 300 of 1970) to strengthen union rights in the workplace.

Apart from that one, and with regard to the public sector,<sup>7</sup> there are no Italian laws regulating either floor wage setting or collective agreements effects. Italy is the only EU member state, besides Sweden and Denmark, that has neither a statutory minimum wage nor an administrative extension procedure to guarantee universal coverage of collective agreements (Leonardi 2017).

Collective bargaining depends on mutual recognition by the social partners; collective agreements are acts of private law, considered as expressions of the signatories' self-regulatory capacity and subject only to the general provisions of the Civil Code of 1942. Collective agreements are not legally binding, so their contents are formally enforceable only by the signatories' affiliates. The law has primacy over collective agreements, and collective agreements over individual agreements. Statutory rights and conventional minimum standards cannot be derogated *in pejus*, but only *in melius*, by lower level collective or individual agreements.<sup>8</sup> If more than one industry-wide agreement is signed in the same contractual unit – as is happening more and more often – the Courts tend to favour the one signed by 'comparatively the most representatives', applying a series of measuring criteria. But it is not always easy.

Since the tripartite agreement was signed in July 1993, the Italian bargaining system has been two-level and articulated hierarchically, prioritising national industry-level collective labour agreements, followed by company-level agreements, or, alternatively,

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7. Since the late 1990s there has been a law concerning the selection of representative unions that are entitled to bargain (Legislative Decree No. 296/1997 and 165/2001, Art. 43). Unions need to pass a threshold of 5 per cent to take part in national collective bargaining, whereas a final agreement is binding if signed by unions representing at least 51 per cent of the relevant workforce. These thresholds are calculated as a weighted average between votes and members in the branch's companies.

8. By virtue of Art. 2077 of the Civil Code, clauses and terms of individual contracts, pre-existing or subsequent to the collective agreement, are by law replaced by those of the collective agreement, except if it contains special terms that are more favourable to employees. However, waivers and transactions concerning employee rights covered under mandatory provisions of laws and contracts or collective agreements, are not valid (Art. 2113).

territorial agreements, where firms are too small and there are no workers' representatives, as in such sectors as crafts, agriculture, construction, retail and tourism. National sectoral bargaining is the core of the system. It establishes a floor of rights and standards that secondary-level bargaining – which is facultative – must comply with, integrating, adapting and generally improving pay and working conditions, in accordance with the favourability principle. Among their main tasks, national agreements establish sectoral wage floors according to different job levels, protecting wage earners' purchasing power against inflation. As no formal extension mechanisms are provided to widen agreements' binding effect, a problem might arise in terms of equal treatment among workers employed in the same branch, territory or even company. Such problems could be particularly acute in the case of minimum wages. The problem has found an indirect solution – a sort of functional equivalent – based on judicial resort to Article 36 of the Italian Constitution. It states that employees' remuneration must be '*commensurate* with the quantity and quality of their work and in any case *sufficient*

Table 1 Hourly sectoral minimum wages, Italy, 2008–2015 (euro/hour and Kaitz index)

	Hourly minimum wages	Kaitz index (% of median)
2008	7.99	74.62
2009	8.22	74.88
2010	8.46	75.13
2011	8.91	78.35
2012	9.06	76.07
2013	9.22	76.20
2014	9.32	80.53
2015	9.41	79.95

Source: Garnero's calculation based on ISTAT negotiated wages database LFS, 2017.

Table 2 Hourly sectoral minimum wage by sector, Italy (euros/hour and Kaitz index, 2015)

	Hourly minimum wages	Kaitz index (% of median)
Agriculture and mining	7.70	59.44
Manufacturing, electricity	9.47	73.11
Construction	8.55	66.03
Retail trade	8.43	66.11
Transport	8.95	69.08
Hotels and restaurants	8.41	64.92
ICT	9.19	70.94
Finance and insurance	12.95	99.97
Public administration	9.72	75.04

Source: Garnero's calculation based on ISTAT negotiated wages database LFS, 2017.

to ensure them and their families a free and dignified existence'. As interpreted by the labour courts, this concept of *commensurate and sufficient pay* corresponds to the wage floors, differentiated by job classification, set up by the national sectoral agreement to which the individual worker is subject. The collectively agreed base wage is inserted automatically into individual employment contracts and represents the minimum, not liable to eventual derogations. In this way, the system achieves the double objective of having a 'constitutional' minimum wage, laid down by law or administrative extension procedures, and preserves trade union sovereignty over wage bargaining.

Collectively agreed minimum wages are, on average, higher both in absolute terms and relative to the median wage (Kaitz index), estimated the highest in Europe, at 80 per cent (ratio between the minimum and the median wage) (Klempermann *et al.* 2014).

The lack of a legal extension mechanism has not impeded a very high collective bargaining coverage, never estimated to be below 80 per cent by international sources and an impressive 99.4 per cent by national sources (CNEL-ISTAT 2015). Employees in all branches and companies are – in theory at least – covered by a multi-employer agreement. At the moment, there are 809 signed and archived agreements (CNEL 2016). However, non-compliance rates are not negligible in a country in which levels of evasion – for example, via informal workers or bogus self-employment – are among the highest in a sample of EU countries. In particular, 'wages at the bottom of the distribution appear to be largely unaffected by minimum wage increases' (Garnero 2017). According to this source, 10 per cent of workers, on average, are paid one-fifth less than the reference minimum wage, with peaks of 30 per cent in agriculture and 20 per cent in hotels and restaurants, SMEs, in southern Italy, and among women and casual workers.

The proportion of national sectoral wages covered by collective bargaining stands at about 88 per cent in the private sector and over 90 per cent in the public sector. The remainder is variously composed of collectively or individually negotiated pay (*restricted wage gap*) and/or other elements, such as overtime pay (Fondazione Di Vittorio 2016).

The second level of collective bargaining can be company-based or, alternatively, territorial (common in sectors in which very small enterprises or casual work are prevalent). Its aim is to respond to and stimulate corporate flexibility and competitiveness. It is not compulsory but rather facultative and usually depends on the presence of unionised works councils. Since the national industry-wide agreement sets minimum pay levels, taking into account only purchasing power, at company level pay rises – in the form of variable remuneration – depend on performance-related indicators (productivity, profitability, quality, attendance). Productivity in particular, the Achilles heel of the whole economic system, is assumed to be the driver of any attempt to promote economic development. Since 2007, a number of laws and decrees have been promulgated in an effort to promote performance-related wage increases, with the introduction of some tax concessions to support company-level bargaining (see below, Section 7)

With regard to the actors concerned, national negotiations are conducted by the sectoral social partner federations, while the firm level is the prerogative of the unitary union representative body (*Rappresentanze sindacali unitarie* or RSU). In the recent past, the RSU has been complemented by the territorial sectoral unions, signatories of the higher-level agreement in force in the company, to confer stronger vertical and infra-associational coherence on the two-tier system. The RSU, whose members are elected by members and non-members, is the single channel of workplace representation and may be elected in companies with over 15 workers.

### 3. What kind of decentralisation? Challenges and changes from 2009 to 2014

Over the years, the Italian collective bargaining system, although theoretically well designed in the 1993 framework agreement, has encountered practical limits, as well as significant criticism. The growth of productivity and wages, which largely depend on company-level bargaining, have suffered from the failure of the latter to take off. The paucity of statutory norms with regard to social partner representativeness and collective bargaining effects has paved the way for uncertainty and bitter disputes, including before the courts. Union representativeness has become a thorny issue as relations between the major confederations have worsened over the years, following the enforcement of a number of key agreements despite the fact that a majority of would-be signatories did not back them.<sup>9</sup> Another difficult issue has been collective bargaining decentralisation. Moving on from the archetypical ‘organised decentralisation’ designed in 1993, we have entered a phase of rapid changes, aimed – to various degrees and through different processes – at strengthening the decentralisation of collective bargaining. The major changes occurred from 2009, a year after the international financial crisis commenced. Schematically, the timeline of the major changes (presented below) has been non-linear (Leonardi and Sanna 2015):

1. Weakly organised: the Tripartite Agreement for the Reform of Collective Bargaining (2009);
2. Totally disorganised:
  - from the bottom, the *Fiat model* (2009–2010);
  - from the top, *Article 8 of Act. 148* (legal reform adopted just after the ECB request to the Italian government (2011);
3. Organised decentralisation: the three inter-confederal agreements on representativeness and bargaining (2011, 2013, 2014).

9. This occurred with the tripartite agreements on the labour market (2001) and the collective bargaining system (2009); in some important industry-wide agreements, such as the tertiary and metalworking sectors (2008–2010); and at company level, in some big companies, such as FIAT (2010). In all these cases, CGIL and its federations were cut out of the deal.



### 3.1 Weakly organised: the Tripartite Agreement for the Reform of Collective Bargaining of 22 January 2009

On 22 January 2009, a *Tripartite Agreement for the Reform of Collective Bargaining* was signed by the government and the social partners. CGIL did not participate, however, due to its opposition to a number of clauses related to decentralisation and industrial unrest. This was followed by an inter-confederal agreement signed with only Confindustria, in April of the same year (and again without CGIL), which introduced a number of changes to the system in force since 1993 (Bellardi 2010). The new rules safeguarded the two-level structure of collective bargaining, with the provisions of sectoral collective agreements continuing to serve as a minimum nationwide threshold within the sector, but with the aim of empowering the second level of collective bargaining. The duration of sectoral agreements has been harmonised at three years for both normative and economic parts (previously, durations were four and two years, respectively). A new *Harmonised Indices of Consumer Prices* (HICP) replaces the old 'foreseen inflation rate', fixed through tripartite concertation, as was previously the case. Unlike in the past, the restoration of purchasing power will not be full, since the new indicator excludes imported energy costs. The gap between forecasted and real inflation will be taken into account only if it is deemed 'significant' at inter-confederate, not sectoral level. With a view to including workers not covered by company-level bargaining, the sectoral agreement will set a guaranteed minimum increase, just for them. Decentralised agreements are to last three years (previously four), covering topics defined by sectoral agreements or legislation and which did not concern those already regulated at other bargaining levels.

One achievement of the 2009 agreements was an incremental strengthening of second-level bargaining, at company level. The agreement adopted changes implying the unprecedented possibility to introduce opening clauses, allowing deviations from national agreements. This was probably the most controversial aspect of the new system and the reason why CGIL refused to sign. Until then, derogations *in pejus* were allowed only exceptionally in territorial pacts in order to cope with economic underdevelopment and/or a high level of undeclared work. In any case, they were hardly ever put into practice.

Although not signed by the largest trade union confederation, the 2009 agreement did not prevent unions from renewing all industry-wide agreements in a unitary way in the following years. The glaring exceptions were the national agreements in two very important sectors – trade and metalworking, accounting for five million workers – from which the CGIL federations were left out.

### 3.2 Totally disorganised: the 'corporatisation' of the FIAT/FCA model

At company level, the most controversial instances, as they concerned the country's most important private employer, were some agreements signed at FIAT plants in 2009 and 2010. The company left the national employers' association and its stratified system of agreements to sign a new, unprecedented first-level agreement, de-linked from the



metalworking industry-wide agreement. The agreements were signed by the CISL and UIL sectoral federations (FIM and UILM), and not by CGIL's (FIOM). This new system recognises union representation with regard to the signatory organisations only (no matter how many members they have or the number of votes they received). Unions that refuse to sign firm-level agreements – such as the historical FIOM-CGIL – are excluded from representation within the workplace. Through a sort of closed shop, the condition required for recognition by companies is not unions' real representativeness (by votes and/or members) but their willingness to sign company agreements. In order to guarantee full enforceability and effectiveness of the agreements, and to prevent all possible forms of workers/unions dissent, a more binding limitation of the right to strike was introduced, with sanctions for unions and for individual workers (even dismissal) in case of violation of the peace clause. Last but not least, FIAT management convened a workers' referendum on the new system, which also included several changes to working time and shifts, holding over them the threat that they would close plants (Pomigliano and Mirafiori) if a 'no' vote prevailed, transferring production to Poland. Under such pressure, the workers voted in favour of the new system by a slight majority. The dispute paved the way for a harsh period of conflicts and reciprocal accusations within the national trade union movement. Since then, FIOM-CGIL has campaigned unceasingly against the new model, registering a number of successes at the case law level, leading up to a final ruling by the Constitutional Court (Sent. no. 231/2013), which denounced the FIAT/FCA system as unconstitutional. This implies that a comprehensive law, embodying democratic and transparent rules on representation and bargaining outcomes, is needed.

The FIAT/FCA case is still the only meaningful example of a company-level agreement was signed that fully substituted, rather than merely complementing the industry-wide agreement. For that reason, it is considered very controversial and potentially destabilising for the whole system by many Italian labour lawyers, who consider this case to be a risky template for the total 'corporatisation' and even 'Americanisation' of the system.<sup>10</sup>

### 3.3 Decentralisation under 'New European Economic Governance': Article 8, Law No. 148/2011

In the summer of 2011, amidst the turmoil in the financial markets Italy's economic situation seemed to worsen. The Berlusconi government was weakened by internal cleavages and mistrusted by financial markets and European institutions alike. Private foreign capital withdrew and the country seemed to be in need of an IMF intervention. At that moment the country was perhaps the main concern of European policy-makers. Then, on 5 August 2011, a 'secret' ECB letter asked the Italian government to reform (i) the pension system, in particular the eligibility criteria for seniority pensions and the retirement age for women; (ii) the labour market, making it easier to dismiss individual employees; and (iii) collective bargaining, allowing firm-level agreements to tailor wages and working conditions to individual firms' specific needs. Clearly, despite

<sup>10</sup>. Among others, Bavaro (2012) and Romeo (2014).

the many and deep changes already introduced, the narrative from the EU institutions was that these changes had been insufficient. In their view, collectively agreed wages in Italy are over-centralised and insufficiently responsive to labour market conditions and firms' capacity to pay, with secondary-level bargaining insufficiently developed.

In a few months, the Parliament approved an austerity package, including all the measures that 'Europe' had requested. As a result the role of social dialogue was completely marginalised. The social partners were barely consulted and their opinions hardly considered. Surprisingly, social mobilisation and unrest remained far below what might have been expected; for instance, there was just a three-hour strike over the reform of the pension system that postponed the retirement age.

Article 8 of Law Decree No. 138 of 12 August 2011 (converted into Law No. 148/2011 by means of a vote of confidence), entitled '*Support for proximity collective bargaining*', was the Italian government's immediate answer of the ECB's letter (Garilli 2012; Chieco 2015). Indifferent to the willingness already expressed by the most representative social partners, the inter-confederal agreement having been signed just a few weeks previously (28 June), the government introduced the possibility for 'specific agreements' signed at company or territorial level to deviate from the law and national industry-wide collective agreements. Such derogating agreements must be formally justified in terms of the following: increasing employment; managing industrial and economic crisis; improving the quality of employment contracts; increasing productivity, competitiveness and pay; encouraging new investments and starting new activities; enhancing workers' participation; or putting a stop to illegal labour. The range of topics with regard to which opting out is now possible is very large and includes working time, the introduction of new technologies, changes in work organisation, job classification and tasks, fixed-term and part-time contracts, temporary agency work, transformation and conversion of employment contracts, hiring and firing procedures and the consequences of the termination of the employment relationship. Exceptions are related to 'fundamental rights', in conformity with the Italian Constitution and international norms and requirements (union rights, discriminatory dismissal, pensions).

For the first time in Italy a national law has established, for the private sector, that company or territorial collective agreements shall have a binding effect 'on all the workers concerned', if they are signed by the 'trade union organisations operating in the company following existing laws and inter-confederal agreements'. With such a clause, Article 8 should at least avoid the promotion by employers of fictitious or 'yellow' representatives with the sole aim of eluding regular collective agreements. The new proximity agreements become valid and binding for all employees concerned if approved by a majority of union organisations, based on the abovementioned rules.

Decentralised bargaining, in the intention of the lawmaker, is supposed to become the new core of the whole system, with the industry-wide level, in turn, relegated to a more or less residual role. Broadly denounced and stigmatised by most trade unionists and scholars, as a result of Article 8, derogations, which previously were exceptional, would become the norm, reversing the traditional hierarchy in labour law (Perulli and Speziale 2011; Bavaro 2012; Gottardi 2016).

### 3.4 Coordinated decentralisation: the inter-confederal agreements on representativeness and bargaining 2011–2014

Meanwhile, on 28 June 2011, Confindustria and the three main union confederations (CGIL included this time), signed an inter-confederal agreement, with a double purpose: (i) defining measurable criteria for union representativeness and the bindingness of company agreements; (ii) enhancing collective bargaining decentralisation, with the possibility of opening clauses at company level, but in the framework established by the primary, national level.

In a general climate of uncertainty and national worries about economic turmoil – with a request from the EU institutions in the air – the Italian social partners made a first attempt to self-reform the system, before the government could pre-empt them, aware of what had just happened in Spain.<sup>11</sup> As we have seen, it was wishful thinking.

The terms of the 28 June agreement were confirmed repeatedly: first, in September 2011, in reaction to the unwelcome and unilateral intervention of the law, in the form of Article 8. Afterwards, on 31 May 2013 and on 10 January 2014, the signatory parties returned to the issues of the first agreement of 2011, specifying its operationalisation in detail (Carinci 2013; Zoppoli 2015; Bavaro 2012; Barbera and Perulli 2014). The text of 10 January 2014 was supposed to be a new inclusive text on the whole subject of union representativeness and collective bargaining.<sup>12</sup> Other sectors and associations, after Confindustria, beat the same path, signing similar agreements on trade, cooperatives and services with the social partners.<sup>13</sup>

In order to be considered sufficiently representative, and so admitted to national collective bargaining, trade union associations need to pass a 5 per cent threshold. It is calculated as a simple average of the votes obtained at the works council elections and branch members, collected and certified by the National Institute for Social Protection. A sectoral agreement is binding if signed by the unions representing least 50 per cent + 1 of the workforce and – importantly – after a ‘certified consultation’ of the workers, if approved by a simple majority of votes.

At company level, the normal employees’ representative body is the abovementioned *RSU*. Its elections can be contested by electoral lists presented by trade union organisations adhering to the associations that have signed the framework or sectoral agreement at the company, or even others, on condition they accept the rules and obtain a minimum number of signatures among the workers. A company agreement will be valid and binding if approved by the majority of *RSU* members. For companies with *rappresentanze sindacali aziendali* (RSA), designated by the unions and not elected by all the employees, a firm agreement will be binding for all if approved by the majority of RSA members. In this case, the draft agreement can be subject to a referendum if

**11.** During those weeks, in fact, the Spanish government had interrupted social dialogue, intervening unilaterally in bargaining decentralisation.

**12.** *Testo Unico su rappresentanza e contrattazione collettiva*.

**13.** There were a few differences and amendments concerning the specific criteria for defining representativeness and secondary-level bargaining, considering that in branches with many SMEs and casual workers, works councils may cover only a small proportion of employees.

at least one of the organisations signing the inter-confederal agreement, or at least 30 per cent of workers in the company, request it within ten days of the signing of the agreement.

It is worth underlining that at both levels representative democracy and the majoritarian principle are supplemented by direct democracy and referendums.

Once approved in accordance with such a procedure, again at both levels, the dissenting signatory organisations are barred from taking industrial action if they are in a minority. Through intra-associational coordination, the signatory parties have to exert influence over their affiliates in order to make the agreement fully enforceable and binding. Cool-down procedures, established at sectoral level, should prevent and sanction any behaviour that might compromise the enforceability and efficacy of signed agreements.

As regards coordination between national- and company-level bargaining, the primacy of the former is explicitly confirmed, although there is a possibility to negotiate ‘modifying agreements’ at company level, albeit subject to coordination and in accordance with parameters and procedural limits laid down in the national agreement. Collective bargaining at company level takes place with regard to matters delegated and in the manner defined by the national collective agreement in the sector or by law. External unions can be involved in managing situations of crisis and restructuring, where some deviations from the higher level of bargaining might be required temporarily. Unlike in the case of Article 8 – and this is a very important difference – derogations from statutory norms are not permitted.

#### **4. Recent trends in collective bargaining**

To date, the outcomes of the new system laid down in the inter-confederal agreements of 2011–2014 have not been satisfying, and the new rounds of negotiations in 2015–2017 have not benefitted. In an entirely voluntary system, the data-gathering process has turned out to be fraught, with major difficulties due mainly to the reluctance of many enterprises to provide the required information to the institutes in charge of processing membership data.

The issue of signatory representativeness, not defined by any law, is the Achilles’ heel of the whole system. It not only affects the trade union side, where in fact it has been a cause of severe disputes, but also the employers’ associations, whose acute fragmentation continues to be one of the most serious weaknesses of the Italian industrial relations system. Individual companies (FIAT was by far the most famous case), groups of enterprises or branches (such as in the area of hypermarkets and small and medium-sized enterprises) have chosen to exit from their respective trade associations, to create their own new contractual units (Bellardi 2016; Papa 2017). The fragmentation and uncertain representativeness of the employers’ associations raise the need to establish transparent and certified parameters, even on this side, with regard to the total number of members and workers. So-called ‘pirate’ agreements, signed by unknown or ambiguous associations, are undermining the whole system of collective bargaining

‘from the top’, fostering fraudulent strategies and downward contractual dumping. The cost gap between a national agreement signed by the most representative unions and one signed by others – in the same contractual unit – can be several thousand euros a year and with lower pay rates (by up to 20 per cent), which is dumping by any estimation. The downward pressure on contractual terms has led the major social partners to moderate wage dynamics in order to limit the adoption of smaller contracts by businesses (D’Amuri and Nizzi 2017)

#### 4.1 Recent renewals of national industry-wide agreements

According to the CNEL archive, in 2008 some 396 industry-wide agreements were recorded, of which fewer than 300 were endorsed by the large confederations; at the end of 2016 that figure had risen to a striking 803 (Olini 2016), only 225 of which were signed by the sectoral federations affiliated to the three main confederations. A striking 195 were in the commerce sector, 60 in transport and an average of 30 in the other main branches: metal, chemical, food, textile, banking and services. Some of them are nothing but ‘copy and paste’ agreements, but most were conceived with the express purpose of driving down costs and labour standards.

In the period 2012–2015, the renewal period for workers whose contract has expired was, on average, 24 months (ADAPT 2017); in 2016–2017, this was increased to 26 months. Strikes were recorded in eight cases.

Between September 2016 and April 2017, over 50 industry-wide agreements – affecting 7 million workers (55 per cent of the total) – were renewed by the most representative social partner associations. As of May 2017, 42 national agreements, concerning 5.8 million workers – 45 per cent of those concerned – were still pending, 15 of them in the public sector (2.9 million employees). After a seven-year freeze – censured by the Constitutional Court – bargaining is once again under way for the renewal of the nationwide agreement covering 3 million public workers.

Nominal wage increases have been scheduled, in two or three tranches, by all the agreements. Amounts differ considerably from sector to sector, but on average they are fairly low once more: 0.8 per cent, according to the Bank of Italy (2017a). Some of them have frozen immediate increases, prolonging agreement duration to over three years. Others (trade and crafts) have abandoned the link to the Harmonised Indices of Consumer Prices (HICP), giving the negotiating actors more room to manoeuvre. They all refer an *ex ante* calibration, as in the past, with the important exception of the metalworking renewal, where the real wage dynamic will be calculated and restored *ex post*, every year in June, after the official data on current inflation are delivered by the National Institute of Statistics.

A monitoring study by ADAPT (2017) of a representative sample of texts shows that, after wages, labour market and industrial relations are dealt with in all sectoral agreements. The national agreements reaffirm the two-tier system, national and company (or alternatively territorial), according to the principle of delegation and non-repeatability

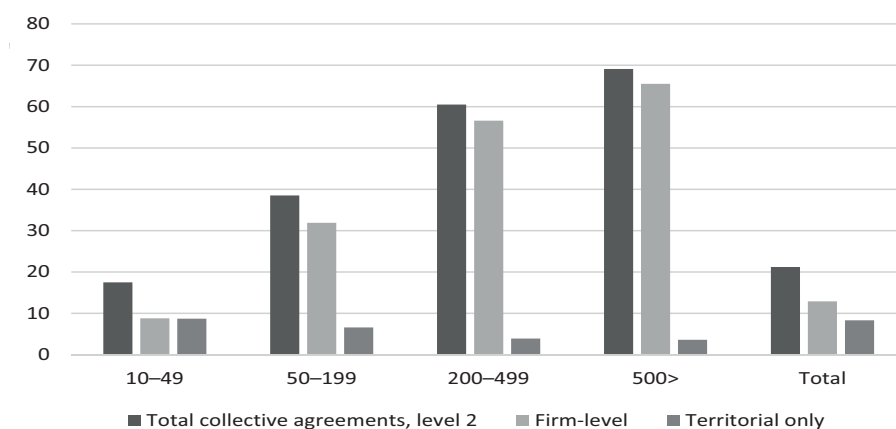
of individual contractual items and with a substantial alignment with the coordination and specialisation rules defined in inter-confederal agreements, which are authoritative in this respect.

Among recent trends, we would like to underline the growing weight of ‘bilateralism’: the social partners’ management of occupational welfare, through joint bodies and funds. Encouraged by the legislation to provide a stop-gap in the context of welfare state retrenchment, bilateral funds have been established in all sectors. Funded by enterprises, they provide complementary pension schemes, supplementary health insurance and unemployment benefits. For a system traditionally lacking a strong participatory model in industrial relations, bilateralism can be considered the most structured and effective form of participation (Leonardi 2017).

#### 4.2 Coverage and contents of secondary-level collective bargaining

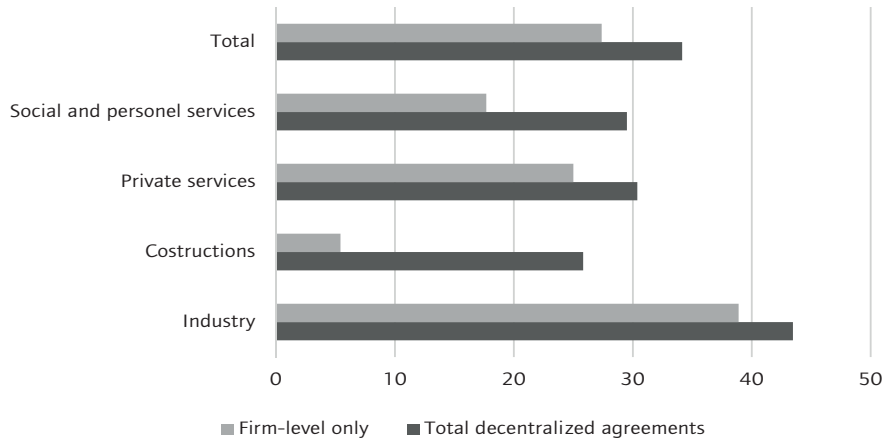
Unlike other countries, where all collective agreements are collected and archived in public observatories – making fairly precise data available – Italy has nothing of the kind, only sample-based surveys or observatories. However, they all agree that decentralised bargaining is very limited, given the number of enterprises and workers covered. According to the Banca d’Italia, company-level bargaining in the private sector covers the 20 per cent of enterprises with more than 20 employees (D’Amuri and Giorgiantonio 2014; Cardinaleschi 2016; ISTAT 2016; Banca d’Italia 2017). The outcomes presented in ISTAT data and their elaboration by the Fondazione Di Vittorio (2016) are similar. Here, secondary-level bargaining coverage, summing the territorial and company levels, is estimated to involve approximately 20 per cent (21.2 per cent) of firms with more than 10 employees, 13 per cent by firm-level agreements and the rest (8.2 per cent) by territorial agreements.

Figure 1 Companies covered by secondary-level collective bargaining, company or territorial



Source: Fondazione Di Vittorio's elaboration on ISTAT data, 2016.

Figure 2 Private sector employees estimated to be covered by secondary-level bargaining, total and by sectors, Italy, 2014



Source: ICTWSS Database; European Commission (2016).

The cross-sectoral gap is remarkable, with a fork between the 43 per cent of the industrial sector and the 25.8 per cent of construction, with a mere 5 per cent at company level.

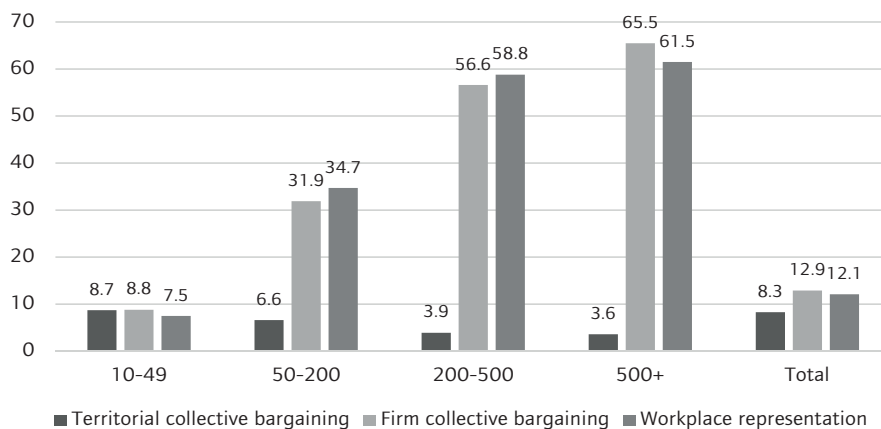
However, the data show a strong territorial polarisation, with a higher concentration in the most economically developed Northern regions, and a substantial absence which affects the Southern regions and the two big islands, where the coverage ratio falls to 11–13 per cent of firms, of which only 5.7–7.7 per cent are covered by a company-level agreement.

Predictably, firm size matters,<sup>14</sup> so that there is a strong and clear co-relationship between firm size and bargaining propensity. The spread of firm-level agreements is much higher in large companies, such as those with over 200 employees (60.5 per cent, 56.6 per cent of which at firm level) or over 500 employees (69 per cent, with 65.5 per cent at firm level). It is lower in the other size classes, namely between 50 and 199 workers, where 38.5 per cent are covered, and between 10 and 49 employees, covering 17.5 per cent, split equally between company and territorial agreements. The total proportion of employees covered by a secondary-level agreement in the private sector is approximatively 35 per cent, or 3.7 million workers (Fondazione Di Vittorio 2016). Other studies reach similar conclusions, according to which between 70 and 75 per cent of Italian wage-earners are excluded by any form of secondary-level bargaining. Wages are ‘condemned’ never to increase but merely to remain aligned, at best, with the real value they enjoyed when the system was established, in July 1993 (Tronti 2016).

14. In Italy, firms under 49 employees represent 98 per cent of all companies, giving employment to 52 per cent of all employees; 93.7 per cent have fewer than 16 employees; 88 per cent fewer than five. At the other extreme, companies with 500 employees or more represent only 0.1 per cent of enterprises, but account for almost 25 per cent of overall employment.



Figure 3 Companies covered by territorial or firm-level bargaining and works councils (by size and in %)



Source: Authors' elaboration based on CNEL-ISTAT data referring to 2012–2015.

According to our calculations, the figures on the coverage of company-level bargaining and workplace representation overlap. According to institutional sources (CNEL-ISTAT 2015), elected works councils (RSU) operate in a mere 12 per cent of enterprises. The figure is slightly higher if one includes the other possible form of workplace representation, designated by the unions and not elected by employees (RSA), prevalent in the financial sector. The presence is as low as 8 per cent in companies employing fewer than 50 employees. The majority of companies (60 per cent) with more than 500 employees have a works council (Pellegrini 2017). This is certainly one of the main explanations, perhaps the most important, for the very limited extension of company-level bargaining and agreements (Leonardi 2016).

If this is not an encouraging picture in terms of coverage, what about the content of the company-level agreements? According to some surveys, in the period 2012–2016 the matter most commonly addressed was wages, present in 77 per cent of territorial and 64 per cent of company agreements (ADAPT 2015; 2017). According to another study (OCSEL 2017), restructuring was the most frequent issue in 2013–2014 (62 per cent of agreements), followed by wages (23 per cent). In 2015–2016, wages were addressed in 43 per cent and restructuring in 37 per cent of agreements. Working time flexibility is another frequent item, whereas occupational welfare has been gaining more and more attention in recent collective bargaining rounds, at all levels. A total of 20 per cent of new firm-level agreements include one or more items concerning in firm health insurance and a wide range of benefits concerning working life balance, smart working and company day care. This could be further developed, given the robust fiscal incentives given by the government for such arrangements in firm-level agreements. Finally, work organisation is tackled in 11 per cent of the sample – especially shift work – up from 6 per cent the previous year (OCSEL 2017)



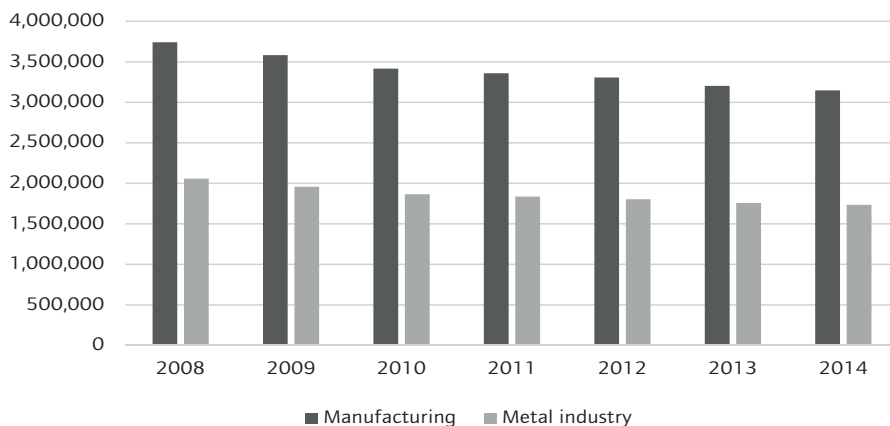
It is important to underline here that disorganised decentralisation, with firm-level agreements used as an open alternative to sectoral ones, has not taken place. Empirical surveys all agree that derogating from sectoral agreements concerns probably between 5 and 10 per cent of company agreements (Tomassetti 2015; OCSEL-CISL 2017; Olini 2016, ADAPT 2017). Work organisation and working time are the most prevalent topics. This is good news, but we cannot completely exclude the possibility that the existence of derogating agreements is simply insufficiently known, as their signatory parties, on the union side, are not interested in publicising them (Imberti 2013).

## 5. Survey of the metalworking and trade sectors

### 5.1 The Italian metal industry in the aftermath of the crisis

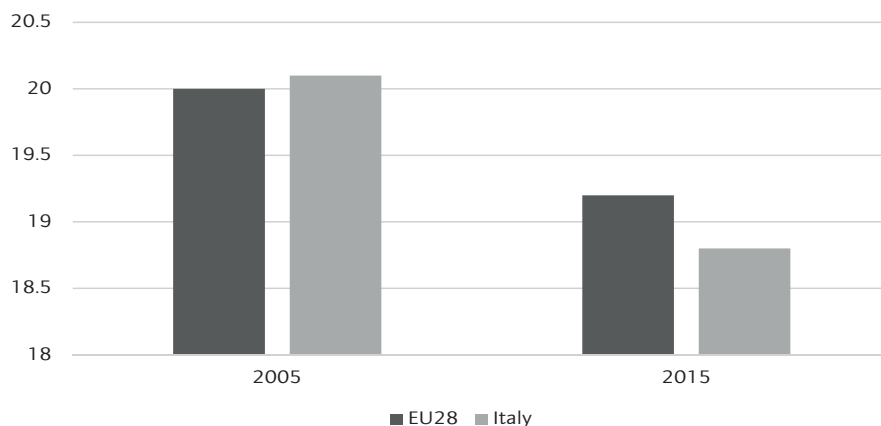
A total of 1.6 million people work in the metal industry in Italy, one of the highest figures in Europe. Its added value in 2014 amounted to 113 million euros, corresponding to 55.3 per cent of the Italian manufacturing sector's gross value added (GVA). The bulk of this is concentrated in two sub-sectors: the manufacture of machinery and equipment (n.e.c.) and the manufacture of fabricated metal products, excluding machinery and equipment. The number of active enterprises registered in 2014 was 196,507, representing 5.2 per cent of the total economy (excluding finance and insurance). As in many other European countries, the manufacturing sector in Italy has witnessed a constant decline in recent decades, in terms of both companies and employment (see Figure 4). The economic crisis that started in 2008 aggravated this trend. Between 2008 and 2014 the workforce in the metal sector shrank by more than 324,000 (–12.5 per cent). Unlike the manufacturing sector, the metal industry is characterised by bigger

Figure 4 Employment trends in the metal industry and manufacturing sector in Italy, NACE Rev. 2, 2008–2014



Source: Authors' elaboration based on CNEL-ISTAT data referring to 2012–2015.

Figure 5 Gross value added at basic prices, 2005 and 2015 (% share of total gross value added)



Source: Eurostat - Economy and finance. National accounts and GDP.

than average enterprises. However, value added decreased steadily in the years of the crisis (see Figure 5). This trend had serious repercussions for both employment levels and labour productivity, which fell steadily compared with the European average.

### 5.1.1 The metal industry in Italian industrial relations. Structure and actors

Union density in the Italian metal sector is 32.8, slightly higher than that of the manufacturing sector (31.4 per cent) and a bit below the – estimated – national average of 33.4 per cent (Carrieri and Feltrin 2016). The most representative sectoral unions are FIOM-CGIL, FIM-CISL and UILM-UIL. Employer density is estimated at around 50 per cent, with a number of employers' associations. The largest and most influential of the latter is Federmeccanica (affiliated to Confindustria), with more than 16,000 enterprises, employing 800,000 workers. The second is Unionmeccanica (affiliated to Confapi), representing 80,000 small and medium-sized enterprises, employing 800,000 workers, with 400,000 in the metal sector proper). Cooperatives and craft industry have their own confederations and sectoral federations, also in metalworking. In 2013, a new breakaway employers' confederation – Confimi Industria – was founded by local and sectoral employers' associations from Confapi and Confindustria.

The whole metal industry is covered by five main national collective agreements, all signed by the same unions with the various employers' associations, depending on firm size and economic subsector: large industry, small and medium, cooperatives, craft and goldsmiths' wares. To date, all the main national collective agreements have been renewed. Only the craft sector has not yet renewed its collective agreement.

Since 1993 collective bargaining has taken place at two levels in Italy. The two-tier bargaining system is based on industry-wide agreements. In recent years trade unions have reinforced the role of second-level bargaining with the aim of increasing flexibility

Table 3 Minimum wage and Kaitz index

	Annual minimum wage	Annual average wage	Monthly minimum wage	Kaitz sectoral index (percentage of median in sector) Metal sector	Kaitz sectoral index (percentage of median in sector) Manufacturing
Metal sector	16,888.43 euros	21,566.22 euros	1,297.81 euros	78.3	79.9

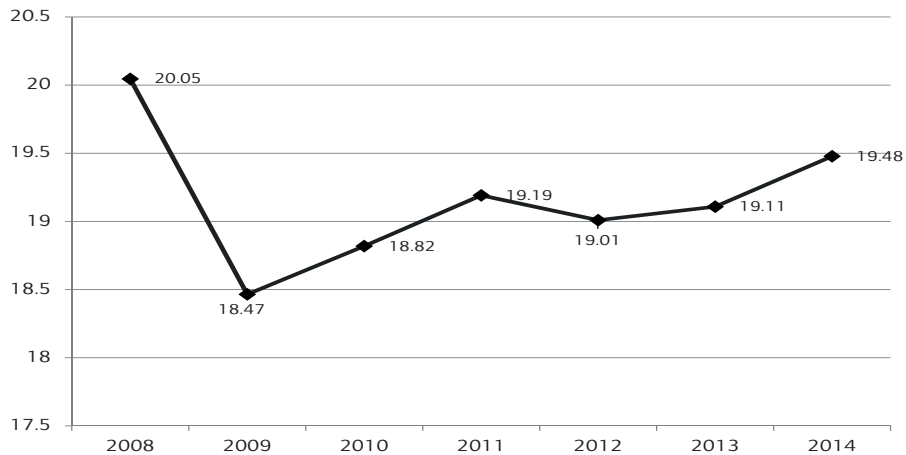
Source: Authors' elaboration of Garnero (2017) and union documentation.

and productivity. In general terms the Italian two-tier bargaining system is made up of high minimum wages negotiated in collective agreements and a relatively compressed wage scale (Garnero 2017). The estimated sectoral Kaitz index<sup>15</sup> in the metal industry (78.3 per cent) is slightly lower than in the manufacturing sector as a whole (79.88 per cent). A high sectoral Kaitz index corresponds to a substantial number of workers being paid at the minimum wage level, with a very narrow distribution. Alternatively, it may indicate a large number of low paid workers below the minimum wage.

As reported by Armaroli *et al.* (2017), pay negotiations in metalworking have, in most cases, been characterised by wage moderation. This trend is confirmed if we look at the metal industry wage share (Figure 6). Despite a steady increase after the recession that started in 2008 this ratio is still far below the pre-crisis level.

As far as second-level bargaining is concerned, the metal sector shows similarities and differences to the national trend. As already noticed in previous sections there is a close

Figure 6 Metal industry wage share, 2008–2015 (%)



Source: Authors' elaboration on business statistics – Eurostat data.

15. The level of the minimum wage compared with the median wage.

relationship between firm size and decentralised agreements in Italy. Approximately 35 per cent of employees in the private sector are covered by a second level agreement represent, equivalent to 3.7 million workers (Fondazione Di Vittorio 2016). In smaller enterprises, most employees are not covered by any workplace representation with the consequence that company level bargaining is limited. Due to the higher number of companies in the metal sector with more than 250 employees, second-level bargaining has a higher incidence there than in the rest of the economy. In order to improve flexibility and productivity decentralised and territorial-level bargaining have been strengthened in the past two years, by focusing on company welfare agreements. The new national industry-wide agreement is fairly representative of this new trend.

### 5.1.2 The most recent national industry-wide agreement

Negotiations on the new national industry-wide agreement were difficult and protracted, taking more than one year. The last two renewals had been signed without FIOM-CGIL and there was a risk, at the beginning, of a similar outcome. *Confindustria* and its affiliate (*Federmeccanica*) demanded more collective bargaining decentralisation towards the firm level in wage setting. In the metal sector, the biggest company, FIAT, left *Federmeccanica* and *Confindustria* in 2009, so as to overcome what it regards as the ‘rigidities’ of the collective bargaining system and to implement its own establishment-level contract.

In 2015, metalworker federations presented two platforms to the employers’ federation: one FIM-UILM and another FIOM. In the end, they were brought together. *Federmeccanica* presented its own platform, called the ‘*renovation of the metalworkers’ national collective agreement*’, calling for just one level of negotiation and a national guaranteed wage only for those uncovered by any collective or individual enterprise CLA (covering just 5 per cent of metalworkers), its amount to be defined every year. Nothing happened in 2016 because wage rises already exceeded real expected inflation. In July 2017 wages are set to be increased based on the previous year’s inflation; 260 euros per year as a production bonus or welfare vouchers; an increase in health coverage insurance; permanent training lasting 24 hours every three years; and an increase in supplementary pension.

At the end of difficult negotiations, an agreement was reached in November 2016 with all the most representative trade unions, and signed after the workers approved the draft in a ballot.

Compared with the past, the new agreement provides considerable novelty.

- *Duration*: unlike what had been foreseen in the collective bargaining reform of 2009, the parties agreed to extend the contract from three to four years.
- *Wages*: there was no planned wage increase for 2016, but there was a one-off sum of 80 euros (gross) in 2017 wages. As of 2017, a new inflation adjustment mechanism has been introduced, which is no longer based on expected inflation (on the basis of the foreseen or expected inflation rate) but defined every year ex post, and not ex ante, as in other sectoral agreements.

- *Occupational welfare*, both at sectoral and company level, plays a key role in the new collective agreement. It consists of health insurance, training (24 hours every three years), complementary pensions and a wide range of benefits provided at company level through vouchers. Due to the robust fiscal incentives instituted by the government these changes are expected to introduce substantial innovations in relations between the social partners. New parameters and a different relationship between occupational welfare at company and at sectoral level have been established. Since 1 June 2017, companies have been committed to providing flexible benefits for all workers up to a maximum of 100 euros in 2017, 150 euros in 2018 and 200 euros in 2019. It must be said that the first real increase, in June 2017, was a pitiful 1.5 euros for a typical blue-collar worker. Likewise, supplementary pensions and supplementary health insurance have been extended to all workers. As an alternative to monetary bonuses, workers can opt – entirely or partly – for in-kind welfare services collectively bargained at company or territorial level. The new agreement gives a further boost to supplementary pension provision by increasing the contribution rate paid by companies in favour of employees who are members of the National Pension Fund (Cometa), from 1.2 to 2 per cent. As of 1 October 2017, the supplementary health insurance contribution to the sectoral health fund (Metasalute) will be fully borne by the employer, totalling 156 euros per year. The right to supplementary health care has been extended to part-time and fixed-term workers, as well as to workers' dependent family members. In cases in which the company already provides forms of supplementary health care, the collective agreement stipulates that the parties will have to complement the benefits with a contribution to be paid by the company, which cannot be less than 156 euros per year.
- *Training*: the contract focuses heavily on training and the individual right of all workers to choose training related to innovation (linguistic, technological and organisational, transversal or relational skills). This right is currently limited to 24 hours (or 16) over three years, after which there is a 150-hour reinforcement and university training (security training and RLS are also strengthened).
- *Participation*: support for the direct participation, in different ways, of workers (observers and committees in second-tier negotiations and security), the establishment of a new *participation advisory committee* in larger companies (1,500 employees or so) and a national committee on active labour policies.

Compared with the past, occupational welfare and benefits constitute a major novelty, seen as a way to stimulate labour productivity with no direct monetary increases. The flexible benefits included are additional, provided by second-tier negotiations, for all workers. This represents a novelty not only with regard to previous renewals, but also with regard to the FCA agreement. The FCA agreement has only one, corporate level. It provides the possibility of transforming or replacing part of variable remuneration into flexible benefits, to which the company adds a 5 per cent stake. The FCA's welfare plan is defined by agreement between the unions that are signatories to the collective agreement: FIM-CISL, UILM-UIL, FISMC, UGLM and ACQF, but not FIOM-CGIL. One of the strengths of the FCA's corporate welfare is the fact that it has built up a well-defined basket of services, with the unused welfare services re-absorbed in wages. The national collective agreement works on the basis of a different logic; it is not based on the exchange of services and variable parts of remuneration within the company, but

on the coexistence of a national level entrusted with maintaining purchasing power and a second tier that is required to add additional welfare benefits. The vast majority of company agreements have been signed in larger companies, especially multinationals, with more than 1,000 employees, 39.7 per cent of the total (ADAPT 2017). In fact, small and micro-enterprises, where flexible benefits cannot be generated by the economies of scale that are typical of larger companies, are somewhat worried. A second concern is related to the availability of data on the type of services and flexible benefits negotiated in companies. The data show a strong increase in corporate bargaining on the subject of welfare. However, the lack of more detailed information on the sectoral and corporate levels preclude comparisons of the different baskets.

### 5.1.3 The trade union viewpoint

The metal workers unions have agreed to wage moderation and new participatory approach to collective-agreement and company welfare, rejecting the abandonment of the national collective agreement. In this exchange Italian metal unions have achieved an attenuation of the strong dualisation initially envisaged in the Federmeccanica proposals. Against this background the trade unions reacted to these pressures by using the new contractual architecture as a tool for relaunching collective bargaining.

Wages and labour costs were the most difficult topic during the long negotiations. As one national official of FIOM-CGIL told us:<sup>16</sup>

‘At the beginning of the negotiations, employers not only did not accept the wage increases. In a situation of deflation (with both an economic downturn and falling inflation), [perversely] the [company] was actually asking the workers for money back. Enterprises were willing to grant wage increases only to those workers whose wage levels were lower than the minimum. This called into question the autonomy of the national and company levels. At the same time, Federmeccanica’s proposal mentioned an integrative health care service borne by the company and the workers. We started from a difficult situation, within a legislative framework that had already created derogations, divisions amongst the workers and a weakening of the national collective agreement.’

Another official from the same organisation told us that the employers have certainly obtained the low wage increases:<sup>17</sup>

‘They also obtained a mechanism of total variability with regard to company welfare benefits. Previously when negotiating final agreements, you could bargain for fixed items for everyone. Now they have become variable. We worked on the fact that with occupational welfare we could recover what was lacking with regard to wages. We have extended integrative health care to everyone and made sure that, above all, this responsibility was borne by the enterprises. Federmeccanica wanted everything to be regulated within the company. We managed to get this in the collective agreement and give workers the opportunity to choose between

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16. Maurizio Landini, General Secretary of the FIOM-CGIL.

17. Roberta Turi, member of the FIOM-CGIL national board.

corporate benefits and other forms of contractual welfare (health insurance and complementary pension).’

For the FIM-CISL, the focus must be on corporate and territorial negotiations. As we were told in an interview with a leader of the metalworkers federation:<sup>18</sup>

‘We cannot continue with just the national one. If small enterprises alone cannot activate company welfare plans, it is necessary to reinforce territorial bargaining in order to build economies of scale, in order to activate services. It is also necessary to integrate bilateralism in this design: we have to put together parts of bilateralism in order to strengthen company welfare in small enterprises. That said, a step forward has been made after too many years of divisions. A step forward has been made with respect to Federmeccanica, which was demanding money back. Foundations have also been laid so that the workers can access more services and integrative benefits under the collective agreement.’

#### 5.1.4 Final comments

The metalworkers unions agreed on wage moderation and a new participatory approach to collective agreement-based and company welfare, rejecting the abandonment of the national agreement. In this exchange Italian metal unions have achieved an attenuation of the strong dualisation initially envisaged by Federmeccanica. In this context trade unions have reacted to these pressures by using the new collective-agreement architecture as a means of relaunching collective bargaining. Although the new agreement does not grant significant wage increases, it continues to maintain purchasing power. Despite pressure towards disintermediation, the potential destabilisation induced by the FIAT/FCA case – with its company agreement as an alternative to the national industry-wide agreement – did not take place. From such a viewpoint, the sector has maintained a degree of inter-sectoral coordination, with the two traditional levels confirmed. The signatory social partners were able to establish some points, exploiting the innovations provided by the legislation. One point of criticism might be the difficulty that smaller companies are likely to experience in actually realising welfare benefits at plant level, especially the in-kind services that require considerable economies of scale. As matter of fact the development of company welfare in these companies depends on the ability of the social partners to reinforce territorial-level bargaining.

## 5.2 The Italian trade sector after the economic crisis (2008–2014)

### 5.2.1 Collective bargaining in the trade and retail sector<sup>19</sup>

Our aim in this section is to investigate the changes that occurred in the Italian trade sector from 2008 to 2014. First, we describe the main structural characteristics of

**18.** Marco Bentivogli, General Secretary of the FIM-CISL.

**19.** The trade sector (G) comprises three main subsectors: G45, wholesale and retail trade and repair of motor vehicles and motorcycles; G46, wholesale trade, excluding motor vehicles and motorcycles; and G47, retail trade, excluding motor vehicles and motorcycles. The so-called GDO: *Grande distribuzione organizzata* (Large Distribution) is included in Retail (G47). We used the Eurostat Annual detailed enterprise statistics for trade (Nace Rev. 2 G) available from 2008 to 2014 (last update 18.05.17; extracted on 04.06.17).

the trade sector in Italy, focusing on the retail subsector. Then we analyse collective bargaining at national level, highlighting the main actors and processes in trade and retail. Finally, we take a more detailed look at decentralised collective bargaining in the trade sector (at company and territorial level) in order to understand its impact on wages, working conditions and social protection.

### 5.2.2 Main structural characteristics of the trade sector in Italy: workers and firms

From 2008 to 2014, the economic crisis led to the closure of 91,908 enterprises in the Italian trade sector as a whole (–8 per cent); more than 57 per cent of this reduction (52,978 firms) was in the retail sector.

Table 4 Enterprises in the trade sector, Italy, by economic activities (2008–2014)

	2008	2009	2010	2011	2012	2013	2014	2008/2014	
G45	122,951	120,850	119,348	119,070	118,220	116,895	115,256	-7,695	-6%
G46	422,198	412,049	409,684	406,450	402,596	398,362	390,963	-31,235	-7%
G47	669,893	651,024	644,873	646,623	642,597	638,383	616,915	-52,978	-8%
G	1,215,042	1,183,923	1,173,905	1,172,143	1,163,413	1,153,640	1,123,134	-91,908	-8%

Source: Eurostat. Annual detailed enterprise statistics for trade (NACE Rev. 2 G).

Most of the employment (about 97 per cent) is concentrated in firms with fewer than 10 employees (Table 5).

Table 5 Number of enterprises in the trade sector, in Italy (G) by employment size, 2008/2014

	2008		2014	
Total firms in trade sector (G)	1,215,042	100%	1,123,134	100%
0–1 person employed	698,061	57%	658,581	59%
2–9	476,193	39%	428,050	38%
Total 0–9	1,174,254	96%	1,086,631	97%
10–49	37,530	3%	33,508	3%
50 or more	3,258	0%	2,995	0%

Source: Eurostat. Annual detailed enterprise statistics for trade (NACE Rev. 2 G).

In 2014, the total number of persons working in the trade sector in Italy was 3,302,311. However, if you consider only employees, they numbered 1,941,454, about 58 per cent of the whole. This falls further to 1,502,830 if you consider full-time employees (Eurostat 2016).

### 5.2.3 National collective bargaining in the trade sector: actors and processes

In the trade sector, there are three main trade union organisations: *Filcams-CGIL*, *Fisascat-CISL* and *Uiltucs-UIL*. These unions represent workers in the largest part of private services, including trade and retail, restaurants, hotels and cleaning. Their



Table 6 Workers in the trade sector, Italy, 2008–2014

	2008	2014	2008/2014	
Total working in sector	3,557,898	3,302,311	-255,587	-7%
Number of employees	1,985,710	1,941,454	-44,256	-2%
Number of full-time equivalent employees	1,699,626	1,502,830	-196,796	-12%

Source: Eurostat. Annual detailed enterprise statistics for trade (NACE Rev. 2 G).

Table 7 Workers in the retail sector, Italy, 2008–2014

	2008	2014	2008/2014	
Total working in sector	1,911,419	1,819,749	-91,670	-5%
Number of employees	1,019,525	1,035,752	16,227	2%
Number of full-time equivalent employees	851,303	762,723	-88,580	-10%

Source: Eurostat. Annual detailed enterprise statistics for trade (NACE Rev. 2 G).

overall number is growing year after year. In 2014 these three trade unions (as a whole) had about 900,000 members.<sup>20</sup>

Nevertheless, union density in these sectors remains one of the lowest. Union density in the trade sector as a whole was about 17 per cent in 2014 (Feltrin and Carrieri 2016), lower than in all other sectors.<sup>21</sup> However, it is growing, especially in large distribution multinational companies.<sup>22</sup>

There are four main employers' organisations in the trade sector and retail: (i) Confcommercio; (ii) Confesercenti; (iii) so-called 'cooperative distribution'; and (iv) Federdistribuzione,<sup>23</sup> representing 'modern distribution companies'.

Confcommercio declares that it has more than 700,000 affiliated firms and almost 2.7 million employees; Confesercenti claims to represent around 350,000 SMEs with more

**20.** According to trade union data, from 2008 to 2014 Filcams, Fisascat and Uilucs taken together increased their membership from about 674,426 to 900,993 (+33.6 per cent). Fiom, Fim and Uilm together increased from 654,237 to 655,781 members (+0.2 per cent).

**21.** According to Visser (2015) union density in Italy was 37.3 per cent in 2013. It is still growing. According to our calculations based on Italian union data and Istat data, in 2014 union density in Italy reached 37.7 per cent.

**22.** According to union data, in 2014 almost 900,000 workers were members of Filcams, Fisascat or Uilucs. According to Istat data, in 2014 about 2,800,000 workers 15–64 years of age were employed in the trade sector (G), and in hotels and restaurants (I). For this reason union density in trade, hotel and restaurant sectors (g-i) in 2014 cannot be higher than 32.1 per cent. This is an overestimation, since we do not know how many workers, who are union members, are working in other sectors (for instance, as cleaners).

**23.** Federdistribuzione is an umbrella association of five further associations: (i) ADA, Associazione Distributori associate; (ii) ADIS, Associazione Distribuzione Ingrosso e self-services; (iii) AIRAI, Associazioni Imprese Retailers Alimentare; (iv) ANCIDIS, Associazione Nazionale Commercio Imprenditoriale al Dettaglio e Imprese Specializzate Non Food; and (v) Federdistribuzione Franchising.

than 1,000,000 employees. According to the last *Federdistribuzione* data, they represent about 200 large companies and multinationals (such as Carrefour, Auchan, Esselunga, Ikea and so on), with more than 220,000 employees. The problem is that every employer association collects and spread its own data. There does not exist, as in the French case, a law that establishes the criteria to follow to measure the representativeness not only of trade union but also of employer organisations.

Until 2011, *Federdistribuzione* was part of *Confcommercio*; in 2012, they split. An influential trade unionist underlined that

‘the split of *Federdistribuzione* from *Confcommercio* occurred after or is somehow linked to Law Decree 201/2011 on liberalisation. *Confcommercio* has its critics ... *Federdistribuzione* instead supported liberalisation. This means not only the possibility of keeping shops open 24 hours a day but also the possibility of opening new outlets by loosening the criteria established by regions and provinces.’ (Gabrielli, Filcams CGIL General Secretary)

Such employer segmentation affects the number of national collective agreements in the trade sector. The following are the main agreements signed (or under negotiation) by Filcams CGIL, Fisascat CISL and Uiltucs:

- The national collective agreement for *Tertiary, Distribution and Services* (TDS) with *Confcommercio*, last renewed in March 2015 (it will expire on December 2017).
- The national collective agreement signed with *Confesercenti*, renewed in July 2016.
- The national collective agreement in cooperative distribution (expired in 2013).
- Ongoing negotiation for first national agreement with *Federdistribuzione*.

The national agreement with *Confcommercio*, last renewed in March 2015, expired in December 2017. This was the first one signed jointly by all three most representative unions CGIL, CISL and UIL, since Filcams CGIL refused to sign the previous two, in 2008 and 2011. According to Uiltucs data, it covers about 1.2 million workers.

The national collective agreement signed with *Confesercenti* in July 2016 is quite similar to the *Confcommercio* national agreement. One novelty is the possibility to adopt a new type of ‘temporary contract’. This agreement allows companies located in tourist places derogations on the limits set by national collective bargaining. According to Uiltucs, it cover about 50,000 workers.

‘From a normative and economic point of view, national agreements in the trade sector (with *Confcommercio* and *Confesercenti*) are essentially identical. Furthermore, each collective agreement has its own bilateral and autonomous system.’ (Gabrielli, Filcams-CGIL General Secretary)

The national collective agreement in *cooperative distribution* expired in 2013 and negotiations are still ongoing.<sup>24</sup> Unions in the past were able to exchange more

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**24.** The three national associations still negotiating the renewal are: ANCC Coop, the National Association of Consumer Coop; Confcooperative; and Agci Agrital.

favourable waging conditions and career development in exchange for labour cost cuts. Cooperative work in Italy can take advantage of the statutory public tax credit to foster the development of cooperative work.

‘Compared with the agreements with Confcommercio and Confesercenti, the national agreement for cooperative distribution has slightly higher wages, as it establishes better career paths for workers.’ (M.G. Gabrielli, Filcams CGIL General Secretary)

Nevertheless, negotiations to renew this national agreement are still under way. According to the Uiltucs national secretary, this national agreement will cover about 80,000 workers.

‘In recent years cooperative distribution has pushed for reductions in wages and labor costs in order to be more competitive than other private (and non-coop) firms.’ (Marroni and Uiltucs National Secretary)

Also still open are the negotiations on the national agreement with *Federdistribuzione*, which covers about 220,000 employees. The situation is now fraught, due to a halt in negotiations. In the words of an official of Filcams CGIL:

‘At the beginning, there were different approaches. Fisascat CISL was more inclined to negotiate with Federdistribuzione, while Uiltucs was more hostile because of its historically stronger relationships with Confcommercio. We, CGIL, have opened a negotiation in a coordinated way by presenting a unique platform (with equal wage increases) for all the employers’ organisations, namely Confcommercio, Confesercenti, cooperative distribution and Federdistribuzione.’

#### **5.2.4 Decentralised collective bargaining in the trade sector**

In November 2016, Confcommercio signed an inter-confederal agreement with CGIL, CISL and UIL in order to establish a new system of industrial relations. This agreement refers to a previous text on representativeness, signed on November 2015, in which Confcommercio underlined its willingness to measure the representativeness of the employers’ organisations. This issue, together with an incomplete process for measuring trade union organisation is a major issue for the Italian system of industrial relations.

This agreement is similar to (and followed) those signed by Confindustria on collective bargaining and representativeness (see above). In this text, the social partners reiterate the importance of a multi-level system of collective bargaining, at national and decentralised level. The national agreement remains the cornerstone of the system, in order to guarantee equal wages to all workers in the sector.

Instead, it is possible to bargain territorial or company agreements by derogating from the national one only in specific conditions, explicitly established in the national collective agreement’s guidelines. (For instance, in order to foster employment growth, good working conditions and quality of work or to deal with an economic crisis.) The agreement aims at enhancing collective bargaining not only at company level but also

at the territorial one in order to find the most appropriate solutions to the needs of companies of different sizes and to improve productivity. It is important to stress the usual size of firms in the trade sector: more than 1 million firms (almost 97 per cent of all enterprises in the sector) had fewer than 10 employees in 2014 (Eurostat 2016).

Derogating from the national agreement is possible only in four specified cases:

- (i) in the event of a serious economic crisis;
- (ii) in order to bolster employment;
- (iii) to support development; and
- (iv) to attract new investment (with particular regard to southern Italy).

However, according to the national secretary of Uiltucs-UIL, these clauses have never been used. The only exception was in 2008, *when derogation clauses were used to tackle the emergence of illegal work, especially in the south of Italy.*

Regarding the retail sector, in recent years the economic crisis has reduced the level and quality of decentralised collective bargaining. Especially in the retail sector, several large distribution firms have cancelled their company agreements. The situation described by a trade union official is not easy. 'We tried to renew company agreements, but [...] on one hand there are very old contracts in the drawer, which nobody wants to question. Some have fixed wages, or particularly favourable terms. On the other hand, some contracts were signed during the economic crisis. It was very hard to renew them. We renewed only a few company agreements and they were all concessional' (National secretary of Uiltucs-UIL).

### **5.2.5 What changes have there been with regard to wages, working conditions and welfare in the trade sector?**

Regarding wages and labour costs, the Confcommercio national agreement establishes the so-called 'economic guarantee element'. The 'economic guarantee element' was introduced in the national collective agreement in 2011 and is an additional sum (ranging from 60 to 105 euros) that firms have to pay to their employees if a decentralised agreement cannot be reached. Firms with fewer than 30 employees (the majority in this sector) can choose to fix variable pay through a territorial agreement, or have to apply the 'economic guarantee element'. On the other hand, firms with more than 30 employees can establish variable pay through company or territorial collective agreements. Otherwise, they have to apply the 'economic guarantee element'. Workers will receive the next 'economic guarantee element' at the end of November 2017.

'It is important to note that in 2011 this sum was higher (from 85 to 140 euros)' (Marroni, Uiltucs-UIL national secretary). The national agreement also established a guideline in order to determine the conditions under which it is possible, at territorial or company level, to derogate from national agreements. For instance, it is possible in tourist places to employ more 'fixed term contract' workers rather than the percentage fixed by the national agreement. Another possibility is to bargain territorial or company agreements to increase flexible working time.

In 2015, the hourly minimum wage in the trade sector was about 8.43 euros/hour. This is lower than the average of all sectors (about 9.41 euros/hour) (Garnero 2017). Other scholars who have examined minimum wages established in the National Trade Agreement confirm these data.<sup>25</sup>

Significant changes that have spilled over to affect workers include increases in involuntary part-time work and temporary contracts, as well as a substantial increase in the use of vouchers (in particular in tourism). The use of involuntary part-time employment increased from 43 per cent in 2008 to 71 per cent in 2015.<sup>26</sup>

The issue of welfare – at both national and company level – is becoming more important. Managed through a multi-level system of bilateral bodies and funds, this kind of ‘bilateral or collective agreement–based welfare’ includes complementary pension schemes, integrative health insurance, income benefits, vocational training and other ‘flexible benefits’ paid for by joint contributions of enterprises and workers (especially supplementary pension schemes and health care).

The most important inter-professional fund for lifelong learning in the sector is ‘For. Te’. A substantial number of small, medium-sized and large companies (operating in trade, tourism, services, logistics, shipping and transport) have chosen it.

What is new is the introduction of a tax concession to improve welfare measures, collectively bargained, not only at decentralised level but (since the end of 2016) also at national level.

According to the president of Confcommercio, Carlo Sangalli:

‘Over a long period we were able to build a huge integrative welfare system, which covers millions of workers, via national bargaining. It’s an instrument of social justice, isn’t it? Supported by adequate incentives these instruments are able to guarantee a second welfare pillar ... in a more mature way, in other European countries.’ (Official speech at annual national meeting of Confcommercio, 8 June 2017, Rome)

Considering the significant and growing volume of financial resources and aims, the issue of transparent governance is fairly crucial. The aim of the social partners is to reduce the number of bilateral funds in order to increase the number of recipients and to make the services more efficient and appropriate to newly emerging needs.

### 5.2.6 Critical issues and perspectives

The most critical and sensitive issue in the sector is the uncontrolled spread of national agreements (labelled ‘pirate’ agreements), signed by a growing number of new unions

<sup>25</sup>. According to Garnero (2017) the hourly minimum wage in the manufacturing sector is about 9.47 euros/hour and – in contrast to the trade sector – ranges from 7.66 to 11.03 euros/hour. Birindelli (2017), by contrast, underlines the existing range in the trade sector between non-fixed term workers (8.3 euros/hour) and fixed term workers (10.1 euros/hour).

<sup>26</sup>. Trade union data. They explain this increase as a way to save jobs by avoiding layoffs.

and employers' organisations. The poorly institutionalised industrial relations system, based on social partner autonomy and voluntarism, is seriously compromised by the lack of a clear rule on representativeness. The risk is that wild cost competition and contractual dumping will be fostered, not only between workers, but also between firms.

Employers who are not affiliated to any association are free to choose which national collective agreement to apply (comparing their costs and advantages), or otherwise to sign a new national agreement with a preferred union.

The Confcommercio or Confesercenti national agreement, but also the CISAL agreement, may be more advantageous for employers. This issue is crucial for the most representative unions. As underlined by the general secretary of Filcams-CGIL:

'There is no system that imposes a minimum wage that can be considered binding erga omnes! An employer association can say that it represents 1 million firms but no one can check it. CNEL (the relevant public authority) does not have a strong enough legislative architecture to verify whether the terms of an agreement constitute dumping.'

Moreover, the options for further derogations available to an employer opting for a 'pirate' national agreement will be much wider than in the case of the most representative national agreements.

There is a strong link between the issue of measuring social partner representativeness and the contents and quality of the decentralisation bargaining process. In January 2016 the three confederal trade unions asked for legislative measures:

'If we want to build an innovative and certain system of rules, it would be a major step forward to take what we have already designed in the framework agreements and to implement it in a law.' (Filcams-CGIL general secretary)

Confcommercio is aware of the risk of wild competition and dumping. President Carlo Sangalli, in his official speech at the most recent Confcommercio conference (8 June 2017) said:

'We, at Confcommercio, are available to immediately verify our representativeness. It is an important factor in real economic democracy. We have underlined this belief also in the 'reformist practice' of the agreement on the contractual model, which we signed last November with CGIL, CISL and UIL. National collective bargaining agreements obviously affect different partners differently. Nevertheless, they are 'social capital' for everyone.'

Finally, tax incentives introduced by the government to enhance productivity and increase competitiveness through collective agreements at company or territorial level, represent another challenge. In the trade sector, the problem is which criteria to adopt in order to measure productivity or quality improvements at territorial level, because more than 1 million firms have fewer than 10 employees.

## 6. The strategies of the social partners

What do the social partners think about the new reformed system of collective bargaining and wage setting? What are their aims?

As far as the employers' associations are concerned, there is no money for wage increases, as the wage rises they gave were higher than expected real inflation. Early in 2015, a bombshell was dropped at the opening of the bargaining session in the chemical sector by the employers, who demanded the restitution of 79 euros on the grounds that real inflation in the previous three-year period had been lower than forecast. In the end, an agreement was reached, but the situation remains uncertain and confused. Employers claim that no provisional indicator should be taken into consideration, all forms of automatism should be abrogated and only real, not forecast inflation should be taken into account. This applies particularly in the metal sector, in which the largest and most influential employers' association, Federmeccanica, issued a position paper entitled 'Contractual Renewal' in 2015. One of its key assumptions is that, at the present time, 'nothing can be taken for granted'. The rules of collective bargaining must be rewritten.

'Our sector is no longer able to bear wage increases, which should be delinked from real company results because otherwise such increases would provoke a further loss of competitiveness and/or reduction of profit margins. ... Wage rises are possible only where gains are registered, that is, at the company level, and must be strictly correlated with objective parameters of the profitability and productivity of individual firms.'

Beside variable wages, occupational welfare at company or territorial level plays a key role. Employers are willing to accept higher payments and vouchers for company health insurance, training and supplementary pensions. On this basis, the national sectoral agreement would maintain only a residual role of fixing a 'guaranteed wage' for workers not covered by any other decentralised performance-related wage increase. Its amount is defined every year, ex post – after the ISTAT data on the previous year – and not ex ante, as was previously the case, based on the anticipated inflation rate. Some of these claims were adopted in the most recent sectoral agreements, signed at the end of 2016 and approved by workers in a referendum (see the sectoral section of this chapter for an insight into the last sectoral collective agreement signed in December 2016). The metal workers unions agreed to some of these proposals, such as those concerning a new approach to contractual welfare and training, but rejected the substantial abandonment of the role of the national collective agreement, in consideration of the fact that wage increases would now refer to a mere 5 per cent of the sectoral workforce, which are now uncovered by any other proximity increment.

Trade union confederations, as a whole, are fairly united in rejecting this approach, considering wage bargaining a matter of fairness, not to mention a key tool for boosting demand and production. The renewal of the numerous expired national agreements is a priority, starting with the large public sector, with its three million employees, in which wage bargaining has not occurred for the past six years.



On 14 January 2016, CGIL, CISL and UIL signed an inter-confederation agreement entitled *A modern system of industrial relations for economic development based on innovation and quality of work*. The new strategy is focused on three pillars, with new rules on collective bargaining, participation and representation.<sup>27</sup> As for the latter, the three confederations stress the importance of a more inclusive model of collective bargaining,<sup>28</sup> still two-tier with primacy going to the national level. A wage expansion policy is required that could herald sustainable wage-driven growth. Wage increases beyond merely conserving purchasing power would act as an indispensable driver of consumption and domestic demand. The economic conditions considered relevant for economic policy will no longer be confined to the recovery of purchasing power, which has become marginal due to deflation, but will include macroeconomic variables such as industry output or average productivity.

## **7. The challenge of the 'Jobs Act' and fiscal incentives for firm-level bargaining**

A layering of heteronymous regulatory interventions intersects with the collective autonomy of the negotiating tables open around the reform and the relationship between the bargaining system, productivity and innovation, wage dynamic and welfare reform.

The impact of Renzi's labour market reform (the so-called Jobs Act) on collective bargaining has been substantial. In order to deviate from legal and common standards, the current government no longer delegates to collective bargaining, as was the case, for example, with the controversial Article 8 of Law no. 148/2011. Now it is the law that directly governs the most sensitive issues (Nunin 2016; Gottardi 2016), imposing ever worsening deregulation. It is as if the lawmaker no longer trusts the willingness of the social partners to negotiate the reforms needed to increase competitiveness through more flexibility. This does not mean that collective bargaining has been side-lined completely; on the contrary, the number of referrals and delegations to collective bargaining are fairly numerous and affect sensitive issues, such as atypical contracts. But its role is quite strictly pre-conditioned by the purpose of introducing further flexibility in employment contracts and working conditions, in response to employer pressures (Nunin 2016). Not only that, but in order to clarify the notion of 'collective agreement', the law refers to the 'national, territorial and company levels' (Art. 51, Legislative Decree No. 81/2015) indiscriminately, without any hierarchy being determined (Zoppoli 2016). In order to prevent contractual dumping, the law prescribes that delegated agreements must be

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**27.** Among the topics covered by collective bargaining, the agreement stresses the importance of active policies to enhance training and lifelong learning for workers, flexibility of employment relations, management of company crises, sub-contracting, bilateralism, bargained welfare plans and wage policies.

**28.** Representing and extending legal and social protections to young, atypical and also migrant workers is today considered an absolute priority, in terms of both specific campaigns and mobilisation, but also – as in the case of CGIL's programme – more inclusive collective bargaining with regard to their needs and conditions. A national petition for new Charter of Universal Labour Rights was launched by CGIL in April 2016, gathering signatures all over the country, with the side request of a referendum on abrogating the legal provisions of the Jobs Act (Renzi's labour market reform), whose more unfair outcomes include mini-jobs paid with vouchers worth 10 euros gross and the fact that instances of job reinstatement in cases of unfair dismissal have become few and far between.



agreed by comparatively the most representative trade union association, at national level, and by ‘their representatives’ or by the RSU at workplace level.

For some commentators and scholars, this type of legal intervention is qualitatively more perfidious even than the already much criticised Article 8. In the new system, in fact, contractual derogations are no longer conditional on any final outcome, while their stipulation in agreements is not subject to the majority principle (Pizzoferrato 2015; Zoppoli 2015).

In response to this the unions came to demand safeguarding clauses during the negotiations in order to halt or hedge against some of the most corrosive changes contained in the new legislation. A bitterly disappointed CGIL officer sums up the situation in this way: ‘I’ve spent my life negotiating the enforcement of the law and now I find myself having to negotiate *against the law*, or act as if it didn’t exist.’

Besides this the legislator uses another lever, namely fiscal measures and incentives. It is not the first time that it has done this, because in 2012 – through another tripartite framework agreement (again not signed by CGIL) – the government and the social partners tried to enhance productivity by reducing the tax burden on wage increases. With the Stability Law 2016 (no. 208/2015) and the following decree of 25 March 2016, the social partners are encouraged to negotiate decentralised agreements aimed at improving performance through decentralised collective agreements. Collectively agreed productivity-related wage increases (also in the form of employee share options) are subject to lower taxation of just 10 per cent, up to maximum of 2,000 euros (up to 2,500 for companies adopting forms of employees involvement), for employees who do not earn more than 50,000 euro gross per year. For 2017, this double ceiling was raised to 3,000 euros for the premium (4,000 euros for companies adopting forms of employee involvement), and to 80,000 for maximum income.

In order to benefit from such a productivity premium, there have to be real improvements in terms of productivity, profitability, quality and innovation, resulting directly from company or territorial collective agreements. They have to define objectives and parameters in detail. If enterprises want to benefit from such tax concessions, improvements have to be real and measurable (production volumes, quality improvement of goods and processes, reorganisation of working time and smart working, employee involvement and direct participation in work organisation). Evaluating joint committees, formed by signatory social partners at the territorial level, will verify that employees will receive communications from their employers concerning the premium and its correct application.

As an alternative to monetary bonuses, individual employees can opt – entirely or partly – for welfare and service benefits, listed in specific plans by collective agreements at territorial or company level, including such items as education, training, wellbeing and assistance for family members, including children, and elderly and dependent persons.

The trade union confederations have reacted overall to such measures with a certain degree of openness, considering this challenge as a great opportunity to relaunch

collective bargaining in terms of coverage and contents. An inter-confederate agreement was signed by CGIL, CISL, UIL and Confindustria on 14 July 2016; it aims to extend the new tax lowering measures to companies where workplace representations have not been set up. These documents define a template of territorial agreements, to be used in all companies affiliated to employers branch federations, apart from works councils.

By August 2017, 25,000 had already been signed and registered; more than 80 per cent have been signed at company level, and concern productivity, profitability and quality. Approximately 5,000 documents concern welfare benefits.

At least three kinds of risk have been highlighted by scholars and trade unionists: (1) employers might opt for less costly increases in the productivity premium and welfare benefits, which is much more convenient than the fully taxed increases in sectoral agreements (2) as the employees are free to choose between wage increases and welfare benefits, with the latter exempted from social security contributions, there could be a weakening of both welfare state and collective bargaining, which are increasingly being eroded by the individualisation of schemes and options; (3) most of these agreements seem to be nothing but 'copy and paste' templates, piled up on the desks of the competent public offices in charge of the difficult tasks of monitoring and authorisation.

## **8. Final remarks**

It is now time, in conclusion, to attempt some answers to our three opening questions about the main challenges that are changing the Italian industrial relations landscape.

First, the decline of neo-corporatist practices, which dominated industrial relations for 15 years between 1992 and 2007. Since then, with the excuse offered by the crisis and the diktats imposed by the EU, the new political powers-that-be have interpreted government as a combination of technocracy and neo-populism, in which there is no place for intermediate bodies and their 'tired rituals'. Following the eclipse of the historical major parties and their partial absorption by the 'Blairite' new Democratic Party, trade unions find themselves lacking a reliable partner and potential support in the political arena. This is something that the unions will probably have to cope with for the next few years, forcing them to reduce their engagement in macro-policy and tripartite concertation, refocusing their role and initiative in the classical areas of industrial relations: collective bargaining, involvement and participation, industrial conflict and campaigning.

A second main issue, consequently, concerns the current relationship between legislation and collective autonomy. The traditional voluntarism of Italian industrial relations, quite peculiar today in comparative terms, seems to us to have reached a dead-end (Leonardi and Sanna 2015). The landscape is at best chaotic and without clearly defined rules governing representation, with an increasing risk of wage dumping and downward competition. The choice once more for a voluntarist solution, as in the case of the new rules on representation and collective bargaining, has prevented the most recent inter-confederate agreements from acquiring the universal and binding characteristics

indispensable for their effectiveness. A new public interventionism in the whole area of industrial relations (representation, collective bargaining, participation, conflict) would be opportune and many commentators, who in the past were sceptical in this regard, are now more or less in favour (Caruso 2014; Treu 2016; Gottardi 2016; Carrieri 2017). The problem is the kind of interventionism we can expect today, between the external pressures of globalisation and the internal weaknesses of the national economy and policy. The government no longer seems to operate as a third *super-partes* player, or in support of labour, as it did at the peak of post-war social policy, but on the contrary it enters the game overtly on the side of business, its needs and expectations (Guarriello 2014; Bellardi 2016).<sup>29</sup> Paradoxically, such new and critical legislation is likely to tempt the unions to call for derogations from it (Art. 8) rather than the employers.

A debate on the need for a specific law is on the cards and a number of bills are in the pipeline in parliament. The government may intervene in a whole range of industrial relations issues, after asking the social partners to express common positions, which at the moment are still lacking. One possible way, suggested by several commenters, could be to transpose into law what the social partners agree on, within the framework of auxiliary legislation, but there is resistance in some quarters in political parties and trade union confederations. The three main trade unions, with the document signed in January 2016, proposed to confer an *erga omnes* binding effect on industry-wide agreements, as foreseen in Article 39 of the Constitution. The choice is then to opt for an extension mechanism, in place of what is considered risky by the unions, namely the adoption of a statutory minimum wage.

A third and final issue, linked to the former, concerns the new structure of collective bargaining. Our conclusion here is that, despite the strong pressure from above (New European Economic Governance) and from below (firms' exit strategies), the Italian system has maintained a certain degree of inter-sectoral coordination. The two traditional levels remain in place and, although weakened, neither has expressed a wish to abolish the role and primacy of the national sectoral agreement. Meanwhile, and importantly, relations between the three main trade union confederations, which deteriorated during the first decade of the new century, have improved substantially.

Having said that, many serious criticisms have been raised. Some refer specifically to the national and sectoral levels. For example, the number of agreements should have been reduced drastically and instead it has doubled in just a few years, from fewer than 400 in 2008 to over 800 in 2017, with a proliferation of agreements signed by associations of very uncertain and sometimes completely unknown representativeness. This means that the whole system is getting out of control. There is an evident problem with the legitimacy of the signatory actors, for example, in terms of transparency. In the absence of binding rules governing competitive pluralism, there is always a risk that the situation may descend into chaos, with the parties seeking judicial redress. This is not a problem only on the trade union side, but also – and perhaps even more serious

<sup>29</sup>. As has been stated, as a result of the unprecedented subordination of workers' rights to economic considerations labour law is changing its traditional paradigm, shifting the balance of power from the rights of the weaker party to the rights of the stronger (Mariucci 2016).

– on the employers’ side, with regard to which information is almost entirely lacking. Someone has proposed the introduction of legislation along the lines of what is found in France in this regard. From this viewpoint – and this is one of the key assumptions of our study – the major threat to the system seems to come from the top, in terms of contractual dumping (Gottardi 2016), rather than from below, where derogations seem to be relatively under control. Firm-level agreements as an alternative to the first sectoral level, have remained limited to the sole case of FIAT/FCA (ADAPT 2017).

However, the periods requested for renewals are, on average, intolerably protracted. Millions of workers must sometimes wait a one year or two for a renewal of their collective agreement, after it has expired. The stagnation of Italian wages in recent years is also a reflection of such dysfunction.

Furthermore, the recovery of wages’ purchasing power, a pillar of the system when Italy boasted exceptionally high inflation, should not be the sole parameter in a period of deflation. Other macroeconomic variables, national and specifically sectoral, must be introduced as benchmarks in negotiations; sectoral average productivity, for instance.

At the same time, due to various impulses and pressures, company-level bargaining has certainly been boosted. This has been possible ‘qualitatively’, by (a) reducing some exclusive prerogatives of industry-wide agreements, (b) weakening the role of external unions in coordination and (c) expanding the possibility for opening clauses and concession bargaining (Bellardi 2016), but in quantitative terms, it has not taken off. The main reason, as we have seen, is the average size of Italian firms: they tend to be too small and unprepared to meet such a challenge, not to mention the ongoing crisis. Company bargaining would require specific expertise among the managerial staff that is usually missing, while works councils would have to be set up, with the risk of introducing unprecedented and confrontational industrial relations where they did not exist before. On this basis, we can talk of collective bargaining decentralisation without decentralised agreements in Italy. In the absence of firm-level collective agreements, productivity and wages increases are decided by employers on an individual and discretionary basis.

In light of all this we should highlight: (i) the value of industry-wide bargaining as a fundamental and indispensable tool against inter-firm cut-throat competition, enhancing the ‘high-road’ and socially sustainable competition, based on wage-driven growth of domestic demand; (ii) the importance of vertical and horizontal articulation or coordination of collective bargaining as a key condition for effective industrial relations. We should be able to figure out possible new collective-agreement units at an intermediate level between national sectors and firms; for instance, at the territorial level – as already fruitfully experienced in sectors and branches with a high concentration of small firms and casual work – or along the new value chains, including inter-sector site agreements, as proposed by some unions in the case of construction or big shopping malls and trade centres.

In our view, we should not undervalue the importance and utility of broader and stronger collective bargaining at decentralised level, with a new focus on substantive innovation.

In an era of world-class manufacturing, digitalisation and Industry 4.0, alongside a shrinking and recasting of the welfare state, the social partners should update their negotiating repertoire. For a country such as Italy, this means in particular significantly to improve employee involvement in work organisation in order to foster a consensual approach to process and product innovation. It is therefore necessary to invest more and more resources and capacity in vocational training and participatory models. But the new needs of employees with regard to work–life reconciliation, individual and collective services, well-being at work and efforts to tackle new forms of work-related stress are also important. A more inclusive collective bargaining is also needed, capable of representing the interests of the atypical and vulnerable workers involved in new production processes.

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# Chapter 7

## Strengthening the decentralisation of collective bargaining in Spain

### Between the legal changes and real developments

Fernando Rocha

#### 1. Introduction

Controversy about the adequacy of the structure of collective bargaining to the changes in the economic cycle in Spain is not certainly new. In fact, it can be traced back to the early 1990s (Cruz 2015; Fernández *et al.* 2016). However, this debate has gained momentum since the onset of the Great Recession in 2008. The renewed interest in this topic can be explained by the larger scale of the impact of the current crisis in Spain compared with other European countries, especially in terms of employment. The most important consequence of this shock was the sharp rise in the unemployment rate, which still remains at dramatic levels: 18.6 per cent in the fourth quarter of 2016, the second highest in the European Union (EU), after Greece.<sup>1</sup>

According to the mainstream narrative adhered to by various international institutions, the current Spanish government, the national employers' organisations and a number of scholars, the crisis hit Spain particularly hard for two main reasons: on one hand, the fiscal imbalances caused by the high public deficit and high external debt, which led to the sovereign debt crisis; and on the other hand, the Spanish economy's historical competitiveness problems, closely linked to domestic structural imbalances, especially in the labour market. In short, it has been argued that the legal regulations in Spain are highly 'protective' compared with international standards, particularly with regard to employment protection and collective bargaining. In this sense, it has been emphasised that the combination of these characteristics led to excessive rigidity of wage dynamics as against the change in the economic cycle, because at a time of heavy reductions in employment, wages in already settled contracts were unable to adjust downward, possibly leading firms to lay workers off (Díaz and Villanueva 2014).

The main political conclusion according to this line of argument was the need for a substantial overhaul of the collective bargaining system, aimed at fostering radical decentralisation at company level. The goal would be to increase firms' internal flexibility, thereby facilitating adjustments in wages and working conditions as a way of boosting their competitiveness and productivity.

Alternatively, it has been argued that the larger scale of the crisis in Spain is not rooted in labour rigidities, but in the weaknesses of the economic growth model consolidated since the mid-1990s. This model was characterised strongly by overheated speculative

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1. Eurostat (population 15-74 years, fourth quarter of 2016).

development in the real estate and building sector, which made it extremely vulnerable to economic cycle changes, aggravating their negative effects in terms of job losses (Banyuls and Recio 2015).

It should be noted that fostering the decentralisation of collective bargaining has been a sort of ‘flagship policy’ of ‘New European Economic Governance’, launched in 2010, which has promoted a new supra-interventionism in industrial relations (Schulten and Müller 2013).

The labour law reforms adopted by various European governments, following EU recommendations, have substantially altered the collective bargaining landscape in the EU (particularly in the southern countries subjected to external intervention). Comparative analysis shows that the enacted measures have targeted not only bargaining outcomes, by putting direct pressure on wages, but also bargaining procedures by pushing more ‘flexible’ wage-setting arrangements (Schömann and Clauwaert 2012; Rocha 2014a; Van Gyes and Schulten 2015; Visser 2016; Piasna and Myant 2017).

More specifically, substantial legal changes aimed at reinforcing the decentralisation of collective bargaining systems have been imposed in various peripheral countries of the European Union, leading to a process that has been defined as a ‘frontal assault on multi-employer bargaining systems prevailing in those countries’ (Marginson 2014).

In Spain, labour law has been subject to continuous and intense modification since 2010. The adopted reforms are diverse in both character and scope, but one common goal has been to foster collective bargaining at company level. It is worth highlighting the legal reform unilaterally enforced by Spain’s conservative government in 2012, which no doubt represents a landmark in labour law regulation.

Against this background, the main goal of this chapter is to analyse the decentralisation of collective bargaining in Spain since the onset of the current crisis, with particular emphasis on the contents and effects of the labour law reforms approved during this period.

This topic has already been addressed in various reports, which have focused in the initial impact of labour law changes on collective bargaining developments (Rocha 2014b; Cruces *et al.* 2015; Fernández *et al.* 2016). The time that has passed since the approval of the most important reform – in 2012 – allows us, however, to deepen and finesse our analysis (in both quantitative and qualitative terms).

The present chapter is structured as follows. Section 2 addresses the regulation of the collective bargaining system in Spain. Section 3 analyses some of the main impacts of these legal reforms on collective bargaining developments. This general overview is complemented with a more detailed analysis of two sectors: retail, with special focus in the large distribution; and the metal industry. The report ends with a summary of the main findings and some conclusions for the debate.

## 2. Labour law reforms in times of crisis

Collective bargaining in Spain has experienced intense development from the restoration of democracy with the approval of the Spanish constitution in 1978 until the onset of the Great Recession. This is shown by the progressive extension of collective agreements and worker coverage, as well as by the increasing number of topics addressed by the social partners.

Nevertheless, in parallel with this, a common assertion in the industrial relations debate is that some key features of the national collective bargaining system have remained unchanged, such as (i) the prevalence of an intermediate degree of coordination, with collective agreements being signed predominantly at the industry level, though with some geographical decentralisation (mostly at the provincial level); (ii) the *erga omnes* extension of collective bargaining agreements, meaning that they automatically apply to all workers and firms within their scope; and (iii) the wage indexation rules frequently established by collective agreements, both sectoral and company-level (Cruz 2015).

These characteristics of the national collective bargaining system were called into question, in a number of instances, with the onset of the crisis in 2008. The main criticism, as noted above, was that they created additional rigidities hindering the responsiveness of wages to economic and firm-specific conditions, therefore aggravating the most negative impacts of the crisis (Jaumotte 2011; Bentolila and Dolado 2012).

Against this background, in this section we provide an overview of the labour law reforms adopted in Spain during this period, with particular focus on measures related to the structure of collective bargaining.

### 2.1 Legal reforms of collective bargaining during the Great Recession

The Great Recession has had a dramatic social impact in Spain. The labour market effects of the crisis have been much more intense than in other European countries experiencing a similar economic downturn. Thus, between 2008 and 2016, 2.3 million jobs were lost in Spain, accounting for around 37 per cent of total job losses in the EU28, with a rate of change of –11.4 per cent for the whole period (the EU28 average was 0.5 per cent).<sup>2</sup>

Different governments have followed different approaches, closely linked to changes in the anti-crisis policies at European level. Thus, there was a first, brief stage characterised by stimulus measures on the demand side.

This sort of approach – popularly labelled ‘Keynesian’ – ended with the turning point of the European Council of May 2010, which led to Spain’s Socialist government fully accepting a programme of budget adjustment and structural reforms with a neoliberal

2. Eurostat (second quarters, population 15–74 years of age). In this period 6.9 million jobs were lost in the EU28 and 7.4 million were created, with a positive net balance of 1 million.

bent, in accordance with the specific recommendations for Spain drawn up by the EU institutions within the framework of the New EU Economic Governance. This line of action was later strengthened by the new Conservative government after the general election held in November 2011, which launched an aggressive and still ongoing programme of ‘fiscal consolidation’ policies and ‘structural reforms’ (Rocha 2014b).

Against this background, since May 2010 labour law in Spain has been undergoing continuous and intensive modification through reforms unilaterally approved by Spanish governments in 2010, 2011 and 2012.<sup>3</sup>

If we focus on collective bargaining, one main goal of these reforms – particularly, those of 2011 and 2012 – has been to strengthen decentralisation to company level, following the EU recommendations for Spain in this period.

Thus, in 2011 the European Commission proposed that

the ongoing labour market reform in Spain needs to be complemented by an overhaul of the current unwieldy collective bargaining system. The predominance of provincial and industry agreements leaves little room for negotiations at firm level. The automatic extension of collective agreements, the validity of non-renewed contracts and the use of ex-post inflation indexation clauses contribute to wage-inertia, preventing the wage flexibility needed to speed up economic adjustment and restore competitiveness. The Government has requested social partners to agree on a reform of the collective wage bargaining system during Spring 2011 and has undertaken to legislate subsequently. (Council of the European Union 2011: 4)

Taking this diagnosis into account, the European Commission recommended that Spain should ‘adopt and implement, following consultation with social partners in accordance [with] national practice, a reform of the collective wage bargaining process and the wage indexation system to ensure that wage growth better reflects productivity developments, as well as local and firm level conditions’ (Council of the European Union 2011: 7).

In this regard, after failed negotiations between the social partners on this topic, in June 2011 the Socialist government unilaterally adopted Royal Decree Law 7/2011 on Urgent Measures to Reform Collective Bargaining (Real Decreto-ley 7/2011, de 10 de junio, de medidas urgentes para la reforma de la negociación colectiva).

Shortly after the adoption of this reform, former presidents of the European Central Bank and the National Bank of Spain Jean-Claude Trichet and Miguel Fernández Ordoñez sent a ‘strictly confidential’ letter to former Spanish prime minister José Luis Rodríguez Zapatero.

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3. Law 35/2010 on Urgent Measures for Labour Market Reform; Royal Decree Law 7/2011 on Urgent Measures to Reform Collective Bargaining; Royal Decree Law 3/2012 on Urgent Measures to Reform the Labour Market; and Law 3/2012 on Urgent Measures to Reform the Labour Market.

This letter, sent on 5 August 2011, argued that at the current juncture it was essential that

the wage-bargaining reform bill adopted by the Spanish government on 10 June 2011 should more effectively strengthen the role of firm-level agreements, with a view to ensuring an effective decentralisation of wage negotiations. During the forthcoming parliamentary process, the law should be amended in order to reduce the possibility for industry-level agreements (at national or regional level) to limit the applicability of firm-level agreements.<sup>4</sup>

Later, the new Conservative government unilaterally launched a new and ‘extremely aggressive’<sup>5</sup> reform of labour law through Royal Decree Law 3/2012 on Urgent Measures to Reform the Labour Market (Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral), which was later confirmed with no substantial modifications by the National Parliament as Law 3/2012 on Urgent Measures to Reform the Labour Market (Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral).

Finally, the EU recommendations for Spain on this topic between 2012 and 2016 focused on following up the 2012 labour law reform. Overall, the results of this reform have been positive, according to the EU.

Nevertheless, regarding the decentralisation of collective bargaining the European Commission country report published in 2016 noted that ‘moderate wage claims might reflect a change in the wage setting environment, but there is no evidence that firm level collective bargaining is picking up’ (European Commission 2016: 36). This diagnosis did not led, however to a related proposal in the EC recommendations for Spain published in 2016 and 2017.

## 2.2 Strengthening the decentralisation of collective bargaining

One goal of Royal Decree Law 7/2011 on Urgent Measures to Reform Collective Bargaining was to ‘promote better management of collective bargaining, while encouraging collective bargaining closer to the company [level] and better matching of sectoral collective bargaining to the situation of each particular sector of economic activity.’

In sum, two innovations in particular are worth highlighting with regard to decentralisation:

- (i) A change in Article 83.2 of the *Estatuto de los Trabajadores* (hereafter: ‘Workers’ Statute’), which addresses the social partners’ competences with regard to regulating

4. The letter is available at: <https://www.ecb.europa.eu/pub/pdf/other/2011-08-05-letter-from-trichet-and-fernandez-ordonez-to-zapateroen.pdf> (accessed on 5/10/2016).

5. Quoting the significant expression used by the Spanish Minister of Economy in an informal dialogue with a representative of the European institutions.

the structure of collective bargaining. Basically, the new wording suppresses the possibility of establishing limitations on the negotiation of certain topics at company level.

- (ii) The reform establishes the priority of company-level collective agreements over sectoral ones with regard to the following matters:
- the amount of the basic wage and wage supplements, including those linked to the company's situation and results;
  - payment or compensation for overtime and specific remuneration of shift work;
  - the schedule and distribution of working time, work regime shifts and annual holiday planning;
  - adaptation of the job classification system to company level;
  - adaptation of contracts listed in this law to company-level agreements;
  - measures to promote reconciliation of working life and family and personal life;
  - any other matters established laid down in collective agreements of the kind referred to in Article 83.2.

It should be noted, however, that there is an important limitation on prioritising company-level agreements. Specifically, this priority will be enforced 'unless an agreement or collective agreement at state or regional level negotiated under Article 83.2 establishes different rules on the structure of collective bargaining or competition between the different agreements'. In other words, the norm provides for a prominent role for sectoral collective agreements – at state or regional level – in defining the competences of company-level collective agreements.

The next reform was promoted by the new Conservative government in 2012 through Royal Decree Law 3/2012 on Urgent Measures to Reform the Labour Market and the Law 3/2012 on Urgent Measures to Reform the Labour Market. The goals of these legal instruments included the 'modernisation of collective bargaining to bring it into line with the specific needs of companies and workers and to promote permanent dialogue within companies'.

According to the government this new reform was necessary due to the 'inadequate system of collective bargaining' prevailing in Spain; more specifically, because since the onset of the crisis 'the system of collective bargaining had restricted employers' options in their efforts to reorganise their productive resources while maintaining jobs' (Government of Spain 2013: 5).

In this regard, the 2012 legal reform was aimed at *strengthening decentralisation of the collective bargaining system* through three mechanisms:

- (i) The reform promotes a widening of firms options with regard to the temporary suspension of sectoral or company-level collective bargaining agreements. The main innovations are: (a) easing the derogation of company collective agreements; (b) a significant relaxation of conditions and widening the range of issues subject to derogation; and (c) imposing binding arbitration when the parties are unable to reach an agreement within a particular period of time.

- (ii) There is a *limitation on the temporary extension rule concerning expired collective agreements* (so-called ‘ultra-activity’). Previously, this extension was indefinite until a new agreement was reached. Now, it has been established that once the collective agreement has expired and its renegotiation has begun, if there is no new agreement and no agreement to the contrary, the agreement will continue to be applied for a maximum of one year.
- (iii) Finally, the most important measure is no doubt the establishment of the *absolute priority of company-level collective agreements over sectoral ones* with regard to the matters mentioned above, by suppressing the limitation included in the previous reform of 2011.

The establishment of this absolute priority means decentralisation without reservation of the regulation of basic working conditions, which significantly erodes the effectiveness and binding force of sectoral agreements (particularly those signed at provincial level).

The 2012 labor market reform was fully backed by international institutions such as the IMF and the OECD, the European Commission and the European Central Bank. It was also welcomed by the Spanish employers’ organisations, which characterised the reform as a ‘step forward’ in the modernisation of labour law.

Nevertheless, this legal reform was widely criticised by labour law scholars (Baylos 2013; Ramos 2013; Pérez *et al.* 2016). It has also been strongly resisted by Spanish trade unions, which called two general strikes against this reform in 2012.

With regard to the specific issue of decentralisation, it should be noted that, in a country such as Spain, with a preponderance of small and micro companies, these measures aimed at encouraging unilateral decentralisation open up the risk of creating a landscape in which real collective bargaining may take place only in a small number of companies.

Furthermore, taking into account the asymmetry between the collective bargaining actors and the possible absence or weakness of trade unions in SMEs and micro-companies, it has been argued that the absolute priority of company-level agreements could strengthen the hand of employers wishing to regulate working conditions unilaterally, as well as the development of so-called agreements ‘*in pejus*’; in other words, agreements with provisions that are inferior to those of higher bargaining levels (Casas 2016).

### **3. Effects on collective bargaining**

Evaluation of the effects of legal reforms on collective bargaining in the current economic context are subject to a number of methodological constraints, such as difficulties in differentiating between the specific effects of labour market reforms and the general effects of the crisis. The limitations of the data on collective bargaining are also a factor.

Nevertheless, analysis of the available statistical sources, as well as of the outcomes of different reports and the qualitative information provided by social partners, allows

us to highlight some of the main effects of the enacted measures aimed at fostering decentralisation of collective bargaining.

This section is divided into three parts. First, there is a statistical analysis of collective bargaining developments between 2011 and 2016. This period was chosen to take into account the two major labour law reforms that affected the basis of the collective bargaining system (2011 and 2012).

Second, a more qualitative approach is taken to two particularly interesting issues: the prioritisation of company-level collective agreements on wages; and the controversy concerning the legitimacy of the actors involved in the new collective agreements at company level.

Finally, we briefly examine the role of the most representative social partners.

### 3.1 Collective bargaining developments

In this section we address the evolution of three specific items in the period 2011–2016:

- (i) collective agreements and workers covered, by year of signature;
- (ii) collective agreements and workers covered, by year of economic effects;
- (iii) temporary derogations of collective agreements at company level.

The analysis is based on data from the statistics on collective agreements produced by the Ministry of Employment and Social Security.

#### 3.1.1 Collective agreements and workers covered, by year of signature

The evolution of collective agreements by year of signature since 2011 allows us to highlight three different moments (Table 1).

Table 1 Collective agreements and workers covered, Spain, 2011–2016  
(by year of signature and bargaining level)

Year	Collective agreements			Workers (1,000)		
	Total	Company-level	Above company-level	Total	Company-level	Above company-level
2011	1,365	1,035	330	2,628.9	251.8	2,377.2
2012	1,582	1,241	341	3,195.2	289.4	2,905.8
2013	2,502	1,897	605	5,247.6	376.5	4,871.1
2014	1,859	1,522	337	2,169.2	249.3	1,919.9
2015	1,606	1,277	329	3,549.0	172.9	3,376.1
2016*	1,714	1,352	362	2,705.9	262.8	2,443.1

Note: \* 2016: provisional data.

Source: Statistics on collective agreements, Ministry of Employment and Social Security (data recorded up to May 2017).



First, it is worth noting the significant increase in the number of collective agreements signed in 2013, up by 58 per cent on the previous year. This increase can be explained as a result of the agreement on the limitation of the temporary extension rule of expired collective agreements, signed by the social partners at national level in May 2013.

The goal of this agreement was to counter one of the measures included in the 2012 labour law reform, whose aim was to establish (as noted above) a maximum of one year for the renewal of expired collective agreements. In this regard, the trade unions launched an intensive campaign to boost bargaining processes, in order to ensure the continuity of collective agreements (Moreno 2016).

In 2014 there was a sharp decline in terms of both collective agreements and workers covered, for a number of reasons: the impasse pending the Supreme Court's rulings in disputes raised on this matter and the refusal of employers' associations and companies to negotiate wage increases as Spain seemed to be finding its way out of economic recession.

The provisional data on 2015 show a slowdown in this falling trend. It is also worth noting the signing of a number of sectoral collective agreements with broad coverage of workers.

If we focus specifically on the evolution of the new bargaining units created in this period, statistical data show a clear rise in company-level agreements (Table 2), particularly in 2013, the year after the last labour law reform (whose main goal, as noted above, was to foster collective bargaining at company level).

In 2015 there was a slowdown in this trend, however. This can be explained at least partly by various court decisions that established the nullity of many of these new agreements, due to the lack of legitimacy of the unitary representation of workers at company level (see Section 3.2.2).

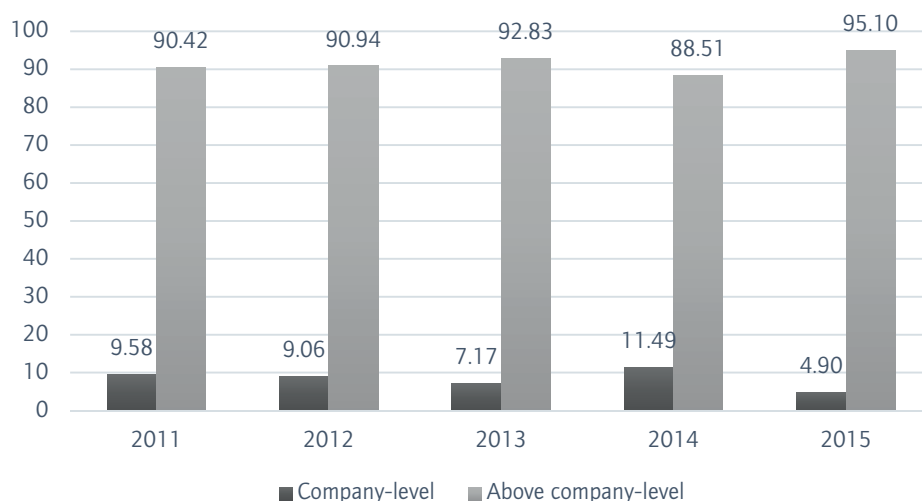
Table 2 Collective agreements signed in new bargaining units and workers covered, Spain, 2011–2016 (by year of signature and bargaining level)

Year	Total	Collective agreements		Workers (1,000)		
		Company-level	Above company-level	Total	Company-level	Above company-level
2011	263	240	23	276.7	30.1	246.6
2012	338	323	15	72.4	46.4	26.0
2013	662	625	37	270.3	55.3	215.0
2014	608	575	33	144.7	48.7	96.0
2015	545	524	21	391.7	32.7	359.1
2016*	462	438	24	113.1	45.6	67.5

Note: \* 2016: provisional data.

Source: Statistics on collective agreements, Ministry of Employment and Social Security (data recorded up to May 2017)

Figure 1 Workers covered by collective agreements, Spain, 2011–2015 (by year of signature of the collective agreement and bargaining level; % of total workers)



Source: Authors' elaboration based on statistics on collective agreements, Ministry of Employment and Social Security (definitive annual data).

Finally, it is important to note that the increase in company-level collective agreements after the 2012 labour law reform was modest in terms of workers affected: from 9.6 per cent in 2011 to 11.5 per cent in 2014,<sup>6</sup> but with a new fall in 2015 (Figure 1, based on Table 1).

Moreover, taking into account the evolution of agreements by the year in which their economic effects are discerned, the share of workers covered by the company-level agreements decreased over time (see Table 3 and Figure 2).

### 3.1.2 Collective agreements and workers covered, by year in which economic effects became known

The evolution of collective agreements shows a continued decline in the first stage of the crisis (Table 3).<sup>7</sup> This trend began to change in 2013, however, and more acutely in 2015. In the latter year, the last for which definitive data are available, around 5,600 collective agreements covering 10 million workers were registered. This means a decline in coverage of 1.6 million workers in comparison with the peak of 2008.

If we focus on the evolution of the structure of collective bargaining, the number of company-level agreements has risen since 2012. However, as noted above, the share of

6. This is the last year for which definitive data are available.

7. The time period covered by this table is longer, in order to capture the evolution of collective bargaining since the onset of the crisis.

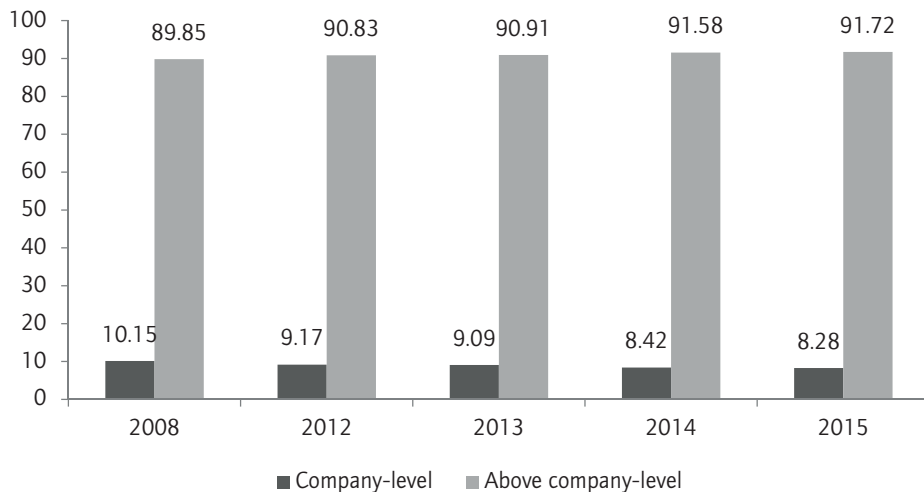
**Table 3** Collective agreements and workers covered in Spain, by year of economic effects and bargaining level: 2008-2016

Year	Total	Collective agreements		Workers (1,000)		
		Company-level	Above company-level	Total	Company-level	Above company-level
2008	5,987	4,539	1,448	11,968.1	1,215.3	10,752.9
2009	5,689	4,323	1,366	11,557.8	1,114.6	10,443.2
2010	5,067	3,802	1,265	10,794.3	923.2	9,871.1
2011	4,585	3,422	1,163	10,662.8	929.0	9,733.8
2012	4,376	3,234	1,142	10,099.0	925.7	9,173.3
2013	4,589	3,395	1,194	10,265.4	932.7	9,332.7
2014	5,185	4,004	1,181	10,304.7	867.2	9,437.5
2015	5,642	4,493	1,149	10,227.3	846.9	9,380.3
2016*	4,147	3,242	905	8,963.6	620.3	8,343.4

Note: \* 2016: provisional data.

Source: Statistics on collective agreements, Ministry of Employment and Social Security (data recorded up to May 2017).

**Figure 2** Workers covered by collective agreements, Spain, 2012–2015 (by year of economic effects of the agreement and bargaining level; % of workers)



Source: Authors' elaboration based on statistics on collective agreements, Ministry of Employment and Social Security (definitive annual data).

workers covered by company-level agreements has decreased over time compared with pre-crisis levels (see Figure 2, based on Table 3).<sup>8</sup>

It can be said, therefore, that, although the 2012 labour law reform fostered the development of new agreements at company level, *to date this process has not brought about a substantial alteration of the existing structure of collective bargaining in Spain*.<sup>9</sup>

The reform's limited effects, taking into account the fact that collective bargaining decentralisation was one of its major goals, can be explained in terms of a number of factors.

First, most of the new company-level agreements in this period were signed at small or medium-sized firms. Furthermore, some important new agreements were signed at state or regional level, with substantial worker coverage.

Secondly, it has been argued that the creation of new bargaining units at company level may represent a risk for many employers in terms of higher transaction costs, higher bargaining costs and potential labour conflicts associated with stimulating worker participation. These factors are especially relevant for smaller companies, which usually prefer to displace such risks to higher bargaining levels (Martín and Alos 2016).

Finally, it is important to take into account the influence of the strategies developed by the social partners – trade unions and employers – during this period.<sup>10</sup>

Another particularly relevant issue is the evolution of agreed wage increases in this period. The data show a significant trend of wage moderation, particularly since 2012, although always maintaining the purchasing power of wages agreed in the collective agreements (see Table 4). It should be kept in mind that the information presented in Table 4 concerns *average* increases; many of the collective agreements signed in this period established temporary wage freezes or even, in some few cases, temporary wage reductions.

Also, despite these moderate average wage increases, it is important to note that there has been a strong decline in real wages in Spain (Figure 3).

This process of so-called 'internal devaluation', widely recognised by national and international institutions, can be explained by some of the main effects of the austerity measures and the labour law reforms implemented in this period:

- A strong increase in precarious employment, which is shown both by the rise in the number of precarious jobs – particularly involuntary part-time employment – and

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**8.** The figure includes information only until 2014, which is the last year for which definitive data are available.

**9.** The same conclusion can be also found in other recent studies on this topic. See, for example: Cruz 2015; Pérez, Rojo, and Ysás 2016. The continuity of the existing structure of collective bargaining has also been noted by the European institutions (European Commission 2016).

**10.** This issue is addressed in Section 3.3.

Table 4 Final agreed wages increases, Spain, 2011–2016 (by bargaining level)

Year	Total	Company- level	Above company- level
2011	2.29	1.97	2.32
2012	1.16	1.48	1.13
2013	0.53	0.55	0.53
2014	0.50	0.37	0.52
2015	0.71	0.46	0.73
2016*	1.06	0.83	1.08

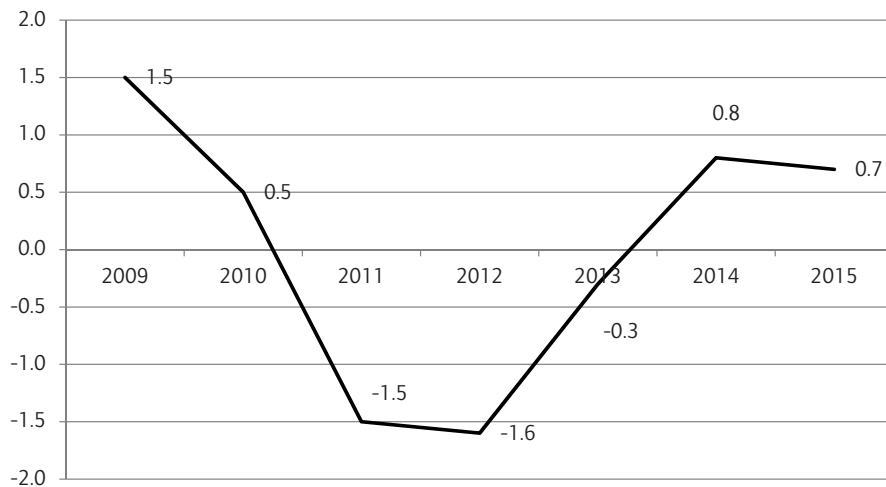
Note: \* 2016: provisional data. Data from 2016: agreed wages, taking into account the effects of the final review due to the application of the wage indexation clauses.

Source: Statistics on collective agreements, Ministry of Employment and Social Security (data recorded up to May 2017).

the deterioration of working conditions (Muñoz de Bustillo and Esteve 2017).

- The application at company level of some of the measures included in the labour law reforms; for example, derogations at company level from working conditions agreed in sectoral agreements; and, more acutely, the reinforced power of employers to unilaterally modify working conditions.
- The development of a number of new bargaining units at company level, which can be considered collective agreements ‘*in pejus*’.

Figure 3 Real wages per hour (employees), Spain, 2008–2015 (year on year change, %)



Source: Authors' elaboration based on statistics on collective agreements, Ministry of Employment and Social Security (definitive annual data).

The combined effects of falling wages and austerity measures<sup>11</sup> have exacerbated the deterioration of the social situation in Spain, in comparison with other European countries (Yancheva *et al.* 2013). This has led to a general rise in inequality and poverty levels in the country: the *at-risk-of-poverty* or *social exclusion rate* increased to 27.9 per cent of the population in 2015; and *in-work poverty*— the so-called ‘working poor’ — to 14.1 per cent.<sup>12</sup>

### 3.1.3 Temporary collective agreement derogations at company level

As noted above, the 2012 labour market reform substantially changed the regulation of temporary derogations of collective agreements at company level. The main outcome has been a significant increase in the number of temporary derogations of collective agreements, especially in 2013 (Table 5).<sup>13</sup>

Certainly, if these figures on derogation are compared with the total number of workers covered by collective agreements, they are not so important.

Detailed analysis of the data shows that derogations are focused mainly on wages and working hours, boosting internal devaluation at company level.

It is also worth noting that around 90 per cent of these temporary derogations were agreed between employers and workers’ representatives, even though trade unions have serious doubts about the legality of the procedure, in particular with regard to the status of workers’ representatives in many of the agreements signed in the micro firms.

## 3.2 Dynamics of collective bargaining: a qualitative approach

The time that has passed since the last major labour law reform makes it possible for us to make a more qualitative analysis of its impact on collective bargaining outcomes. An in-depth study of all the issues involved would exceed the scope of this chapter, but it is worth addressing two topics that are particularly relevant: (i) the priority of company-level collective agreements on wages; and (ii) the controversy about the legitimacy of the signatory parties of some new company-level collective agreements.

### 3.2.1 Priority of company-level collective agreements on wages

The findings of a study of a sample of sectoral and company-level collective agreements signed between 2012 and 2015 allow us to discern a number of general trends concerning wage regulation in this period, more specifically with regard to wage structure and wage increases (Cruces 2016).

With regard to *wage structure*, three general aspects are particularly noteworthy:

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11. For example, significant cuts affecting social expenditures and social services.

12. Living Conditions Survey 2016, National Institute of Statistics (published in 2017, data for 2016).

13. Data available since 2012.

Table 5 Temporary derogations of collective agreements at company level, Spain, 2012–16

Year	Derogations (N <sup>o</sup> )	Workers (N <sup>o</sup> )
2012	748	29,352
2013	2,512	159,550
2014	2,073	66,203
2015	1,437	43,173
2016	1,326	32,064

Note: 2012 = between March and December.

Source: Statistics on collective agreements (data recorded up to May 2017).

- (i) A low level of precision and clarity in the definition of elements of the remuneration structure, particularly in relation to the definition of wage supplements
- (ii) The small number of clauses regulating wage supplements specifically linked to company results.
- (iii) A trend towards incorporating more flexibility and the reduction or creation of additional wage supplements, depending on business needs.

With regard to *wage increases*, there are two main points:

- (a) The inclusion of provisions regulating moderate wage increases for this period (for the statistical development of final agreed wages, see Table 4). Nevertheless, it should be noted that some collective agreements include provisions on temporary wage freezes or even, in a small number of cases, wage cuts.
- (b) Most collective agreements establish wage indexation clauses, linked to the development of the Harmonised Prince Consumer Index (HIPC). This is a traditional feature of the Spanish collective bargaining system and its continuity in this period indicates the lack of influence of the recommendations emanating from the European institutions on the suppression of such clauses.

Against this general background, it is important to focus the analysis on the content of the *new bargaining units at company level* created in the wake of the 2012 labour law reform. This reform, as already noted, established the absolute priority of company-level collective bargaining agreements over sectoral ones in the regulation of the base wage and wage supplements.

A report on this topic found a proliferation of new company-level company agreements *in pejus*, in the form of agreements targeted mainly at cutting wage costs (Vivero 2016).

Cutting wage costs has been pursued mainly through provisions on basic wages, although collective agreements also address this goal with provisions on other aspects (wage supplements, review of wage indexation clauses, overtime and so on).

Finally, it is important to mention that a number of practices have been controversial from a legal standpoint. Particularly noteworthy are various cases of new company-

level collective agreements *in pejus* that not only enshrine wage cuts but also make them retroactive.

A Supreme Court ruling in 2015 declared that such ‘retroactivation’ was illegal, among other reasons because the Spanish Constitution clearly guarantees ‘the non-retroactivity of punitive provisions that are not favourable to or restrictive of individual rights’ (Article 9.3).

### **3.2.2 Legitimacy of collective bargaining actors**

The legal rule on legitimacy with regard to negotiating collective agreements establishes that ‘the following shall be deemed legitimate to negotiate company-level agreements or agreements of lesser scope on behalf of workers: the works council; workers’ delegates, as applicable; or the union representatives, if these exist, that altogether form the majority of the committee members’ (Workers’ Statute, Article 87).

The Workers’ Statute also establishes that in cases pertaining to more than one workplace, a works council should be formed in order to negotiate a collective agreement for the whole. This new body may only be agreed on by collective bargaining (Article 63).

Analysis of bargaining processes at company level since 2012 shows that problems have arisen concerning actor legitimacy, in particular with regard to workers’ representatives in smaller companies: on one hand, in some instances the workers’ representatives did not comply with the legal rules governing who may legitimately negotiate. On the other hand because, even though there was formal compliance, in many cases it is not certain that the workers’ representatives really acted in the workers’ interests, especially in smaller companies (Alfonso and Fabregat 2016).

One clear example of this controversy can be found in the new collective agreements signed by so-called ‘facility management’ or ‘multi-services’ companies, whose business is to provide a plurality of services to third parties, usually on a permanent basis, supplying the necessary personnel and usually performed on the premises of the client company.

The emergence of this in Spain can be traced back to the 1990s. The number of such companies has been growing constantly, as has the scope of their activities.

One key factor in this development is the lack of a legal framework for such companies, which are not subject to existing regulations on temporary work agencies. There is a consensus among labour law scholars that firms in Spain are increasingly outsourcing part of their activities through multi-services companies as a way of avoiding the higher labour standards laid down by law for temporary work agencies (Vicente 2017).

The 2012 labour law reform represented a new step in this process, with the establishment of the absolute priority of company-level collective agreements over sectoral ones with regard to a number of matters. Many companies have taken advantage of this new regulation, and as a result there has been a significant increase of new bargaining agreements signed by multi-services companies in recent years.



Analysis of the contents of these agreements shows that most of them drive down working conditions in comparison with the reference sectoral agreements (Vicente 2016; Muñoz 2014).

Against this background, it is worth noting that many of the new collective agreements signed by multi-services companies in this period were denounced by trade unions, and later declared invalid by the labour courts

The main reason these agreements were rejected was that they had country-wide scope, affecting all workplaces (current and future). However, the agreements were signed by the workers' representatives *only of some workplaces*, who were not entitled to do so (according to the rules on legitimacy established by the Workers' Statute).

In other words, the labour courts concluded that these agreements were invalid because they implied 'a breach of the principle of correspondence between the representation of the body (unitary representation body involved in negotiating the company agreement) and the field on which it is projected (scope of resulting collective agreement)' (Muñoz 2014: 285).

In spite of these court judgments, collective bargaining in multi-services companies still constitute an issue of particular concern to Spanish trade unions. Indeed, in 2015 the two most representative trade unions at national level signed a joint statement in which they called for a halt to the promotion 'of new collective bargaining agreements in multi-services companies until the legal framework has been reformed' (CCOO and UGT 2015).

### 3.3 Role of the social partners

In this section we provide a brief overview of the views and strategies of the social partners with regard to the challenges of industrial relations and collective bargaining in this period.

The analysis is based on information from the following sources:

- The Annual Labour Survey (ALS) of 2014, carried out by the Ministry of Employment and Social Security. This survey is based on data provided by nearly 10,000 companies, and its main goal is to obtain information on: measures taken by enterprises to adapt to changes in economic circumstances; internal flexibility measures and other measures implemented in companies; industrial relations; training measures implemented by companies for their workers; and business forecasts.<sup>14</sup>
- The findings of a field survey conducted in 2015, based on eight in-depth interviews with the heads of the main national-level sectoral federations of *Comisiones Obreras*

14. The methodology and data of this survey are available at <http://www.empleo.gob.es/estadisticas/EAL/welcome.htm> (accessed on 11/10/2016).

(CCOO), the most representative trade union in Spain (Cruces 2016b). Obviously, this sample is not statistically representative, but qualitatively the information collected provides a rich overview of the union movement's main concerns and challenges with regard to the effects of labour law reform on collective bargaining.

### **3.3.1 Employers**

We may highlight three key findings from the 2014 ALS (Lago 2016).

First, a gap can be discerned between the formal and the real goals of the 2012 labour law reform. Thus, while one of the reform's stated objectives was to promote internal flexibility in companies, as an alternative mechanism to the widespread use of external flexibility in times of crisis, survey data show that most companies have continued to resort mainly to layoffs and non-renewal of contracts as their preferred way of adjusting to slumps. Companies opting for internal flexibility – for example, related to wages and working hours – are in the minority.

Second, around 82 per cent of the companies surveyed had a sectoral collective agreement as reference for the regulation of working conditions. When asked whether the sectoral collective agreement met the company's needs, 82 per cent answered 'to a fair extent' or 'to a considerable extent'. Furthermore, 76 per cent of the companies surveyed stated their preference for keeping the sectoral agreement.

These assessments are in striking contrast with the mainstream narrative sustained by both European and national institutions, which since the onset of the crisis have called repeatedly for a radical decentralisation of collective bargaining, on the pretext that companies were crying out for it.

Finally, it is worth noting that most of the companies surveyed stated that, when faced by the next economic downturn, they would opt once more for external rather than internal flexibility.

It should be noted here that companies' preference for external flexibility cannot be explained in terms of alleged labour market 'rigidity'. More to the point is a generalised pattern of business management strongly focused on a 'low road' in pursuit of competitiveness – mainly cutting prices and labour costs – to the detriment of a more sustainable 'high road' (based on, for example, innovation, quality and differentiation of products and services, training and quality of employment).

### **3.3.2 Trade unions**

A number of points of interest emerge from these interviews with union officials.<sup>15</sup>

First, there is a consensus that the development of collective bargaining has been difficult since the onset of the crisis, due to both the adverse economic situation and the effects of the labour law reforms adopted in this period.

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15. Here only the more general issues are addressed, without taking sectoral differences into account. For a more detailed analysis, see Cruces 2016b.

It is important to note that the impact of this reform is linked not only to its implementation, but also to the ‘threat effect’ of its potential application by employers.<sup>16</sup> According to the unionists interviewed, deployment of this ‘threat effect’ has been constant in bargaining since 2012; not only that, but it has been ‘internalised’ by many workers’ representatives.

Second, the main trade union concern just after adoption of the 2012 labour law reform was the limitation of the temporary extension rule for expired collective agreements. In this regard, a key trade union priority was to preserve collective agreements nearing expiry, even to the detriment of their contents (a deterioration of working conditions).

Third, there was also a concern about the widening of companies’ legal options with regard to the temporary suspension of sectoral or company-level collective agreements. In this sense, the trade unions have prioritised involvement in negotiations on such temporary derogations, the outcome of which is that most of them have been agreed.

Fourth, the unionists remarked that the 2012 labour reform has strengthened employers’ power to unilaterally modify working conditions at company level. They also complained about the lack of information provided on the development and scope of this process.

Finally, for the near future the unions’ strategic option is to maintain the role of sectoral collective agreements, which are considered a key tool in ensuring a minimum floor of labour rights and regulation of working conditions (especially for workers in smaller companies).

#### **4. Labour market reforms and collective bargaining developments in the metal industry and the retail sector (large retail)**

In this section we examine the effects of the crisis and labour market reforms on collective bargaining developments in two sectors: retail, with a particular focus on large retail, and the metal industry.

The analysis of each sector is structured as follows. First, there is a brief overview of industrial relations dynamics. Second, we analyse the impacts of labour market reform – particularly, that of 2012 – on the structure and development of collective bargaining. Third, we look at the position of the social partners. A brief summary concludes.

The study is based on information from various sources, including the findings of in-depth interviews with social partner representatives.<sup>17</sup>

<sup>16.</sup> For example, the threat of creating new bargaining units at company level in order to enforce the absolute priority of regulating working conditions.

<sup>17.</sup> For the commerce sector, we interviewed two union officials from CCOO-Services. For the metal industry, we interviewed two union officials from CCOO-Industria, and one from the main employers’ association CONFEMETAL.

## 4.1 Retail sector

### 4.1.1 Industrial relations

There are two main employers' organisations in the retail sector in Spain: the National Association of Large Distribution Companies (ANGED in Spanish), which brings together the most representative companies in the large retail distribution; and the Spanish Confederation of Commerce (CEC in Spanish), which represents small and medium-sized regional and provincial retail organisations.

Two other employers' organisations represent the supermarket sector, although they are not involved in collective bargaining: the Spanish Association of Distributors and Supermarkets (ASEDAS) and the Spanish Supermarket Chains Association (ACES).

As for workers' organisations, union density in the retail sector in Spain is lower than the national average: 9 per cent as against 16 per cent in 2010, according to official statistics.

Trade unions in this sector are clearly divided into two types of organisation. On one hand, there are two 'independent' unions: the Federation of Independent Workers in Retail (FETICO in Spanish), which is the most representative trade union in the large distribution sector, and the Federation of Trade Union Associations (FASGA), which is also present in the large distribution sector (particularly in one company).

On the other hand, there are the sectoral federations integrated in the two traditional trade union confederations: CCOO-Services and FeSMC-UGT (the Federation of Services, Mobility and Consumption of the General Union of Workers).

The class-based trade unions are highly critical of the other two organisations, which they label 'yellow unions' – in other words, backed by the employers. Thus, these organisations are described as 'the union departments of ANGED companies'.<sup>18</sup>

Collective bargaining in the retail sector has historically been atomised, with a large number of agreements in force. Sectoral collective bargaining is basically at provincial level, although there are also national-level, regional, interprovincial and even local agreements.

In large retail distribution, collective bargaining is organised at two levels: on one hand, there is just one sectoral agreement: the 'national collective agreement of department stores'. This agreement applies to all large distribution companies integrated in ANGED.

On the other hand there are various agreements at company level, which are not exactly statutory collective agreements (and therefore not registered in the official statistics). The aim of these agreements is to develop and/or adapt the contents of the national collective agreement.

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18. Interview with a CCOO-Services union official.

#### 4.1.2 Collective bargaining developments

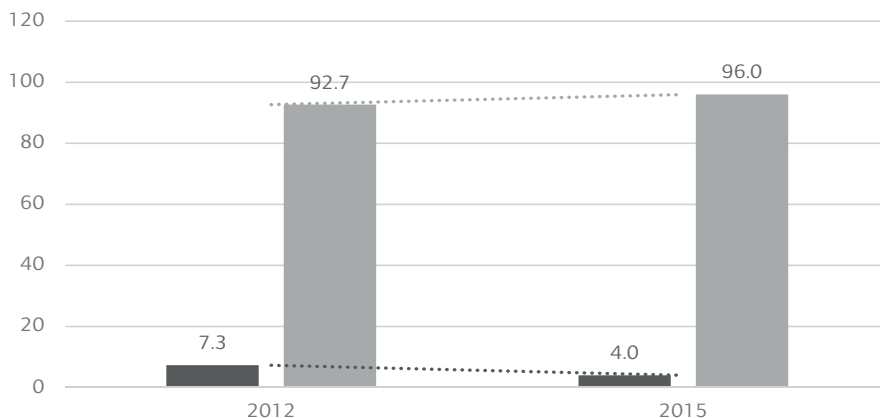
The combined impacts of the crisis and the labour market reforms approved since 2010 – particularly that of 2012 – put industrial relations under pressure.

First, there has been a decline in collective bargaining. Thus, according to the available official statistics the net balance for the retail sector is a fall of 46 collective agreements between 2008 and 2015 – a variation of 10.50 per cent – and of 10,562 workers covered (–0.56 per cent).<sup>19</sup>

Second, focusing on the potential effects of the legal measures aimed at fostering the decentralisation of collective bargaining, it is worth highlighting the following issues:

- There has been no alteration in the existing structure of collective bargaining in the retail sector, despite the establishment of new company-level collective agreements after 2012 (Figure 4). This can be explained by a number of factors: (i) most of the new collective agreements were signed by small firms, with a very low coverage; (ii) the creation of new bargaining units at sectoral level, with higher coverage; and (iii) employers have opted to take advantage of other measures in the 2012 labour reform, such as reinforcement of the unilateral power to modify working conditions at company level.
- The legal limitation imposed on the temporary extension rule for expired collective agreements has not had a real impact, although this possibility ‘was used by some employers as a threat to reinforce their bargaining position’.<sup>20</sup>

Figure 4 Workers covered by collective agreements in the retail sector (NACE G), Spain, 2012 and 2015 (year of economic effects of the agreement and bargaining level; % of total workers)

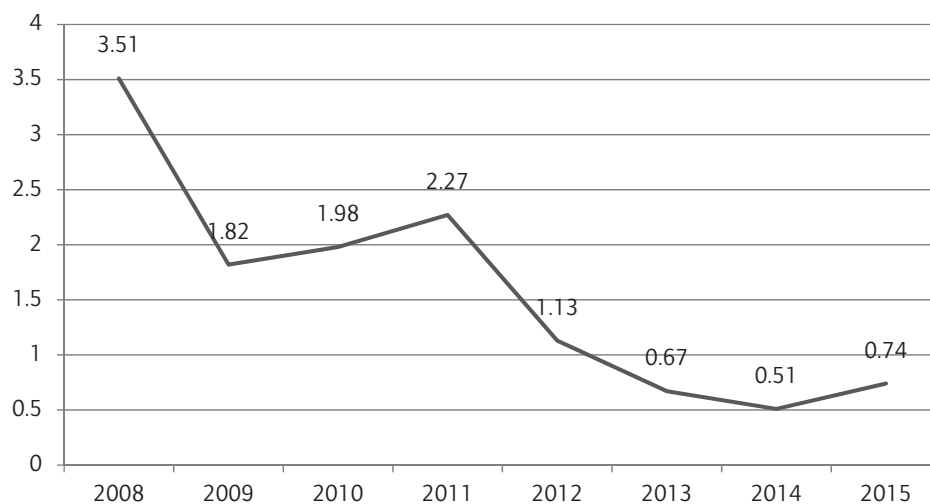


Source: Authors' elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, annual data recorded up to October 2014 (data 2012) and March 2017 (data 2015).

19. Statistics on collective agreements, Ministry of Employment and Social Security, Annual Data.

20. Interview with a union official from CCOO-Services.

Figure 5 Agreed wage increases in the retail sector (NACE G), Spain, 2008–2015 (%)



Source: Author's elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, annual data.

- The main effect of the labour market reform has no doubt been to boost wage devaluation, which was already occurring due to the impact of the economic crisis in the sector.

Thus, on one hand there has been a significant wage moderation trend, although with a slight recovery since 2014, in the context of the fragile improvement in economic activity (Figure 5).

On the other hand, real wages in the sector have fallen sharply, although there were signs of recovery at the end of the period, as shown by the development of hourly wages (Figure 6).<sup>21</sup>

According to the class-based trade unions, the combined effects of the crisis and the labour market reforms have led to a 'wild wage devaluation' in many companies in the retail sector. In the wake of the 2012 labour market reform two mechanisms in particular have been applied by employers to implement wage devaluation.

First, effective implementation of the 'absolute prevalence' of company-level agreements over sectoral ones. The consequence of this is that most of the new company-level agreements signed after 2012 can be considered to be *in pejus* (namely, targeted mainly at reducing wage costs).

<sup>21</sup> This indicator allows us to overcome the differences due to the changing full-time/part-time composition of the workforce over the years.

Figure 6 Hourly wages in the retail sector, Spain, 2008–2014 (% increase over previous year)



Source: Author's elaboration based on data on wages and hours (employees) in Spanish Annual National Accounts.

Thus, 'the fundamental difference is that, before the 2012 reform, company-level agreements were signed in order to improve the contents of sectoral agreements. After the reform, many employers want to sign new company-level agreements in order to worsen working conditions'.<sup>22</sup>

The second mechanism involves application of the 2012 amendment of Article 41 of the Workers' Statute, which regulates procedures for substantial modification of working conditions at company level. This reform was basically aimed at reducing the role of collective bargaining in this regard and to reinforce the power of employers, thus consolidating unilateral internal flexibility.

In this regard, employers in the retail sector have enthusiastically taken advantage of this reform to adjust working conditions. The main consequence has been a reinforcement of wage devaluation, by means of wage cuts or freezes, an increase in the annual number of working days and greater flexibility with regard to working time distribution.

#### 4.1.3 Positions of the social partners in large retail distribution

The employers' association in the large retail distribution sector, ANGED, has been pretty much in favour of the 2012 labour market reform, in particular with regard to measures aimed at reinforcing unilateral internal flexibility at company level.

The main strategy pursued by ANGED in order to exploit this reform was to include some of its key provisions in the text of the national-level collective agreement of department

<sup>22</sup>. Interview with a CCOO-Services union official.

stores, signed in 2013 with two ‘independent’ trade unions, FASGA and FETICO, that have traditionally aligned themselves with the employers, as noted above.<sup>23</sup>

The content of this agreement led to a severe degradation of working conditions, through provisions such as: (i) the linking of wage increases to sales, taking as a reference the volume of sales in 2010 (in practical terms, this amounted to a real wage freeze); (ii) the extension of the annual number of working days by 28; (iii) the elimination of paid Sundays and holidays, in a context of increasing deregulation of shopping hours; and (iv) greater flexibility with regard to the distribution of working time.

The key point with regard to this agreement, however, was the insertion of a provision on substantial modification of working conditions. Accordingly, in order to comply with the new regulations on the annual number of working days and greater working time flexibility, companies may launch a period of consultation with worker’s representatives, following the rules established in Article 41 of the Workers’ Statute (modified by the legal reform of 2012, as noted above).

The outcome of this provision has been continuous modification of working conditions since 2013, focused on working time. The aim is to increase the annual number of working days, but especially the reinforcement of working time flexibility and worker availability. In this regard, ‘Article 41 is familiar even to the last employee entering the company, because it has been a continuous process of modification after modification’.<sup>24</sup>

As for the employees’ side, the dynamic of industrial relations in large retail distribution is strongly conditioned by the clear divide between the traditional class-based trade unions and the two ‘independent’ unions (FASGA and FETICO), who are considered by the former to be ‘yellow’ unions.

The 2013 collective agreement was strongly criticised by the class-based trade unions (CCOO and UGT), which refused to sign it.<sup>25</sup> On their view, there were three main matters of controversy.

First, the anomalies concerning the bargaining process, specifically its short duration. Thus, ‘there were only three bargaining meetings. The process began at the end of January, and the agreement was signed one month later.’<sup>26</sup>

Second, the contents of the agreement, which according to the class-based unions implied a strong deterioration of working conditions, as noted above.

Finally, there was the reinforcement of unilateral flexibility via the provision mentioned above.

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**23.** National-level collective agreement of large stores (2013–2016).

**24.** Interview with a CCOO-Services union official.

**25.** It should be noted that the class-based trade unions did not sign the former agreement (2009–2012) either, although they did in 2006 (2006–2009).

**26.** Interview with a CCOO-Services union official.



#### 4.1.4 Final remarks

Collective bargaining in the retail sector has been under pressure due to the combined effects of the crisis and the labour market reforms, particularly those of 2012.

This has led, in the first instance, to a decline in collective bargaining, in terms of both number of agreements and workers covered.

Second, analysis of the effects of the 2012 reform, whose aim was to foster the decentralisation of collective bargaining, yield three main findings:

- (i) The existing structure of collective bargaining in the retail sector has not changed substantially, despite the creation of new company-level collective agreements. This can be explained by a number of different factors: (a) most of the new collective agreements were signed by small firms, with very low coverage; (b) the creation of new bargaining units at sectoral level, with higher coverage; and (c) employers have taken advantage of other measures drawn from the 2012 labour reform, such as reinforcement of their powers concerning unilateral imposition of internal flexibility.
- (ii) The legal limitation imposed on the temporary extension rule for expired collective agreements has not had a real impact, although this possibility has been used by the employers as a threat to reinforce their position in bargaining.
- (iii) The main effect of labour market reform has no doubt been to boost wage devaluation in the sector, which was already occurring due to the economic crisis. Thus, on one hand, there has been significant wage moderation; and on the other hand, there has been a sharp fall in real wages in the sector.

It is worth noting, in relation to the large retail distribution sector, that industrial relations dynamics are strongly conditioned by a clear divide between two types of trade union organisation: the class-based trade unions and two ‘yellow unions’, which have historically been supported by and aligned with the interests of the employers’ association.

One major consequence of this divide was the 2013 agreement in the sector, which developed a number of key elements of the 2012 labour market reform and which was not signed by the class-based trade unions.

Against this background, the latter’s strategy is twofold: (i) rationalisation of the structure of collective bargaining in various ways: maintaining and improving the existing national-level collective agreements; concentrating existing provincial-level agreements into new ones, in order to reduce their number; and linking the company-level agreements to sectoral agreements. (ii) Improvement of working conditions, especially in terms of wages and working time, taking into account the economic recovery ongoing since 2014.

## 4.2 Metal industry

### 4.2.1 Industrial relations

The employers' association that is party to sectoral collective bargaining is the Confederation of Metal Employers Organisations (CONFEMETAL).

It is worth noting that the composition and even the role of the employers' organisations integrated in CONFEMETAL are very heterogeneous and unstable at provincial level (which is the main level of bargaining in the metal industry). Thus, 'in Spain it is very usual that the bargaining processes at provincial level are carried out by law firms, representing the interests of the employers from different economic sectors. [This has led to a situation in which] many agreements are awaiting renewal because the lawyer involved has retired and there is no contact partner on the business side'.<sup>27</sup>

The most representative trade unions at national level that are party to sectoral collective bargaining are the sectoral federations integrated in the two traditional class-based trade unions confederations: the Federation of Industry of Workers' Commissions (CCOO-Industry); and the Federation of Industry, Construction and Agriculture of the General Union of Workers (FICA-UGT) and the sectoral federations of three regional-level trade unions. Two are in the Basque Country: the Federation of Industry of Patriot Workers' Commissions (LAB) and the Federation of Industry and Construction of Basques Worker Solidarity (ELA). The third is in Galicia, namely the Federation of Industry of the Galician Inter-Union Confederation (CIGA)

Collective bargaining in the metal industry in Spain has historically been atomised, with a large number of agreements at provincial and company level. This situation is due to the strong fragmentation and atomisation of the sector itself, characterised by a high number of micro and small companies.

### 4.2.2 Collective bargaining developments

Collective bargaining in the metal industry has been under pressure due to the combined impacts of the crisis and the labour market reforms approved since 2010, particularly those of 2012. Analysing collective bargaining developments in the sector we found the following.

First, there has been a slight decline in collective bargaining since 2008. According to the official statistics the net balance for the metal industry is a decline of 173,000 workers covered by collective agreements between 2008 and 2015 (around -14 per cent).<sup>28</sup>

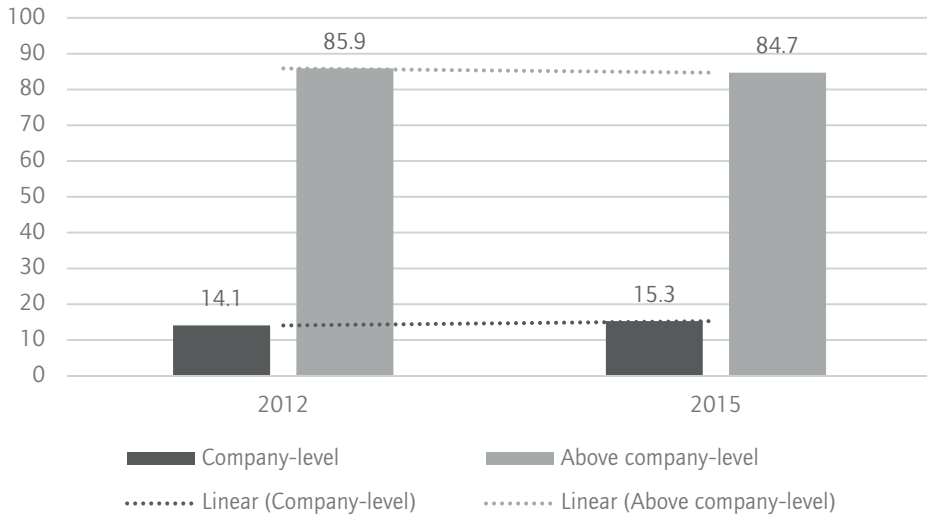
Second, turning to the potential effects of the 2012 labour market reform measures aimed at boosting decentralisation of collective bargaining, one might mention the following:

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<sup>27</sup> Interview with a CCOO-Industry union official.

<sup>28</sup> Statistics on collective agreements, Ministry of Employment and Social Security, definitive annual data.

Figure 7 Workers covered by collective agreements in the metal industry,\* Spain, 2012 and 2015 (by year of economic effects of the agreement and bargaining level: % of total workers)



Note: Total number of workers covered by collective agreements registered in the following subsectors (NACE code): 24, 25, 26, 27, 28, 29, 30 and 33.

Source: Author's elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, definitive annual data registered up to October 2014 (data for 2012), and March 2017 (data for 2015).

- There has been a slight increase in the weight of the company-level agreements –in terms of workers covered– although this has not caused a substantial alteration of the existing structure of collective bargaining in the metal industry (Figure 7).
- The legal limitation of the temporary extension rule for expired collective agreements has not had a real impact, although this reform has been used as a kind of threat in negotiations.
- The main effect of the labour market reform has no doubt been to boost wage devaluation, which was already occurring due to the impact of the economic crisis in the metal industry.

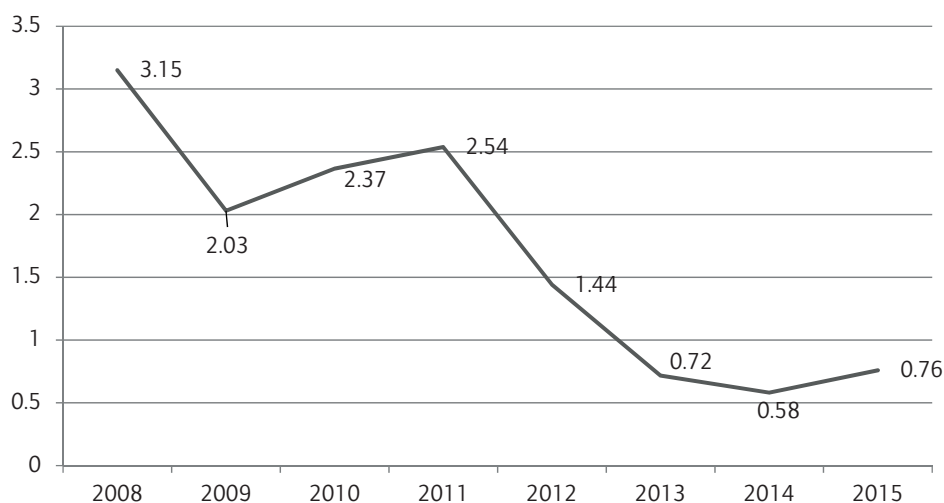
Thus, there has been significant wage moderation, although with slight signs of recovery since 2014 in the context of the fragile recovery of the economic activity (Figure 8).

At the same time, there has been a sharp fall in real wages in the sector, as shown by the evolution of hourly wages (Figure 9).<sup>29</sup>

According to the trade unions, the employers have implemented three main mechanisms to enforce wage devaluation.

<sup>29</sup>. This indicator allows us to overcome the differences due to the changing full-time/part-time composition of the workforce over the years.

Figure 8 Wage increases agreed in the metal industry,\* Spain, 2008–2015 (%)



Note: \* Simple average of wage increases in collective agreements registered in the following subsectors (NACE code): 24, 25, 26, 27, 28, 29, 30 and 33.

Source: Author's elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, definitive annual data.

First, new company-level collective agreements, which can be labelled agreements *in pejus*, namely, agreements targeted mainly at fostering cuts in wage costs.

Second, temporary derogations from sectoral collective agreements. These derogations has not been very numerous, but they have focused on wages to a large extent.

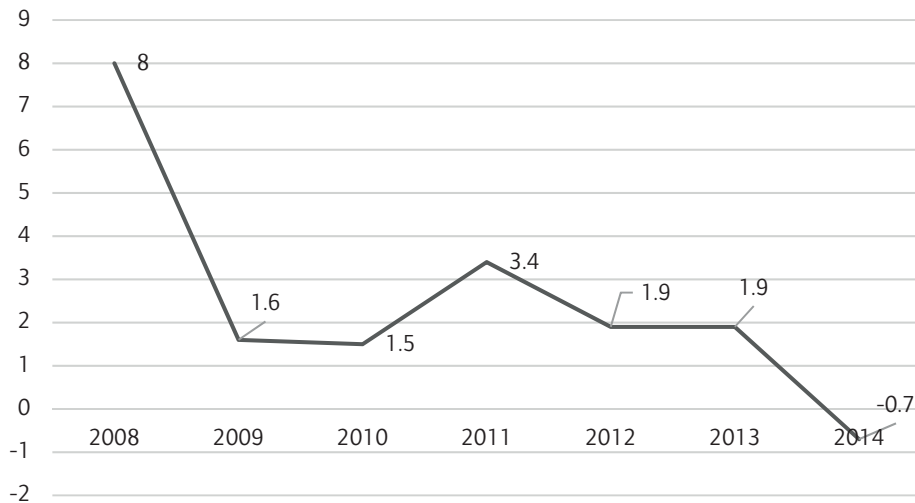
Finally and most important, the application of employers' reinforced powers – after the reform of Article 41 of the Workers' Statute in 2012 – to bring about substantial modifications in working conditions. This reform was basically aimed at reducing the existing role of collective bargaining in this area and to reinforce the power of employers accordingly, leading to consolidation of unilateral internal flexibility.

Employers in the metal industry have taken broad advantage of this reform to adjust working conditions at company level. The main consequence has been the reinforcement of wage devaluation, by means of wage cuts or freezes, an increase in the number of annual working days and greater flexibility with regard to working time distribution.

To sum up, according to the trade unions, 'employers don't really need to negotiate a new company-level agreement, especially in smaller companies, because they can generally resort to the substantial modification of working conditions made possible by the reformed Article 41 of the Workers' Statute to boost wage devaluation'.<sup>30</sup>

30. Interview with a CCOO-Industry union official.

Figure 9 Hourly wages in the metal industry, Spain, 2008–2014 (% change over previous year)



Note: \* Simple average of wage increases in collective agreements registered in the following subsectors (NACE code): 24, 25, 26, 27, 28, 29, 30 and 33.

Source: Author's elaboration based on statistics on collective agreements, Ministry of Employment and Social Security, definitive annual data.

#### 4.2.3 Positions of the social partners

The employers' confederation in the metal industry has fully backed the labour market reforms implemented since 2010 in Spain, although with some nuances regarding decentralisation of collective bargaining.

In short, employers in the metal sector agree with the measures aimed at reinforcing bargaining at company level, but at the same time – and contrary to the government's position – they are in favour of preserving the provincial level of bargaining.

This can be explained by the strong tradition of collective bargaining at provincial level, but also by their resistance to the potential weakening of the role of the employers' confederation. This confederation comprises a number of heterogeneous employers' organisations, rooted mainly, as already mentioned, at the provincial level. Therefore, 'if we lose the provincial level of bargaining and focus only on company-level agreements, there's a strong risk of losing our own organisation'.<sup>31</sup>

It is worth noting the strong prevalence of small and micro companies in the sector. Instead of promoting new company-level agreements most employers have been pretty much in favour of exploiting other measures included in the labor market reforms, aimed at strengthening companies' unilateral power to implement wage devaluation.

31. Interview with a CONFEMETAL representative.

This strategy is also supported by other legal measures, such as the reform of ‘ultra-activity’,<sup>32</sup> whose potential application has been used as a threat in the bargaining process, as noted above. Thus, as recognised by the employers themselves, this ‘is being used to obtain other benefits; it is being used as a bargaining strategy’.<sup>33</sup>

The most representative metal industry trade unions at national level have developed a threefold strategy to confront the pressures aimed at promoting decentralisation of collective bargaining.

First, the negotiation of modifications in the chapter on collective bargaining structure in the existing National Metal Industry Agreement. This was a reaction to the labour market legal reforms approved in 2011,<sup>34</sup> aimed at, among other things, undermining the role of provincial collective agreements in favour of company agreements.

An agreement was finally concluded in January 2012,<sup>35</sup> and in its preamble the social partners state that

the current intention to strengthen the company level as the basic level of bargaining cannot ignore or be unaware that our sector is made up of medium-sized and, above all, small enterprises whose dimensions and characteristics are not the most appropriate for negotiating a collective agreement. For this reason, sectoral or sub-sectoral collective agreements should continue to set the minimum conditions for companies and workers in their territorial scope.

Second, the negotiation of the first national-level statutory collective agreement in the metal industry, after 20 years of failed attempts.<sup>36</sup> One key trade union goal was to avoid the effects of the 2012 labour market reform, which among other things limited the continuity of collective agreements to one year after their expiry.<sup>37</sup>

The main concern of the trade unions was that, due to the lack of a higher level agreement, most of the workers could lose the protection of an sectoral agreement with the expiration of the existing provincial agreements.

The outcome of bargaining was the first national-level industry, technology and services collective agreement in the metal sector (*Convenio Colectivo Estatal de la Industria, la Tecnología y los Servicios del Metal*), signed in March 2016 by CONFEMETAL and the most representative trade unions at national level (CCOO and UGT). This agreement was renewed in March 2017, with the signing of the second national-level collective agreement in the sector.

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**32.** The limitation of the temporary extension rule for expired collective agreements.

**33.** Interview with a representative of CONFEMETAL, quoted in Fernández *et al.* (2016).

**34.** Royal Decree Law 7/2011 of 10 June, of urgent measures for the reform of the collective bargaining.

**35.** Agreement for the modification of the National Metal Industry Agreement (published in the Official State Bulletin, 22/2/2012).

**36.** Mainly due to the opposition of the employer’s association (CONFEMETAL).

**37.** Before this reform, this continuity was legally indefinite until a new agreement was reached.

The third strategy has aimed at mitigating the worst social effects of the crisis at company level with the negotiation of ‘defensive agreements’, which have been very common particularly in the automotive industry. In short, these agreements allowed temporary deterioration of working conditions – in terms of wages and especially working time flexibility – in exchange for job preservation and future investment.

#### 4.2.4 Final remarks

Collective bargaining in the metal industry has been under pressure, as in the case of the retail sector, due to the combined impacts of the crisis and the labour market reforms approved since 2010, particularly those of 2012.

This has led, in the first instance, to a decline in collective bargaining during this period. Second, analysis of the potential effects of the measures established by the 2012 labour market reform aimed at favouring the decentralisation of collective bargaining yields the following conclusions:

- There has been a slight increase in the weight of company-level agreements, although this has not caused a substantial alteration in the existing structure of collective bargaining in the metal industry. This is because the new agreements at company level have been signed to a large extent by small firms. Also, most employers have opted to take advantage of other measures included in the 2012 labor market reform, aimed at boosting unilateral internal flexibility at company level. Finally, it is worth noting the defence of the continuity of provincial-level bargaining by the employers’ confederation.
- The legal limitation of the temporary extension rule for expired collective agreements has not had a real impact, although this reform has been used as a kind of threat in negotiations.
- The main effect of the labour market reform has no doubt been to strengthen wage devaluation, which was already happening in response to the impact of the economic crisis in the metal industry. Thus, on one hand there has been significant wage moderation, although with slight signs of recovery since 2014 in the context of the fragile economic revival. On the other hand there has been a sharp fall in real wages in the sector.

Against this background, the most representative trade unions at national level have pursued a threefold strategy: (i) preserving the role of provincial collective agreements, ensuring the sectoral structure of collective bargaining and improving coordination among the different bargaining levels; (ii) mitigating the worst social effects of the crisis at company level by negotiating ‘defensive agreements’; and (iii) negotiating the first statutory national-level agreement pertaining to industry, technology and services in the metal sector, which was finally reached in 2016, after 20 years of failed attempts.

It is worth highlighting that trade unions in the metal industry are not against company-level collective bargaining, but they are definitely opposed to the model of ‘*disorganised decentralisation*’ being pushed in the European South by the labour market reforms approved under the umbrella of New European Economic Governance. This process has seriously eroded the dynamics of collective bargaining – it has even brought about

their collapse in the extreme case of Greece – as well as a profound deterioration in working conditions and living standards.

## 5. Summary and conclusions

Collective bargaining in Spain has been under strain since the onset of the Great Recession. This can be explained, on one hand, by the stronger impact of the crisis in Spain compared with other European countries, especially in terms of job destruction. The significant worsening of the economic and social situation created a tough context for the normal development of industrial relations. For example, there was practically a 'blockade' of collective bargaining in the first two years of the crisis.

On the other hand, the New European Economic Governance launched in 2010 established the decentralisation of collective bargaining as a key goal of country-specific recommendations (particularly for southern European countries).

The labour law reforms adopted in various European countries show some differences in terms of contents and scope. Nevertheless, comparative analysis allows us to highlight two common trends:

- (i) A certain *democratic deficit with regard to governance*, as the labour law reforms have been adopted mainly without consultation and negotiation with the social partners.
- (ii) The bias of the reforms towards *more flexible regulation of collective bargaining*, emphasising three key goals: (a) giving a major new 'push' to the decentralisation of collective bargaining; (b) fostering wage devaluation in order to reinforce the competitiveness of the national economies; and (c) deepening the asymmetry between capital and labour at company level by strengthening employers' power to regulate working conditions unilaterally.

Labour law has been subjected to continuous reform in Spain during this period, the most important being the reforms adopted by the Conservative government in 2012. This reform is unanimously considered a landmark in Spanish labour law regulation.

One of the major goals of the 2012 labour law reforms was to push the decentralisation of collective bargaining, through three main mechanisms: (i) widening employers' possibilities for temporarily suspending sectoral or company-level collective agreements; (ii) limitation of the temporary extension rule for expired collective agreements; and (iii) giving absolute priority to company-level collective agreements over sectoral ones in a number of respects.

Analysis of the effects of these measures on collective bargaining developments between 2012 and 2015 yields four main findings:

- (i) The labour law reforms enacted during this period of crisis have fostered the development of new collective agreements at company level. Nevertheless, to date this



process has not caused a substantial alteration of the formal structure of collective bargaining (in terms of the weight of sectoral and company level agreements).

In fact, if we focus on the evolution of collective agreements registered by the year in which their economic effects became known, statistical data show that the weight of the company-level agreements decreased from 10.2 per cent of workers covered in 2008 to 8.4 per cent in 2014.<sup>38</sup>

There are a number of different reasons for this:

- Most new collective agreements were signed by small or medium-sized firms, with low coverage.
- The creation of new collective agreements at company level may represent a risk for many employers in terms of higher transaction costs, higher bargaining costs and potential labour conflicts associated with encouraging workers' participation.
- Employers have taken advantage of other measures drawn from the 2012 labour reform, such as: wider possibilities for temporary derogations from collective agreements at company level; and, especially, reinforcement of the employer's unilateral power to modify working conditions
- Union strategies aimed at maintaining the continuity of sectoral collective agreements, even at the expense of the devaluation of their contents (especially in terms of wage freezes or devaluation, and higher flexibility or working time).

(ii) Two controversial issues arise from the development of the new company-level agreements created after the 2012 labour law reform. On one hand, it is worth noting the signing of various new collective agreements *in pejus*, namely, agreements whose provisions are inferior to those of higher bargaining levels (particularly with regard to wages). In some cases these agreements even tried to operate retroactively, although the labour courts later struck this down.

On the other hand, there have been problems with regard to the legitimacy of the actors involved in the negotiation of some new company-level agreements, in particular workers' representatives in smaller companies.

(iii) The most important effect of the labour law reforms adopted since 2010 has no doubt been strong wage devaluation, which has exacerbated the social situation in Spain, with a general rise in inequality and poverty levels; as a result, the at-risk-of-poverty or social exclusion rate increased to 28.6 per cent of the population in 2014; and the in-work poverty rate – the so-called 'working poor' – rose to 14.8 per cent.<sup>39</sup>

(iv) The 2012 labour law reforms have strongly deepened the power asymmetry between capital and labour, strengthening the capacity of employers to regulate working conditions at company level unilaterally. This has laid the foundations for a more

**38.** Statistics on collective agreements, Ministry of Employment and Social Security. Data related to collective agreements registered by year of economic effects (2014 is the last year available with definitive data).

**39.** Living Conditions Survey 2015, National Institute of Statistics (published in 2016, data related to 2014).

authoritarian pattern of industrial relations, and also for the potential consolidation in the medium term of a model of ‘disorganised decentralisation’ of collective bargaining. In this regard, we have noted that this disorganised decentralisation poses a number of challenges (Martín and Alos 2016):

- The characteristics of the business structure in Spain, marked by the prevalence of small and micro companies.<sup>40</sup> This environment is a breeding ground for patronising or even authoritarian industrial relations, thereby obstructing normal development of collective bargaining.
- The lack of a trade union in many SMEs, which can lead to the establishment of workers’ representatives strongly influenced by the employers.
- The risk of unfair competition and social dumping. This largely explains the reluctance of many employers to discard the sectoral collective agreements, because they provide an umbrella for a minimum common regulation of economic and working conditions for all the companies affected.

Against this background, the general strategy of the most representative trade unions for the coming years is structured around two key goals.

First, promotion of wage growth in order to ensure the recovery of purchasing power after years of internal devaluation, and taking into account the signs of economic recovery registered since 2014.

In this regard, it is worth noting the Third Inter-confederal Agreement on Employment and Collective Bargaining 2015, 2016 and 2017, signed on 8 June 2015 by the most representative social partners at national level. In this text, which provides guidelines for the development of collective bargaining at all levels, the social partners state that ‘a breakthrough in wage growth, if possible in line with economic reality in the different sectors and/or across the economy, and the absence of inflationary pressure in the Spanish economy would help to increase workers’ purchasing power and further improve our competitiveness, thereby preserving and creating jobs’.

Thus, a wage increase of ‘up to 1 per cent’ was agreed in 2015 and one of ‘up to 1.5 per cent’ in 2016. Nevertheless the guideline for 2017 is still the subject of controversy at the time of writing (June 2017), because the trade unions were demanding a higher wage increase, taking into account overall economic performance, which has not been accepted by the employer’s confederation.

Second, the defence of a model of ‘*organised* decentralisation’ of collective bargaining, emphasising two key elements:

On one hand, the role of sectoral collective agreements in order to ensure a minimum floor of working conditions and rights for workers, but also to avoid the risk of unfair

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**40.** In January 2016 there were 1.4 million companies with employees in Spain, of which 90.4 per cent had fewer than 10 workers, and 62 per cent one or two. See Central Business Register, National Institute of Statistics (data published on 29/7/2016).

competition and social dumping for companies. One clear example of this approach is the first national-level collective agreement signed in the metal industry in 2016.

On the other hand, the importance of coordination among the different levels of collective bargaining, as a way of guaranteeing flexible and fair adaptation of working conditions to companies' changing circumstances.

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# Chapter 8

## The impact of the European Semester on collective bargaining and wages in recent years

Kristian Bongelli

### 1. Introduction<sup>1</sup>

The question of whether the EU has competence over collective bargaining and wages is of fundamental importance for the trade union movement. The answer is more complex than it may seem and forms the basis on which the European Trade Union Confederation (ETUC) has developed strategies to cope with economic governance over the past few years. However, in order to fully understand the trade union position, we need to look briefly at what the European semester is and how it works. This will provide an analytical framework for the ETUC's approach and a proper understanding of its two phases. The strategy that is being implemented to counteract and (re-)balance the policies imposed via the European semester and to make the latter more socially-oriented is addressed in Section 2. In Section 3 we look at the improvements and results achieved by trade unions within this framework. Looking first at the EU as a whole, we then examine the five target countries of the DECOBA project – Belgium, France, Germany, Italy and Spain – more closely. Finally, we draw conclusions confronting recommended policies with trade unions' views and demands.

### 2. Does the European Union have competence over collective bargaining and wages?<sup>2</sup>

The 2008 crisis made it self-evident that, from the adoption of the single currency, the economies of the European Member States became ever more interwoven. Growth would spread from one country to another, but so too would any imbalance. The Economic and Monetary Union needs more coordinated policies among the national levels, especially within the framework of the euro area. This assumption pushed the governments of the Member States to design a new form of coordinated exercise of public power in the economic domain. In 2011, the European semester for economic policy coordination (referred to below as 'the Semester') was formally introduced.<sup>3</sup>

1. This chapter is based mainly on positions and working documents of the ETUC, developed over the period 2014–2017 (that is, semester cycles of 2015, 2016, 2017 and start of 2018) in the frame of the daily work on collective bargaining, wage policy and the European semester.
2. The description of how the European Semester works in this paragraph is based mainly on Arrigo et al. (2016).
3. See Section I-A, Council Regulation 1466/97/EU of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, as amended by the Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies. The Regulation 1175/2011 is one of the legislative instruments of the so-called Six Pack'.

The Semester is an innovative decision-making process – halfway between the Community and the intergovernmental method – through which the European Member States design their policies for budgetary surveillance, fiscal consolidation and economic coordination. In a nutshell, it aims at achieving the following objectives in a single and consistent framework of action: deepening and completing the single market, while maintaining stable macroeconomic conditions.

Within the governance of the single currency, each Member State runs a stability or convergence programme.<sup>4</sup> This implies a transferral of a certain degree of sovereignty to the supranational level with a view to coordinating economic and social policies, as well as completing the single market. A particular feature of the Semester process is a certain degree of shared decision-making among countries, while holding each government accountable with regard to the other Member States. For this to happen, the Semester goes through a complicated series of interwoven cycles<sup>5</sup> and documentation. The cycle starts in September and lasts until July.<sup>6</sup> For the sake of simplicity, one can summarise them in four main steps:

First, the European Commission sets the political priorities for the coming year in the so-called ‘Autumn Package’,<sup>7</sup> which comprises the following documents:

- (i) The Annual Growth Survey lays down the broad economic guidelines. The document focuses on investment, structural reforms and fiscal consolidation.
- (ii) The Joint Employment Report analyses the employment and social situation in Europe and the policy responses of national governments. For a long time this was a document of minor importance, but that has changed from the 2018 cycle onwards thanks to the introduction of the European Pillar of Social Rights (EPSR) and the consequent stronger focus on social performance. The latter is now monitored via the social scoreboard.<sup>8</sup>
- (iii) The Alert Mechanism Report, based on a scoreboard of indicators, identifies countries that may be affected by economic imbalances and for which the Commission should undertake further in-depth reviews within the Country Reports. It is the first step in the Macroeconomic Imbalances Procedure, which aims to prevent or address imbalances that hinder the smooth functioning of national economies, the eurozone or the EU as a whole.

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4. All the countries of the European Union should indeed adopt the euro sooner or later, excluding Denmark and the UK – which is currently under negotiations for withdrawing from the European Union. For the time being, Greece is excluded from the semester process, being under a specific financial assistance programme.
  5. There are indeed more and different cycles within economic governance. However, for the sake of simplicity, it is more opportune to refer to the European Semester as it was a single cycle. There is indeed no clear distinction among them as most documents serve the purposes of several cycles at the same time, such as the Country Reports. For a more complete explanation of the European Semester, see the following: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester_en)
  6. Since the beginning of the Juncker Commission, the timing of the semester was modified so to allow a better involvement of stakeholders, notably national parliaments and social partners.
  7. For more info see the following: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities_en).
  8. For more details, see the conclusions of this chapter.



- (iv) Recommendation for the euro area addresses issues critical to the functioning of the single currency area.
- (v) Opinion on draft budget plans for euro-area countries assesses the compliance of national budget plans with the requirements of the Stability and Growth Pact (SGP).

The ‘Autumn Package’ is usually released at the end of November. However, the drafting process starts in September, at the end of which DG Employment holds a consultation meeting with the European<sup>9</sup> and national social partners on the broad economic guidelines, mainly the Annual Growth Survey.<sup>10</sup>

Second, on the basis of the political priorities set out in the ‘Autumn Package’, the European Commission analyses the financial and socio-economic situation of each Member State and identifies critical areas for reform via the Country Reports. Such documents – one for every member state – are published between the end of February and the beginning of March. During the drafting period, in order to enhance the ownership of the process, as well as to share analysis and objectives, the Commission involves the different stakeholders at European and national level. Notably, it organises informal consultations with the European social partners in Brussels,<sup>11</sup> undertakes fact-finding missions in each member state to discuss issues with governments and national social partners and liaises with those actors via its European semester officials (so-called ESOs).<sup>12</sup>

Third, on the base of critical areas identified by the Commission via the Country reports, reforms to be undertaken by each government are laid down in the National Plans.<sup>13</sup> It is crucial to stress the fact that, of course, every government is completely free to design its own policy measures in response to the abovementioned challenges. The National Plans are generally due between the middle or the end of April.

The fourth and final step is the Country Specific Recommendations (CSR). They represent the final output of the semester and embody the abovementioned shared decision-making among national governments. The CSR are proposed by the European Commission in mid May, on the basis of the ‘discrepancies’ between the objectives commonly set out and the actions proposed by each government in the National Plans. Basically, they can be regarded as a request to adapt government policies in order to make sure agreed objectives will be met. A couple of years ago the Commission committed to streamline the content of CSRs and reduce their number. To this end, the Commission has focused the CSRs on the countries’ most urgent challenges. The CSRs

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**9.** The ETUC for the workers’ side, BusinessEurope, CEEP and UEAPME for the employers’ side.

**10.** The consultation documents of the European social partners are attached to the AGS and made publicly available on the following webpage: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities_en).

**11.** Concerning these consultation meetings with the ETUC and its member organisations, see the following paragraph.

**12.** The list of ESOs for each member state can be found on the following webpage: [https://ec.europa.eu/info/about-european-commission/contact/local-offices-eu-member-countries\\_en](https://ec.europa.eu/info/about-european-commission/contact/local-offices-eu-member-countries_en).

**13.** ‘National Plans’ is a new expression used by the Commission and include both National Reform Programmes (NRP) and Stability and Convergence Programmes (SCP).

are then discussed and endorsed by the European Council (in different compositions) and formally adopted by the Council around the first week of July. The Council has the power to endorse, drop or amend these draft CSRs. In general, 'it is expected to, as a rule, adopt the recommendations proposed by the Commission or publicly explain its position'.<sup>14</sup> Once adopted, the CSRs are 'politically binding' and

are to be taken into account by Member States in the process of national decision-making. A failure to implement the recommendations might result in further procedural steps under the relevant EU law and ultimately in sanctions under the SGP and the MIP. These sanctions might include fines<sup>15</sup> and/or suspension of up to five European Funds, namely the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). (European Parliament [Hradiský] 2017)

So far, the Commission has not issued any sanctions against Member States, even when CSRs were not implemented. Nevertheless, experience has made it crystal clear that, when a country find itself in a difficult situation – and, as a consequence, its bargaining power is low vis-à-vis the European partners – the CSR become more substantial and the country comes under more pressure to implement it. On the other hand, very often CSRs are welcomed by the receiving government, which sees them as a means of undertaking desired reforms while minimising the 'political shock', as responsibility can be attributed to the usual suspect, namely the European Union.

From what we have just said two elements indicate the answer to the opening question:

- (i) the European Commission has a mandate for analysing, monitoring and proposing policies;
- (ii) decision-making power rests in the hands of the European Council (in other words, the national governments themselves).

The reason for these roles is extremely simple. As mentioned above, the semester is half way between the Community and intergovernmental methods, as it presents a number of peculiarities: (i) it was created by international treaty, other than the treaties of the EU, that have not been signed by all the Member States, such as the Euro Plus Pact and the Fiscal Compact; and (ii) it makes use of the European institutions – giving them new roles, other than those established by the Treaties – to put in place intergovernmental programmes. However, by doing so, the related domains (under which collective bargaining and wages also fall) are still a national competence but have been put under a common umbrella with a view to reaching commonly agreed objectives.

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14. European Parliament [Hradiský] 2017, At a glance. The legal nature of Country Specific Recommendations, European Parliament, IPOL-EGOV, 2017. The briefing can be found here: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/528767/IPOL\\_ATA\(2014\)528767\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/528767/IPOL_ATA(2014)528767_EN.pdf).

15. The Commission threatened Member States (Spain and Portugal) with fines for the first time in 2016, see: <https://www.euractiv.com/section/euro-finance/news/commission-threatens-spain-and-portugal-with-fines/>. However, the fines were subsequently dropped, see: <https://www.ft.com/content/dff5e6d2-540c-11e6-9664-e0bd13c3bef>.

This brings us to an answer to the question kept in mind from the beginning. Do the European institutions have competence over collective bargaining and wages? They do, but only to a certain extent. This has been the state of affairs since the Member States signed off on the treaties establishing the new economic governance. In this frame, collective bargaining systems and wages are indeed scrutinised as factors contributing to the EU's economic performance. Thus, while the Commission is responsible for analysis and monitoring,<sup>16</sup> the Council is accountable for the recommendations issued. This system has been designed, of course, to avoid any further extension of the core competences of the European Union itself. At the end of the day, therefore, national governments are still responsible for the policies implemented in their own country,<sup>17</sup> even though those national competences have been – to a certain degree – shared with their peers.<sup>18</sup>

However, acknowledging this does not mean that the resulting interference in collective bargaining and wages is acceptable or justified. These are areas traditionally reserved for the autonomy of social partners, areas from which, traditionally, governments have refrained. Only autonomous negotiations between the social partners can guarantee a fair balance of the interests of businesses and workers. Nevertheless, as we are currently experiencing, the 'institutional environment' conducive to collective bargaining may change. The governments or, better, the national parliaments, in their capacity as legislators, can surely decide otherwise. It is then up to the trade unions to step up, mobilise and take action to defend their fundamental prerogatives on collective bargaining and wages from this wave of state interventionism. This is why the European trade union movement has decided to get more involved in talks with the Commission and governments within the framework of Economic governance. The aim is to influence its content to strengthen the social dimension and, by doing so, to better defend workers' interests. In a nutshell, influencing decisions rather than simply reacting after they are already taken.

### **3. From reacting to influencing: the trade unions' response to the European semester for economic policy coordination**

The European Semester, and in particular the CSR, addresses many topics within the core activities of trade unions. The list indeed does not end with collective bargaining and wages. Other fields of concern for the unions addressed by the Semester over the years are those encompassed in the so-called structural reforms. Notably, employment and labour market, pensions, unemployment benefits and the welfare system in general. Last but not least, the budgetary and fiscal reforms, which have negatively impacted public expenditure – especially public services – and investment.

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**16.** This is, by the way, a political exercise itself as the benchmarks used as well as the evaluation of social and economic policies can be driven by a political or ideological thinking.

**17.** Of course, together with the national parliaments.

**18.** A concrete example may be helpful for understanding this dichotomy. Over the past few years, the Commission has been putting forward a CSR on the need to make the Austrian pension system sustainable in the long term, a recommendation always endorsed by the Council. Nevertheless, so far the Austrian government has opposed this request, considering it unjustified.

In the first years of the crisis, the fight against austerity measures was conducted mainly at national level. The situation remained unchanged when the Semester was introduced. The trade unions strongly opposed it, regarding it as a method for imposing austerity and cuts on countries weakened by debt. Another peculiarity of the Semester is its 'democratic deficit'. As an intergovernmental process, it dispenses with supranational democratic accountability with regard to the decisions taken. The involvement of the European Parliament was and remains a mere (and late) formality rather than a real exercise of control. The same happened with the European social partners who were consulted solely in merely formal settings in which they could express their views, but with no ability to influence policymaking. Under these conditions, the trade unions were able to do nothing more than react to and reject decisions that, usually, had already been taken.

Between 2013 and 2014 the ETUC started working on the Semester dossier in a more structured way. Informal coordination was established in order to reach common positions with a view to preparing for the consultations. In the meantime, within the framework of the ETUC Collective Bargaining and Wages Coordination Committee, a first 'Semester toolkit' was being developed with the aim of monitoring the Semester's impact on collective bargaining and wages in the EU countries and sharing information in a two-way flow: between the national unions and the secretariat, on one hand, and among affiliates themselves, on the other. Although the feedback generally came from between 15 and 18 countries – that is, approximately half the EU Member States – the toolkit proved to be a valuable source of information for a comparative analysis of the situation, thereby providing sound arguments for inclusion in the ETUC documents for the consultations. The toolkit was based on three pillars: monitoring of trade union involvement in the Semester at national level; monitoring of respect for fundamental trade union rights; and trade union assessment of the CSR, as well as of actions undertaken by governments. The findings obtained by means of these tools found their way into three annual documents.

In late 2014 the European trade unions decided to change their approach. The decision was not an easy one. Simply reacting to the different Semester documents and rejecting austerity measures did not deliver results for workers and citizens. It even undermined the unions' position to some extent as, in many countries, criticisms were raised claiming that the trade unions had been unable to properly fulfil their role of opposing austerity. The new strategy was to develop stronger internal coordination and to establish a structured dialogue with the Commission, especially with DG Employment. This second goal might have exposed the trade unions to the charge of 'fraternising with the enemy', legitimising the process and – at least partly – 'healing' its democratic deficit with no guarantee of being able to influence it. However, after almost six years of crisis and three of the New Economic Governance, it was high time to step up union efforts and shift from a reactive to an active stance.

The ETUC launched a project to refine the tools developed in the previous toolkit and extend the areas of work. More stable coordination across such areas of work was established and reinforced, including collective bargaining and wages, economics and taxation, employment and labour market, social protection, education and skills,

migration, youth, gender and equal opportunities. Other fields may be added in the near future. In the meantime, each trade union organisation was asked to appoint a responsible person to coordinate inputs from the national unions to the ETUC, liaising with the Commission's European Semester Officers based in that country and participating in the consultation meetings that would take place with the Commission and Council committees in Brussels. By December 2017 (the time of writing), the group comprised 51 TUSLO (trade union semester liaison officers) from 28 countries and four European sectoral federations. Together with the ETUC secretariat, they are part of a structured dialogue with DG Employment. Consultations are held regularly in advance of the drafting of the Annual Growth Survey (end of September) and Country Reports (between end of November and beginning of December). A follow-up assessment meeting takes place after the latter are released in order to raise critical priorities not taken into consideration by the Commission in its analysis.

In parallel, three tools have been developed in the new toolkit (the so-called 'ETUC Semester Toolkit 2.0'<sup>19</sup>) to prepare and support the ETUC and its affiliates through these meetings. The first is the document 'ETUC for growth and social progress. Priorities for the broad economic guidelines'. It concerns the definition of common trade union priorities for the whole EU to be addressed in the following Semester cycle and to be submitted at the consultations on the AGS. This paper is developed by the secretariat, together with the members of the ETUC permanent committees in charge of the relevant dossiers. The draft is then adopted by the ETUC Executive Committee and so becomes an official common position of the European trade union movement.<sup>20</sup>

The second supports the trade union semester liaison officers in compiling the so-called national trade union inputs for country reports.<sup>21</sup> This identifies the most urgent challenges that should be addressed by each government and puts forward the trade unions' key demands (policy measures to be applied). The ultimate goal is a written exchange with the Commission aimed at influencing the Country Reports with clear and evidence-backed demands. The drafting lasts almost two months (October and November) as trade unions generally go through their departments and constituencies for each of the dossiers involved. The various national inputs are then fed into the ETUC report on trade union inputs for country reports, which is forwarded to the Commission in preparation for the early stage consultation meeting, which takes place generally between the end of November and the beginning of December. A second consultation meeting is usually held after the Country Reports are published in order to raise urgent issues which have not been taken into consideration.

The third tool is an online survey monitoring the involvement of trade unions in the Semester at national level at the various milestones of each Semester cycle. Such

**19.** The ETUC semester toolkit 2.0 was developed within the framework of of the EU-funded project 'ETUC Semester 2.0 – Enabling a trade union influential presence in the European semester'. The dedicated webpage is accessible to ETUC members only, while the online toolkit itself can be exclusively used by TUSLOs.

**20.** After its adoption, the final document is officially sent to the Commission and it is attached to the AGS. For instance, the 2018 version is publicly available here: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities_en).

**21.** A sort of brief country report drafted by trade unions.

monitoring is based on the ETUC definition of quality involvement<sup>22</sup> and performs an extensive analysis of: (i) the format of the consultations; (ii) relevance and the timely disclosure of information; (iii) the appropriateness of the interlocutors – at political and technical level; and (iv) the consideration given to trade union analysis and positions. Eventually, at the end of each cycle, the ETUC secretariat, supported by the trade union semester liaison officers, releases an assessment of the CSR and the whole cycle to take stock of improvements and results. The abovementioned project came to an end in September 2017. A follow-up project to further strengthen this strategy was launched in December 2017, as some good results have been achieved – at both European and national level – through such dialogue with the Commission.<sup>23</sup>

However, all this work was possible *also* thanks to the political support provided by the ‘fresh start’ instigated by Commission President Jean-Claude Juncker, who committed himself to relaunching the social dialogue. This was indeed clearly visible in the attitudes of Commission officials, who were much keener to listen to and discuss priorities and policies with the trade unions throughout the entire cycle than in previous years.

## **4. Collective bargaining and wages in the Semester over 2014–2017: business as usual<sup>24</sup>**

### 4.1 A brief overview of the EU as a whole

The importance of the European Semester with regard to wages and collective bargaining has remained stable. From 2011 to 2016 – excluding 2013 – the number of country-specific recommendations in these areas varied between 11 and 14. In 2017, they again numbered 14, which means they cover more than half of the EU Member States, considering that Greece was under a financial assistance programme and the United Kingdom is involved in talks on leaving the EU. Looking only at the recommendations focusing on wage-formation mechanisms – generally aimed at fostering the decentralisation of collective bargaining – it is worth noting that over the past four years (2014–2017) they have numbered 11, 11, 12 and 14.<sup>25</sup> Nevertheless, some minor improvements have been recorded.

#### **The 2015 Semester cycle**

At the end of the 2014–2015 cycle, the situation was in any case improving slightly in many respects. The Juncker Commission showed more flexibility on budget deficits and

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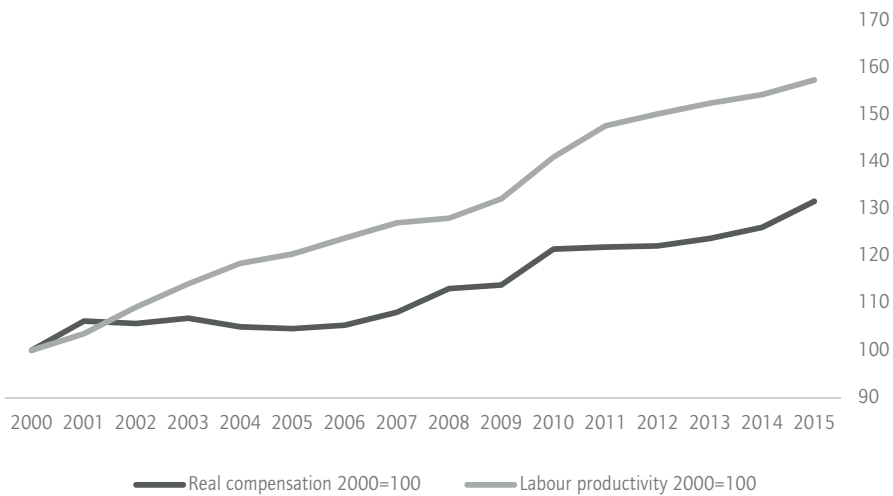
**22.** The extensive definition can be found in the ETUC resolution on trade union involvement in the EU Semester, adopted at the Executive Committee on 14–15 December 2016. The resolution is available here: <https://www.etic.org/documents/etic-resolution-trade-union-involvement-eu-semester#.WoWje6jtyUk>. The survey results can be found here: <https://www.etic.org/documents/new-start-social-dialogue-needs-change-pace-trade-union-involvement-economic-governance#.WorteqjtyU1>.

**23.** Please see the next paragraphs for an evaluation of the results produced.

**24.** This paragraph is mainly based on previous ETUC documents. Some of them are publicly accessible on the ETUC website, while some others were developed for internal purposes and not available. The analysis of the macroeconomic impact of the CSR on wages has been performed by Ronald Janssen, then ETUC Chief Economist and currently at the OECD-TUAC.

**25.** For a deeper comparative analysis of social-related CSR in qualitative and quantitative terms, please see S. Clauwaert (2017).

Figure 1 Wage and productivity developments in Poland 2000–2015



Source: The calculation was made by ETUC economist Matthieu Méaulle in preparation of the ETUC campaign 'Europe needs a pay rise'. Data on wages were taken from AMECO database: Real compensation per employee, deflator private consumption: total economy (RWCDC). Data on labour productivity were taken from: EUROSTAT database, Labour productivity per hour worked (ESA 2010). Base 100 was set according to the oldest data available.

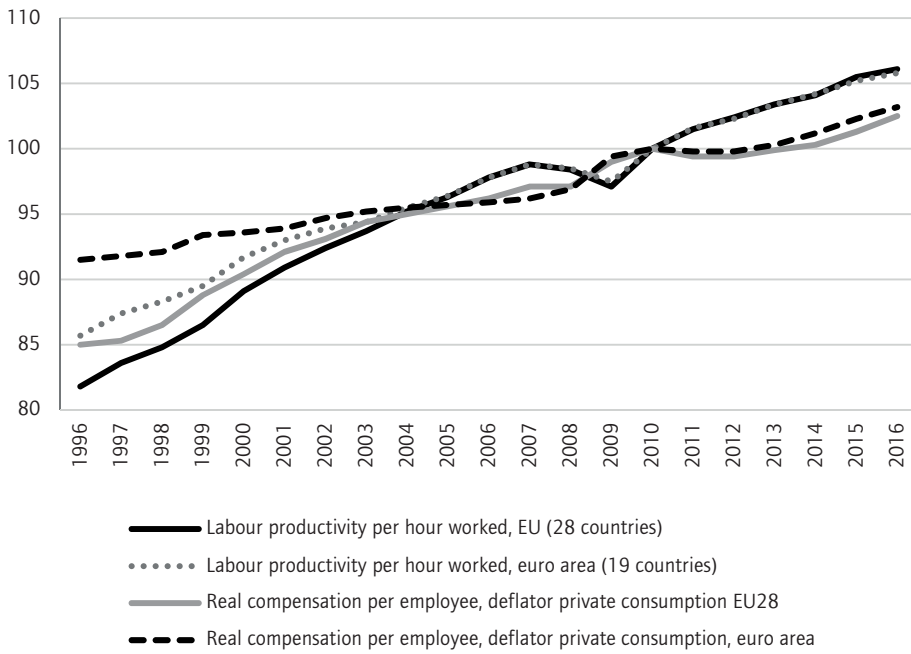
CSR were generally a bit more positive than in previous years, although this was not the case with regard to collective bargaining and wages. In general, the Commission’s advice on pay was still based on the mantra that ‘wages are to evolve in line with productivity’ but its application of this key idea was unbalanced.

Some Member States, affected by the problem of real wages systematically lagging behind productivity developments, did not receive any wage recommendation at all. One of the most striking examples was Poland. As shown in Figure 1, from 2000 to 2015, real wage growth in Poland had fallen short of productivity developments by a stunning 30 percentage points.

Recommendations to improve wage dynamics were also conspicuously missing for those countries experiencing a growing number of working poor or large low-paid segments, such as Estonia and the United Kingdom. However, besides the abovementioned Member States, the key recommendation on wages and productivity was also disingenuous for many others, in particular for western European euro-area countries. Here, too, the Commission suggested that wages had outpaced productivity whereas, in reality, it was the other way around. Looking at the EU and the euro area as a whole (see Figure 2), the general trend is clear, with wages lagging around 10 per cent behind productivity developments. Nevertheless, the general policy was then to recommend that Member States compete against each other by squeezing wages, thereby – dangerously – de facto establishing the economies with the lowest wages as the benchmark for all. Turning a



Figure 2 Growth trends in average real wages and labour productivity in Europe and the Euro Area, 1996–2016



Source: This calculation was made within the framework of the ETUC campaign 'Europe needs a pay rise'. Wage growth is calculated as a weighted average of year-on-year growth in average monthly real wages in 36 economies. The base year is set as 1999 for reasons of data availability. Source: ILO Global Wage Database; ILO Global Employment Trends (GET).

blind eye to the risks of a beggar-thy-neighbour policy entailed the danger that this race to the bottom would end up in very low inflation or even deflation, for the euro area as a whole and/or for individual countries.<sup>26</sup>

Furthermore, minimum wages were regarded as hampering economic growth due to their (presumed) adverse impact on job creation and competitiveness. Besides some of the DECOBA countries – which we will talk about later on – such a view was expressed in the cases of Portugal, Slovenia and Bulgaria. This totally ignored a large amount of research, not to mention experience showing that minimum wages, when introduced or raised, do not destroy jobs, but on the contrary foster positive trends.<sup>27</sup> On top of

26. This did indeed happen and the missing ingredient, as testified by ECB forecasts, was – surprise surprise – wage growth.

27. See, for instance, Amlinger *et al.* (2016). The authors remark that 'the negative effects on the labour market that were predicted by many economists did not materialise. On the contrary, employment in Germany has seen a continuous increase. Only so-called 'mini jobs' (a special form of marginal part-time employment) show a strong decline, but many of these were transformed into regular jobs subject to social insurance.'



that, in absolute terms the minimum wage remains low in these countries, especially in Bulgaria, where it is the lowest in the EU.<sup>28</sup>

In other words, after seven years of economic crisis, austerity and falling or stagnating wages, the Commission was still recommending a policy based on either wage cuts or wage ‘moderation’ when Europe desperately needed something else. This assumption was well underlined by an ETUC press release:

‘The Commission continues to overlook the fact that wages in 23 Member States are lagging behind productivity. The Commission fails to identify, or react to, the redistribution from wages to profits. Europe needs a wage rise for fairness and to increase demand, mainly by strengthening collective bargaining.’<sup>29</sup>

At the same time, besides suggesting overall wage squeezes for entire economies, the Commission was also using the formula of ‘wages in line with productivity’ to promote the fragmentation and decentralisation of collective bargaining and wage formation across individual sectors and firms, regions and skills. Moreover, social partner autonomy in setting wages was being challenged also by the newly proposed ‘competitiveness boards’ – without any prior consultation with the trade unions. These bodies – built upon the example of Belgium’s National Labour Council – were meant to advise the social partners and thereby to narrow their margin of manoeuvre for negotiations. Reacting to the so-called Five Presidents’ Report,<sup>30</sup> former ETUC General Secretary Bernadette Ségol expressed strong opposition, reaffirming who should control wage setting:

‘There is no way trade unions would accept a body separate from the social partners giving advice on wage negotiations. (...) Wage setting is the role of autonomous social partners. What the European Commission (...) fails to mention is that the

[similar] authority in Belgium is run by employers and trade unions – it is not a separate body handing down advice to social partners to follow.’<sup>31</sup>

### The 2016 Semester cycle

At the beginning of the 2016 cycle, the European Commission promised a more socially-oriented Semester, respecting the autonomy of the social partners. The 2016 Country Reports then provided for an in-depth investigation of the socio-economic situation in each Member State. Moreover, as had been announced in the Communication on Steps Forward Completing Economic and Monetary Union,<sup>32</sup> the 2016 Country Reports also measured social performance. The benchmarking was supposed to promote social

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28. For a comparison of minimum wages per hour worked see ETUI Benchmarking Working Europe 2017, p. 41.

29. <https://www.etuc.org/press/country-specific-recommendations-2015-eu-needs-increase-wages#.WYSapVGrRdg>

30. The Five Presidents’ Report is a document setting the way forward for the European Union, drafted by Commission President Jean-Claude Juncker, in close cooperation with Council President Donald Tusk, Euro Group President Jeroen Dijsselbloem, European Central Bank President Mario Draghi and European Parliament President Martin Schulz. It was published on 22 June 2015 and available at: [https://ec.europa.eu/commission/publications/five-presidents-report-completing-europes-economic-and-monetary-union\\_en](https://ec.europa.eu/commission/publications/five-presidents-report-completing-europes-economic-and-monetary-union_en)

31. <https://www.etuc.org/press/trade-unions-employers-should-set-wages-not-5-presidents-%E2%80%98competitiveness-authorities#.WYSazFGrRdg>

32. <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-600-EN-F1-1.PDF>

convergence but the social targets were biased. Moreover, it is worth highlighting that ‘best practices’ as regards collective bargaining and wage setting were unilaterally selected by the Commission. This was part-time the detriment of the overall coherence of the analysis, generating paradoxes. For instance, the Estonian collective bargaining system, characterised by the highest level of decentralisation in the EU, was considered to be the most ‘efficient’, while Croatia was considered ‘inefficient’ because national collective bargaining proved able to protect workers against less favourable working time arrangements provided by law. Once again, this was a sign of a rigid ideological conviction that structured forms of collective bargaining hamper reforms, ignoring their success as a democratic and balanced way to co-regulate the labour market.

Unfortunately – and despite some concrete improvements in the social field – the ensuing country-specific recommendations kept going in the same direction. That wave of CSR dogmatically proposed the same failed economic policies of previous years, while prompting further interference in collective bargaining and wages throughout Europe. Belgium, France, Portugal and Spain received recommendations questioning their wage-setting systems and employment protection legislation. The biased reading of the centralised collective bargaining model proved difficult to throw off. Eventually, in countries deviating from the Stability and Growth Pact rules, the Commission advanced the outdated macroeconomic solutions which had been causing stagnation and severe social consequences for so long. Even though the country reports had recognised that the weak recovery countries were experiencing was driven mainly by private consumption, the CSR did not provide much support for the missing ingredient to relaunch the European economy that the ETUC had been demanding for years, namely a generalised upward wage dynamic to boost domestic demand. Commenting on the draft CSR just released, the then-Deputy General Secretary Veronica Nilsson made crystal clear the severe disappointment of the trade unions:

“The ETUC is very concerned that the Commission is again interfering in the autonomy of the social partners and collective bargaining. It’s wrong to claim that the increase in minimum wages in Portugal would harm employment and competitiveness as it is wrong to claim that the minimum wage in France hampers employment. On the contrary, what Europe needs is an increase in minimum wages, wage increases through enhanced collective bargaining to boost growth and tackle inequality, and action to end precarious employment. The Commissioners repeated as usual the need for structural reforms of the labour market which in the past have led to less collective bargaining, lower wages and higher unemployment. Europe does not need more of the same tried, tested and failed policies.”<sup>33</sup>

### **The 2017 Semester cycle**

The 2017 Semester cycle began with some positive novelties. In October 2016, for the first time ever, the Council’s Employment Committee (EMCO) undertook a sort of multilateral surveillance exercise, monitoring the involvement of social partners in the Semester at national level. National governments, Commission officials and

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33. [https://www.etuc.org/press/economic-package-commission-wrong-collective-bargaining-minimum-wages#.WcZy\\_sirRdg](https://www.etuc.org/press/economic-package-commission-wrong-collective-bargaining-minimum-wages#.WcZy_sirRdg)

representatives of trade union organisations and employers' associations gathered to perform a peer review of involvement practises in the Member States. Irrespective of the – positive – results,<sup>34</sup> the event was concrete evidence of the Juncker Commission's commitment to revamp the social dialogue.

The AGS<sup>35</sup> was issued in November, moving forward along this track. The ETUC expressed its appreciation for the Commission's emphasis on the key role that social dialogue can play in designing and implementing economic and social policies. Finally, the social partners were recognised as responsible macroeconomic actors once again. The Commission indeed acknowledged that social dialogue is crucial for well-functioning social market economies, as shown by the best performing Member States over recent years.<sup>36</sup> In particular, recalling the social partners' capacity to engage in this exercise could be a basis for implementing capacity-building for national social partners enshrined in the Quadripartite Declaration on a 'New Start for Social Dialogue',<sup>37</sup> as well as a driver for implementing the coming European Pillar of Social Rights.

To a certain extent, the AGS 2017 could be considered a first step to partially mitigating and reversing the policies implemented since 2008. Despite some positive changes and the fact that, generally speaking, the priorities the AGS put forward were more balanced than in the past, the narrative was still anchored in a general framework in which an alleged need for structural reforms, budgetary consolidation and attention to labour cost competitiveness still prevailed with regard to the social dimension.

Collective bargaining and wages are a clear example of this, depicted by the ETUC as 'schizophrenic'. In this respect, the improvements were self-evident compared with the previous years but, in global terms, there still were some causes for serious concern.

The Commission indeed, probably for the first time since the crisis, affirmed that 'too modest wage developments' can be counterproductive, leading to 'weaker aggregate demand and growth'.<sup>38</sup> This time the mantra 'aligning wages with productivity' was interpreted also in a direction that might lead to positive wage dynamics. In particular, it was stated that wage-setting systems – beyond being able to better respond to productivity changes over time – should ensure 'real income increases'. Furthermore, the Commission highlighted that, when fixing the minimum wage, a new element should be taken into consideration by governments and social partners, namely the impact on in-work poverty.

These references reflected some of the ETUC's top priorities, outlined in the document 'ETUC for Growth and Social Progress: Priorities for the Annual Growth Survey 2017',<sup>39</sup>

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**34.** That exercise fed into the EMCO conclusions enshrined in the document 'Key messages on successful involvement of Social Partners in national European Semester processes'. The text is available here: <http://data.consilium.europa.eu/doc/document/ST-14367-2016-INIT/en/pdf>.

**35.** [https://ec.europa.eu/info/sites/info/files/2017-european-semester-annual-growth-survey\\_en\\_o.pdf](https://ec.europa.eu/info/sites/info/files/2017-european-semester-annual-growth-survey_en_o.pdf)

**36.** European Commission, Annual Growth Survey 2017, p. 11.

**37.** <http://ec.europa.eu/social/BlobServlet?docId=15738&langId=en>.

**38.** *Idem*.

**39.** The document was adopted by the ETUC executive committee on 11 October 2016 and can be found here: [https://www.etuc.org/system/files/eu\\_semester/file/161011\\_etuc\\_priorities\\_on\\_the\\_ags\\_2017\\_en\\_adopted.pdf](https://www.etuc.org/system/files/eu_semester/file/161011_etuc_priorities_on_the_ags_2017_en_adopted.pdf)

which also represented the basis of the upcoming ETUC Campaign ‘Europe needs a pay rise’.<sup>40</sup> The daily work of the ETUC staff and affiliates in structured talks with the Commission was finally delivering results. Some of the Commission’s policy priorities were – slowly – turning in the direction desired by the trade union movement.

Then Deputy General Secretary Veronica Nilsson hailed this new orientation and expressed the appreciation of the ETUC and its affiliates for Commissioner Thyssen’s call for wage-setting to generate real income increases. She commented:

Wage rises are crucial in increasing internal demand. Without more money in workers’ pockets, Europe will be unable to achieve a sustainable recovery.<sup>41</sup>

However, many other ideological assumptions remained to counteract and limit the progress made. For instance, although decentralisation of collective bargaining was not addressed explicitly, the abovementioned positive aspects were counterbalanced by an insistence on the importance of having wage-formation systems able to ensure that differences in skills and economic performance across regions, sectors and companies are taken into account. This was another argument exhibiting a preference for fragmented collective bargaining systems. All this despite the seriousness of the social situation, which rather suggested a need to support or (re-)strengthen sectoral collective negotiations at national level; this powerful tool could have helped to quickly address the problem of income inequality. At the same time, the Commission was also backing state interventionism related to reforms of wage-formation systems.<sup>42</sup>

Finally, regarding wages, the reference to wage developments that might lead to productivity erosion was strongly criticised by the ETUC and its affiliates. Indeed, as has been proved several times, real wages have been lagging well behind productivity in all European countries for years and, taking into consideration the sharp fall of the wage share in GDP since the 1980s,<sup>43</sup> the reasons for trade union disappointment and concern are self-evident. Once again, the European trade union movement, although recognising the improvements made, was forced to call for the Commission to step up efforts and take more concrete actions toward the so-called ‘social triple A Europe’.

The situation did not change much with the 2017 Country Reports. The divergence of priorities and opinions between the two bodies drafting these documents – DG ECFIN (Economic and Financial Affairs) and DG EMPL (Employment, Social Affairs and Inclusion) – became even clearer than in the AGS 2017. More positively, it became self-evident that DG Employment was gaining more ground in all the documents and, by doing so, was slowly rebalancing the European Semester, drawing greater attention to the social dimension of the economy. Some of the priorities presented by the ETUC and member organisations during the consultation meetings with the European Commission were taken into account. However, the necessary U-turn desired by the trade unions did

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40. For more information see the campaign website at: <https://payrise.eu/>

41. <https://www.etuc.org/press/etuc-semester-package#.WbP-acirRdg>

42. A fear that would have soon come true, for instance, in Belgium. For more details, see G. van Gyes and S. Vanderhercke in this volume.

43. See Figures 4 and 5 in this chapter.

not materialise. The Country Reports touched upon collective bargaining systems in nine countries. This was mainly because the issue had been addressed extensively in previous years, and the Commission's position in favour of decentralisation was still considered largely valid (we shall look at a number of examples shortly).<sup>44</sup>

In Estonia the collective bargaining system, which in 2016 the Commission considered the most efficient in the EU because it had been completely decentralised, was just one year later accused of promoting *too rapid* wage growth.<sup>45</sup> Nevertheless, no mention was made of the possibility of developing sectoral negotiations, which can help better manage wage dynamics. The same was true of Romania's Country Report, but for different reasons. Romania was described as suffering from poverty and inequalities and collective bargaining should have been considered a factor in democracy building and the enhancement of wages and working conditions. However, the Commission made only a timid reference to the weakness of collective bargaining and social dialogue.<sup>46</sup> In Cyprus, despite the clear demands put forward by the unions about restoring and respecting collective bargaining and extending collective agreements, the Commission interfered again in the wage-setting mechanism, but more worryingly, also in the democratic process. It claimed only limited progress had been made with the binding mechanism restraining the growth rate of public employees' wages and expressed disappointment because the legislative proposal designed to make this mechanism – introduced in collective agreements until 2018 – permanent had been 'rejected by the House of Representatives'.<sup>47</sup>

To a certain extent, the only 'positive' exception to the general picture was Lithuania. There, the Commission recalled that both trade unions and employers had raised concerns over the Labour Code reform. On this basis, the Commission then recognised that a more proactive involvement in the designing process on the part of the social partners would benefit the effectiveness of such a reform. After the pressure exerted by the ETUC with regard to the demands of its Lithuanian affiliates, the Commission successfully persuaded the government to reopen talks with the social partners and the new reform was approved, containing a number of amendments proposed by the social partners themselves.

Regarding wages, the narrative remained more or less the same. Despite the need to boost domestic demand, pay rises were neither encouraged nor welcomed, with a few exceptions,<sup>48</sup> where wage increases were considered acceptable and even desirable by the Commission, as in line with macroeconomic fundamentals. More concerning was the misreading of the minimum wage rises, notably in the eastern European Countries. The European Commission kept insisting on its ideological assumption that higher minimum wages may affect job creation and so encourage informal work or bogus self-employment. The ETUC, on the other hand, asserted that the utmost attention should be paid to the negative social consequences of low incomes. For instance, again with

**44.** See below for the cases of Belgium, France, Italy and Spain.

**45.** See Estonia's 2016 and 2017 Country Reports.

**46.** See Romania's 2017 Country Report.

**47.** See Cyprus' 2017 Country Report.

**48.** Germany (see below) and the Netherlands.

regard to Estonia – as EAKL had feared – the Commission expressed concern because the minimum wage was ‘increasing fast, outpacing overall wage growth over recent years’ because these ‘increases can have a significant impact on the wage bill in the poorest regions’, despite the fact that the minimum wage stood at a mere 38 per cent of the average wage, one of the lowest levels in the EU. This is not only unacceptable for the trade unions and workers, but is detrimental to EU countries’ commitment to implement UN Sustainable Development Goal No. 10, which pledges to ‘progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average’ by 2030. The paradox is highly worrying, especially from a political point of view. The same failed austerity policies that have hindered Europe from making a more rapid, not to mention fairer economic recovery and which are one of the main instigations of the anti-EU right-wing populism emerging all over the continent are still reaffirmed and recommended in too many Member States.

The Country-Specific Recommendations in 2017 made further, if minor steps forward in the direction asked for by trade unions, but still were generally unsatisfactory. Once again, they were not pro-wage growth and failed to encourage collective bargaining.

Wage growth was recommended in a few countries with an excessive surplus, such as Germany and the Netherlands. That was positive, but showed that governments still see wages as a factor in macroeconomic adjustment, while the ETUC sees them as a driver of social justice and growth. In some countries, CSRs may ultimately be harmful for wage development due to the doubts raised about the efficacy of wage formation in the public sector (Cyprus, Romania and Croatia), the performance of statutory minimum wages across the economy (as in Portugal) or labour cost trends (as in Finland and Estonia). This applies to countries in which the purchasing power of wage earners has diminished and wages have underperformed productivity gains in recent decades.

The reference to transparency in minimum wage-setting mechanisms in Bulgaria and Romania was welcome. Transparency in minimum wage setting appeared in several country reports but only two countries received a recommendation. However, some progress can be discerned in the fact that recommendations to redesign minimum wage settings cited the need to involve social partners.

On collective bargaining, an improvement on the previous cycle was that this time the governments showed considerable self-restraint with regard to intervening in collective bargaining arrangements. But in countries such as Spain, Romania and Portugal, CSRs (even without directly referring to it) harmed the autonomous deployment of industrial relations institutions.

To sum up, one can say that, while the EU economy is recovering, collectively agreed wages do not reflect the positive economic outlook. Reduced employment protections are one reason why collectively agreed wages are underperforming and inflation is on the rise again. Having said that, it is crystal clear that CSRs in 2017 have failed to capitalise on the potential for coordinated and multiemployer collective bargaining to boost internal demand, on one hand, and to tackle inequality and reinstate social justice, on the other.



If the EU's ambitions were to achieve 'structural reforms ... to foster social justice, mitigate income inequalities and support convergence towards better outcomes' and that 'social priorities and consequences [had to] be taken into account when designing and implementing the reform agenda', the results of the 2017 cycle have been very modest and often very negative to workers. Changes are urgently needed to bring social progress to the forefront and become a driver for policies that can improve the quality of work and living conditions all over Europe. Positive wage dynamics enabling upward wage convergence are necessary both for stimulating the European economy and for rebuilding a fairer society.

#### 4.2 A closer look at the 'DECOBA countries'

So far, we have looked at the general picture. In this section the analysis will focus closely on the five countries that comprise this project: Belgium, France, Germany, Italy and Spain. In particular, we will see whether and how the collective bargaining and wage dynamics policies recommended by the European Commission evolved over the period of study.

##### **Belgium**

Belgium has long been one of the Commission's favourite targets when it comes to collective bargaining and wages. Its centralised system of sectoral negotiations has been considered a threat to the country's productivity. According to the Commission this is evident from comparing productivity and labour cost trends with neighbouring and partner countries, notably Germany.

In the preamble of the 2015 CSR, the Commission states 'there is a need to align wage growth more closely with productivity and to make wage setting more flexible so as to increase the economy's potential for adjustment ... closing the gap entirely will require additional action which hinges on reforms of the wage-setting system'. However, the CSR asked that this be delivered 'in consultation with the social partners and in accordance with national practices'.

In 2016 the Commission expressed its intention to release fewer, shorter and more focused Country-Specific Recommendations.<sup>49</sup> In the Belgian case, the result was that only a few of the previous year's measures were mentioned, but this was enough to let the recipient understand that wage formation reform was still on the agenda: 'Ensure that wages can evolve in line with productivity.'

In 2017 no such recommendation was made. Indeed, in this year's Country Report for Belgium the Commission celebrated the long-awaited – or, better, long-recommended – reform of collective bargaining. After years of sustained attacks and despite the strong opposition of the Belgian unions, the government imposed such a reform. The new wage-setting framework has narrowed the room for negotiations between social

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**49.** However, as many practitioners have affirmed, while the number of recommendations has been reduced, they have become longer, generally by condensing more policy measures in each recommendation.

partners and granted the government the possibility to take corrective measures in order to fix detrimental cost-competitiveness developments.<sup>50</sup>

This happened despite that fact that, according to the ETUC's own calculations within the framework of the campaign 'Europe needs a pay rise',<sup>51</sup> as well as those provided by the three Belgian trade union organisations (for the ETUC report on trade union inputs for Country Reports 2016<sup>52</sup>), it is not correct in affirming that wage growth would have outpaced productivity gains, in either in the long run or the short.

### France

France has proceeded along almost the same path as Belgium. Wage dynamics were assessed as producing negative effects on the country's competitiveness, notably – again – compared with Germany, and the wage moderation policy applied in 2015 was considered insufficient to compensate these trends. Also, questions have been raised about both its collective bargaining system and the SMIC<sup>53</sup> for years. In particular, the Commission considered its system of collective bargaining to be inefficient due to its presumed rigidity, which did not allow firm-level collective bargaining to flourish. It then asked for a reform that would have permitted a wider use of derogations from sectoral collective agreements.

The 2015 CSR contained the following: 'Reform, in consultation with the social partners and in accordance with national practices, the wage-setting system to ensure that wages evolve in line with productivity. Ensure that minimum wage developments are consistent with the objectives of promoting employment and competitiveness.' A year later the CSR on wage-setting reform disappeared as the French government was undertaking a reform meant to ease the derogations from sectoral collective bargaining.<sup>54</sup> It was due to be approved in the second half of the year. Some time later, the 2017 Country Report welcomed the adoption of the labour reform but recognised that its effects would depend on the use the social partners make of it. This is of particular significance for the trade unions. It clearly proves that the European Commission implicitly recognises what the ETUC has said several times: the social partners are best placed to decide for themselves the appropriate level of collective bargaining and what to negotiate at the different levels. Therefore, it is necessary that their autonomy be respected.

In 2016, the recommendation on the SMIC was still in place ('Ensure that the labour cost reductions are sustained and that minimum wage developments are consistent with job creation and competitiveness'), but finally removed in 2017. The reason for this change is very likely that the French minimum wage – also recognised in the same Country Report – represents a tool that effectively tackles in-work poverty. It is indeed one of the very few that stands at 60 per cent of the national average wage, a benchmark often used also by the trade unions as a minimum living wage.<sup>55</sup>

**50.** For more details, see G. van Gyes in this book.

**51.** See the related website at <https://payrise.eu/>

**52.** Available here: [https://www.etuc.org/system/files/eu\\_semester/file/etuc\\_report\\_on\\_trade\\_unions\\_inputs\\_for\\_country\\_reports\\_2016\\_en.pdf](https://www.etuc.org/system/files/eu_semester/file/etuc_report_on_trade_unions_inputs_for_country_reports_2016_en.pdf).

**53.** Salaire Minimum Interprofessionnel de Croissance; in other words, the French minimum wage.

**54.** For more details, see Rehfeldt and Vincent in this book.

**55.** For instance, see the ETUC Resolution on low and minimum wages, available here: <https://www.etuc.org/documents/etuc-resolution-common-strategy-low-and-minimum-wages#.WcghvMirRdg>.



## Germany

The German case is very interesting. Germany is the only country – of those analysed in this project – whose wage moderation policy has been repeatedly challenged by the Commission on the grounds that wages need to increase faster. This is particularly true because Germany's wage moderation policy has had an adverse effect on the competitiveness – in particular, in terms of labour costs – of neighbouring countries

In 2016, the Commission limited itself to noting that wages were rising less than economic fundamentals might lead one to expect, but no recommendation was issued. This policy was consistent with Germany's export-driven economy. The Country Report read as follows: 'over the whole period (2000–2015), the growth rate of wages (both in nominal and real terms) undershot the euro area average', as shown by Figure 3 (European Commission).

However, in the same year, the general analysis also highlighted that Europe's fragile recovery was due mainly to domestic factors, especially consumption and the rise of positive wage dynamics. In 2017, therefore, the wage narrative has suddenly changed, at least for Germany. The Country Report explicitly said that 'the social partners do not appear to be making full use of the existing scope for sustained wage increases'.<sup>56</sup> Moreover, with this analysis the Commission indirectly<sup>57</sup> admitted also that the German wage moderation policy has been producing spillover effects in the euro area in recent years. This has affected particularly Belgium's and France's cost competitiveness (especially labour costs).

By contrast, the German collective bargaining model was not challenged over the period in question. The reasons can be found in the features and trends characterising the German collective bargaining system deeply analysed by Schulten and Bispinck in this book.

## Italy

The 2015 CSR demanded a reform aimed at fostering company-level bargaining, recommending that Germany 'establish, in consultation with the social partners and in accordance with national practices, an effective framework for second-level contractual bargaining'.<sup>58</sup>

One year later, Italy's Country Report kept stressing that the Italian collective bargaining system was still inefficient, not providing enough room for firm-level bargaining (and use of derogations from sectoral collective agreements). Nevertheless, subsequent waves of CSR did not address collective bargaining. The reform remains a highly sensitive open issue and is mentioned in the preamble but the reference to the role of the social partners did not encourage unilateral intervention by the government. This happened thanks to the platform for autonomous reform of collective bargaining and

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56. European Commission, Germany's Country report 2017, p. 5.

57. Indirectly because this is what can be obtained by *reading between the lines* of Belgium's and France's Country Reports.

58. As explained in the chapter on Italy in this book, a law enabling firm- and local-level collective bargaining has already been in place in Italy since 2011 (Law 148/2011, Art. 8) but the social partners agreed not to make use of it as it was imposed by the government.

Figure 3 Nominal and real wages (annual average growth, %)



Source: European Commission, Germany's Country Reports 2016.

industrial relations put forward by CGIL, CISL and UIL, the three main Italian trade union confederations. Such a proposal had already been signed off by some employers' organisations and was under discussion with Confindustria and the government itself.

In Italy, the outstanding reform of the collective bargaining system is not the object of a specific recommendation, but is mentioned in the preamble. The preamble mentions the need to move on with the consensus of the social partners and improves on the National Reform Programme in which the government envisaged unilateral intervention.

In the 2017 Country Report, the Commission complained that the inter-confederal agreement on trade union representativeness and collective bargaining was not yet operational. It also stressed that – despite the fiscal incentives granted by central government, notably in terms of tax reductions for occupational welfare – firm-level bargaining was still not picking up. This translated into a recommendation requiring that Italy 'strengthen the collective bargaining framework to allow collective agreements to better take into account local conditions', with the involvement of the social partners themselves.

The wording has been changed slightly and the role of the social partners is acknowledged. However, the Commission keeps promoting state interventionism and interference in a domain that should be reserved to the autonomy of the social partners. This interference is intended to promote a reform of the collective bargaining system toward decentralisation, without taking into account the position of the social partners, and especially of the trade unions.

## Spain

In 2015 the Commission recommended that the Spanish government promote the alignment of wages and productivity. Again, in other words, it suggested fostering decentralised collective bargaining.

Despite its acknowledgment of the extremely worrying social situation, the 2016 Country Report kept insisting on this. The Spanish collective bargaining model was still considered inefficient because it was too ‘rigid’ – as in the case of Belgium, France and Italy. While wages were considered to be moving in line with the country’s economic performance, they were rising less than they could have done compared with GDP and productivity growth. This time, however, there was no recommendation related to the mantra of aligning wages to productivity in the following round of CSR.

In the 2017 Country Report, the European Commission has again addressed the issue and expressed disappointment because firm-level negotiations have not picked up despite the recent reforms. However, this did not take into consideration the leeway with regard to unilateral modification in terms of pay and working time granted to the employers. As the Spanish author complains (in this volume), this was mainly due to the fact that these unilateral modifications are not subject to registration by the labour authority.<sup>59</sup>

## 5. Summary and conclusions

Having examined the European Semester cycles from 2014 to 2017, it is now time to draw some conclusions. The positive change in the Commission’s narrative and the greater attention paid to the social dimension of the economy<sup>60</sup> and the involvement of social partners in decision-making<sup>61</sup> – at least at EU level – cannot be denied.<sup>62</sup> This is clearly the result of the strong commitment of President Juncker to recovering the original values of the European social model. Nevertheless, the road ahead toward a ‘triple A Social Europe’ is still long. The Spanish case represents a clear example of trade union disillusionment. The ETUC and its Spanish member organisations had welcomed the Country Report’s analysis of the negative impact of high rates of precariousness in the labour market but this did not translate into an appropriate policy response when it came to the recommendations. Here, measures to ‘promote hiring on open-ended contracts’ imply the removal of ‘uncertainty in case of legal dispute following a dismissal, along with comparatively high severance payments for workers on permanent contracts’.<sup>63</sup>

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59. For a deeper analysis of this worrying problem, see Rocha in this book.

60. This is the case, for instance, with regard to those recommendations aimed at fighting undeclared work in Portugal and Romania.

61. For instance, Annual Growth Survey 2018, p. 9: ‘Social partners are essential stakeholders in the reform process. The timely and meaningful involvement of social partners in the design, sequencing and implementation of reforms can improve ownership, impact and delivery.’

62. This is the case, for instance, with regard to those recommendations aimed at fighting undeclared work in Portugal and Romania.

63. Spain’s Country Specific Recommendations 2017.

The troubled path to the ‘social triple A’ is even clearer when it comes to collective bargaining and wages, particularly with regard to the five countries analysed here. One can easily see how intensively the European Semester has insisted on reforming wage formation systems by fostering the trend toward decentralisation. Germany may be an exception in that it did not receive such recommendations over the period in question. However, this can be ascribed to the fact that its system was already characterised by decentralisation and fragmentation. Italy is the only country in which national sectoral bargaining is still under attack, whereas with regard to Belgium, France and Spain, the Commission dropped the relevant recommendations once reforms were implemented. However, in these four countries the Commission is still complaining because firm-level bargaining is – *surprisingly* in its view – not taking off. In fact, this is happening for a reason, as the unions have tried to explain. Indeed, in economies dominated by small and medium-sized enterprises, the demand for decentralisation of collective bargaining to make it more responsive to quickly changing business needs is ideological. SMEs rarely have the capacity and skills to negotiate collective agreements. For them company bargaining represents a cost and impediment. By contrast, sectoral bargaining is a tool for setting wage levels and preventing unfair competition. Moreover, the Commission has also admitted that social partners make poor use of derogations even when they are allowed to. As stated by the ETUC on many occasions, this is not surprising. The social partners are indeed best placed to decide what to negotiate about and at what level. This is why institutions should stop unwanted interference in free collective bargaining.

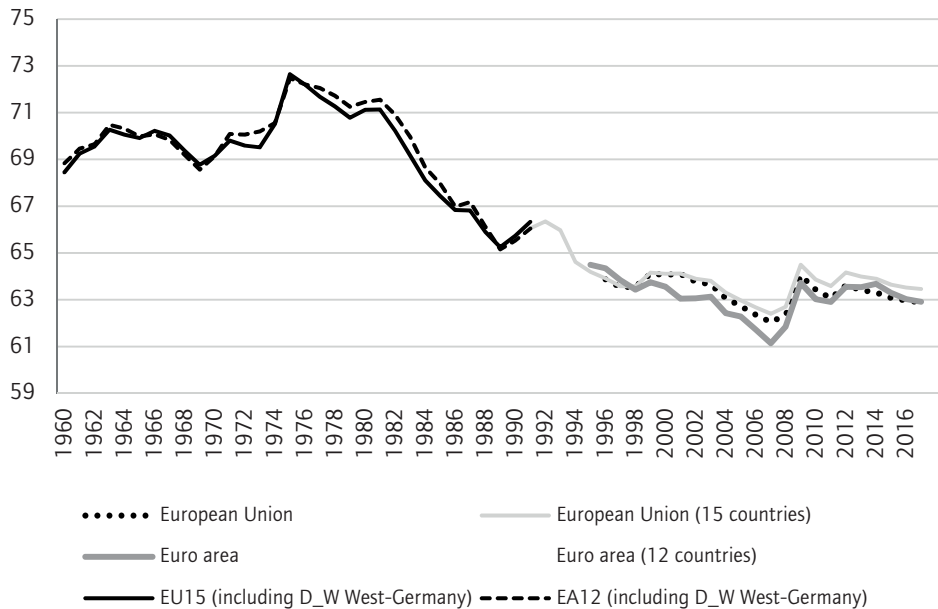
Another paradox in the Commission’s narrative is the predictability of wage dynamics. As previously noted, at one point the European Commission considered the Estonian bargaining system to be the most efficient as it was totally decentralised. Some months later it complained that negotiated pay rises were not responsive to productivity and economic performance. Again, sectoral collective bargaining is an example of how unions and businesses can be responsible macroeconomic actors. This testifies once again that strong social partners represent added value for the economy and society as a whole. Even the Commission itself acknowledged this recently.<sup>64</sup> Nevertheless, concrete support for strengthening national sectoral collective bargaining, where necessary, has not yet been forthcoming.

In addition, it is worth stressing the inconsistency between the Commission’s analysis and the policies it recommends. In countries with outstanding problems of income inequality, national sectoral bargaining is the most efficient instrument for a rapid redistribution of wealth, especially after more than 30 years of a constantly falling wage share, as shown in Figure 4.

This situation particularly affects countries that have been under Troika programmes (Ireland, Spain, Portugal) and in many central and eastern European countries, but it

**64.** See, for example, European Commission, DG Employment, ‘Industrial Relations in Europe 2014’. The foreword by Commissioner Thyssen reads as follows: ‘As in previous years, the verdict (...) is unambiguous: countries with strong social dialogue institutions are among the EU’s best performing and most competitive economies, with a better and more resilient social situation. Social partners can identify balanced and tailor-made policy solutions in response to complex socio-economic developments.’ This assumption is repeated further in the text. The report is available here: <http://ec.europa.eu/social/BlobServlet?docId=13500&langId=en>.

Figure 4 Changes in the wage share in Europe, 1960–2016



Source: Ameco.

also affects western European members of the euro area (Austria, Belgium, Germany and the Netherlands), as can be seen from Figure 5.

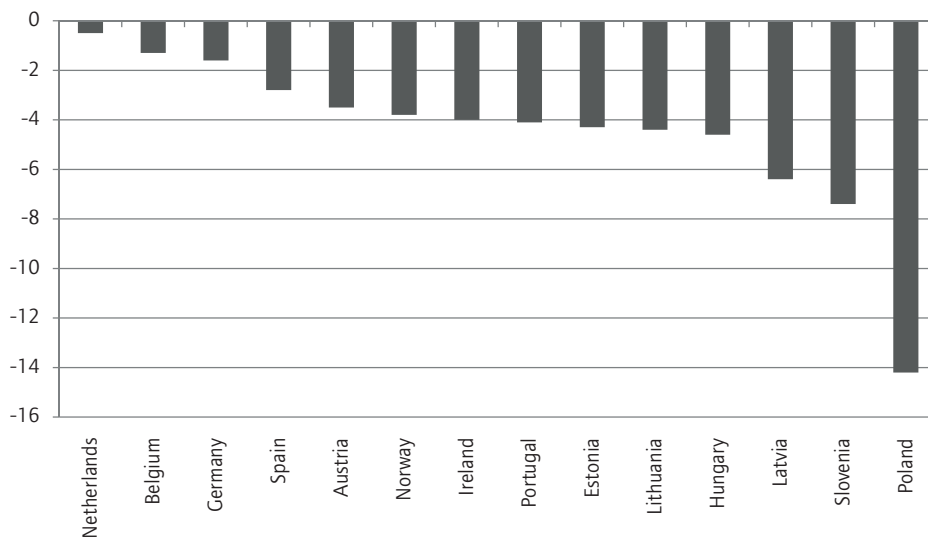
At least concerning wages – and social policies in general – such a situation seems to be positively evolving, looking at the general narrative of the 2018 Autumn Package.<sup>65</sup> Here, social progress comprises the distributional effects of reforms and upward convergence in working and living conditions. In particular, both the AGS and JER came closer to the ETUC position on wage policy. The AGS affirms that ‘growth in real wages, as a result of increased productivity, is crucial to reduce inequalities and ensure high standards of living. More dynamic wage developments, when translated into greater domestic demand, would support further the ongoing economic expansion.’<sup>66</sup> The JER (finally) acknowledged that ‘wage growth remains subdued in most countries. (...) In addition, in the period 2014 to 2016, real wage growth lagged behind productivity growth. This is a long-term trend: in the EU, from 2000 to 2016, real productivity per person employed grew by 14.3 per cent, while real compensation per employee grew by 10.2 per cent.’<sup>67</sup> The Commission attributes this to the remaining slack in the labour

65. This was published on 22 November 2017 and can be found here: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities_en).

66. Annual Growth Survey 2018, p. 10.

67. Draft Joint Employment Report 2018, p. 8.

Figure 5 Declining labour shares in the EU, 1995–2014 (percentage points)



Note: See also R. Janssen, *Why pay rises are a plus for the economy*, academic paper developed for the ETUC campaign 'Europe needs a pay rise', available here: <https://payrise.eu/get-the-facts/>.

Source: OECD ECO Working Paper 2017/5.

market, weak productivity growth and low inflation expectations. However, what they do not mention is that, again, this is often because trade union power has been eroded or restrained by recent reforms in many countries, collective bargaining has been weakened or dismantled at the multi-employer level or, as in the case of the public sector, because wages have been cut or frozen and collective agreements have not been renewed for years.

It may be argued that if unions and/or employers' organisations are weak or not representative enough to negotiate wage increases and conclude sectoral agreements, this is not the fault of the European Commission or of governments. This is not completely true. Collective bargaining, and social dialogue in general, needs a supportive framework – either legal or institutional – enabling social partners' negotiations. This is of course in place in those Member States with strong industrial relations traditions, but is missing or has been dismantled due to recent reforms in many others. As well explained by ETUC General Secretary Luca Visentini – in his speech given at the conference 'End Corporate Greed. Europe – and the world – needs a pay rise', 'without such frameworks, we will never be able to address the gap in wages and working conditions between Western and Eastern Europe, nor social dumping'.<sup>68</sup> Thus, the ETUC, via its pay rise campaign, is spreading the key message that Europe needs wage increases achieved through collective bargaining, notably national sectoral negotiations.

**68.** The complete speech can be found on the ETUC website.

The European trade union movement has expressed appreciation for the efforts so far on the part of the Commission<sup>69</sup> to put social policies back at the top of the political agenda, but it is high time that something was delivered. The trade unions are strongly committed and supportive with regard to the social initiatives that will be further developed in the coming months by the EU institutions, notably the European Pillar of Social Rights<sup>70</sup> and related legislative initiatives.<sup>71</sup>

For too long policymakers have overlooked the vital functions of collective bargaining, especially at national sectoral level. In this perspective the European Pillar of Social Rights is an unprecedented occasion to finally reverse this trend and create upward social convergence across the EU Member States. The 20 principles put forward by the Commission clearly indicate the role the social partners may (and have to) play in effective implementation via social dialogue and collective bargaining. The Commission promised that the 2018 cycle will be the first round of the new ‘social semester’, which is intended to launch implementation of the 20 principles. As recognised by the ETUC,<sup>72</sup> the Autumn Package represents a first step in the right direction. However, the expectations of the European trade union movement are high. In the ETUC’s view, the EPSR – in order to be effective – should help to better shape future Semester cycles. The way forward to rebalancing economic governance by strengthening its social dimension – that is, making it an economic and social governance – is to increase the value attached to the JER and the social scoreboard.<sup>73</sup> They are in fact the two main tools through which the EPSR is expected to be implemented. The hope is that the JER (along with the social scoreboard) can be put on the same level as the AMR (and its MIP scoreboard) so to drive more socially-oriented policies. Of course, this is clearly a political decision by European leaders to show that they are willing to put their fine words into practice. The ETUC’s ambition is to see CSRs demand the implementation of EPSR principles and thereby to improve the grave social situation in which the EU finds itself.

However, for this to happen, the following conditions must be met. First, governments should agree to receive more CSRs, if necessary. Streamlining and reducing the number of CSRs can no longer be acceptable if this would limit (or even exclude) the adoption

**69.** The fact that the EMCO peer review of social partners’ involvement in the European semester is becoming a cyclical practice testifies to such efforts. A second exercise was held on Wednesday 22 November 2017, this time targeting 12 countries: Bulgaria, Croatia, Estonia, France, Hungary, Italy, Lithuania, Latvia, Slovenia, Slovakia, Spain and Romania. This multilateral surveillance is supposed to lead to CSRs to enhance the social partners’ involvement at national level in the milestones of the European semester for some countries with weak practices.

**70.** The formal proclamation of the Pillar by European governments took place at the Social Summit for Fair Jobs and Growth in Gothenburg (Sweden) on 17 November 2017.

**71.** Four pieces of legislation are currently under discussion at EU level: (i) the work–life balance directive; (ii) the written statement directive (now referred to as the ‘transparent and predictable working conditions directive’; (iii) revision of the posting of workers directive; and (iv) a Recommendation on universal access to social protection. The first three initiatives are currently under negotiation in the trilogue (involving the Commission, Parliament and Council), while the proposal for a recommendation on social protection will be published on 13 March 2018, together with the ‘Social Fairness Package’, including a proposal for a recommendation on a European social security number and a proposal for a regulation on the European Labour Authority.

**72.** For a complete evaluation of the Autumn Package see the ETUC position on the Broad Economic Guidelines for the European Semester cycle 2018, adopted at the Executive Committee on 13–14 December 2017, available here: <https://www.etuc.org/documents/etuc-position-broad-economic-guidelines-european-semester-cycle-2018#.Wo7QJqjtyUK>.

**73.** For more details on the social scoreboard see <https://composite-indicators.jrc.ec.europa.eu/social-scoreboard/>.



of social CSR.<sup>74</sup> Secondly, putting social priorities at the same level as financial and economic priorities entails two things: on one hand, to pay more attention to the social consequences of the latter, while, on the other hand, investing in social measures. Trade unions need to mobilise to make sure that these social reforms receive the necessary funding. Restricting the latter to the meagre resources available under the European funds would jeopardise the realisation of the ambitious objectives the EU has committed itself to.<sup>75</sup> Member States have to dedicate a share of their own budgets to social measures. This implies that the Commission and Council guarantee enough fiscal flexibility to Member States so that they can undertake them properly. In a nutshell: allocating enough money to such social reforms will turn political commitments into concrete actions.

Over the past decade, social policy has not been on policy-makers' agenda and the few improvements recorded in recent years are still too meagre to alleviate the resentment and anti-European feeling that have grown among EU citizens across the continent. Reversing such disillusionment requires that all these social initiatives be delivered, bringing concrete benefits to workers and citizens. Europe finally has a chance to get back on track to progress toward the key objective of the European integration project: prosperity for all.

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74. In other words, social CSR programmes should not be dropped just because Member States have agreed to receive a few recommendations and all of them need to be dedicated to other policy priorities.

75. In this regard, we have to recall that, in the social field, EU Member States are committed not only to EPSR principles but also to the UN Sustainable Development Goals (SDGs). For more details see: [https://ec.europa.eu/info/strategy/international-strategies/global-topics/sustainable-development-goals\\_en](https://ec.europa.eu/info/strategy/international-strategies/global-topics/sustainable-development-goals_en).



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# **Chapter 9**

## **Conclusions and outlook**

### **More challenges and some opportunities for industrial relations in the European Union**

**Roberto Pedersini**

#### **1. Decentralisation and industrial relations**

This book clearly shows that industrial relations in the European Union are experiencing important changes. The economic and financial crisis, which hit the countries covered by our analysis with quite different consequences in terms of growth and employment, had a significant impact on collective bargaining. Particularly important in this respect was the role of governments, which increasingly and more incisively intervened to constrain the social partners' autonomy. According to the classification proposed by Bordogna and Cella (1999), this corresponds to the growing importance of 'corrective' initiatives, whereby governments steer industrial relations towards arrangements that they believe are more consistent with their policy objectives. Wage moderation and freezes imposed at cross-industry level in Belgium and the emphasis on decentralised bargaining in Spain, France and Italy are clear examples of this new attitude. The implications of the latter governments' initiatives are that industrial relations and collective bargaining should renounce at least some of their concern with solidarity among all workers, as well as comprehensive standards of protection, and rather embrace more flexible regulatory arrangements, which allow for variation across firms, according to their specific organisational features, market position, competitiveness issues, and economic and financial situation.

However, if the contribution of multi-employer collective agreements to defining the terms of employment is scaled down significantly, the general legitimisation of industrial relations may be eroded, since it also – perhaps mainly – derives from the capacity to extend inclusive protection and realise tangible improvements in economic and working conditions on a broad front. Indeed, following Hyman and Gumbrell-McCormick (2013), this inclusiveness is the really distinctive feature of trade union action and the original hallmark of industrial relations. Trade unions – and usually employers' associations, too – need more solidarity rather than less to develop their role and relevance in the regulation of the employment relationship. Otherwise, decentralisation and segmentation of protection may be accompanied by decreasing bargaining coverage and possibly the emergence of particularistic representation, which would contradict the essence of much of the European trade union tradition.

The German experience of opening clauses provides an example of the capacity of the social partners to accommodate increasing demands for broader leeway at decentralised level to adapt to local conditions, while keeping the overall system under close scrutiny and supervision. The flip side of this is that such a system could not halt

the ongoing decline in union density and collective bargaining coverage, even in the traditional strongholds of industrial relations. More generally, our country case studies provide clear evidence that trade unions and employers alike are seeking new ways to express their autonomy in regulating employment, despite the restrictions imposed by governments. And they often do it together, thereby confirming the viability and mutual benefits of joint regulation and in particular of collective bargaining.

## **2. The role of employers in institutional change**

The ‘varieties of capitalism’ approach (Hall and Soskice 2001) assumes that industrial relations institutions constitute an asset in coordinated market economies, so that employers will try to protect and even strengthen them. In this view, the main benefits that industrial relations bring to employers are wage moderation and coordination at national level, which help to avoid inflationary pressures, as well as labour–management cooperation and mutual trust at the workplace level. This fosters adaptation and internal flexibility, commitment, incremental organisational improvements and quality enhancement. Moreover, strong collective representation of employers can promote inter-firm cooperation and the production of collective goods, such as higher investments in worker skills, and facilitate partnerships and collaboration in developing and implementing innovation.

This analysis has been challenged on many grounds, including for the dichotomous nature of the typology of capitalism – which excessively constrains the variety of institutional arrangements – and the emphasis on complementarity, which privileges ‘pure’ systems and somehow disregards ‘mixed’ configurations (Amable 2003; Hancké, Rhodes and Thatcher 2007; Burroni 2016). Importantly, mainstream analysis of the varieties of capitalism has been criticised for providing a unitary picture of national production systems, whereas a broad variety of competitive strategies can be found in any country (Berger 2006). Moreover, the focus on the national level fails to detect internal differences and the emergence of significant forms of dualisation or segmentation of protection levels, including in the field of industrial relations (Palier and Thelen 2010; Thelen 2014). Additionally, the emphasis on institutions and their stability downplays agency and the possibility that economic actors may transform the role of certain institutional tools to better serve their interests, for example, by exploiting the changing balance of bargaining power (Baccaro and Howell 2017). In this way, institutions that were created to represent and protect workers may be turned to the benefit of company interests and to re-establish managerial prerogatives.

Despite the various weaknesses highlighted in the abovementioned literature, a substantial merit of the ‘varieties of capitalism’ approach is to draw the attention of scholars and practitioners to firms and employers, as well as to the benefits that joint regulation can bring them. These include not only the institutionalisation of conflict and the containment of competition based on labour costs within the framework of multi-employer bargaining (Sisson 1987) – both fairly important objectives – but also the provision of specific resources that can support their competitive strategies. Indeed,

industrial relations institutions can represent an asset and contribute to shaping competitiveness. The stability and development of industrial relations practices are, in fact, dependent on the commitment of employers, especially when the strength of trade unions and the support of the public regulators are declining, as at the present juncture.

In these circumstances, it is true that industrial relations institutions may become more prone to ‘capture’ by employers’ interests, as claimed by the ‘neoliberal trajectory’ hypothesis (Baccaro and Howell 2011, 2017). The procedural justice embodied in collective bargaining processes could provide employers with superior arrangements than unilateralism, because it would also legitimise their interests and therefore strengthen their strategies. However, it must be underlined that institutional continuity also preserves the potential for protecting workers, should the balance of power and interests change again. ‘Institutional conversion’ may in fact be better than ‘institutional demise’ and could even be regarded as a possible outcome of the bargaining game. This may not be so different from concession bargaining, which can be reversed, as the conditions for the assertion of workers’ interests are re-established. Shifting attention from the institutional framework to its performance certainly helps significantly to properly assess the role of industrial relations in specific situations. But performance can change and awareness of it can help the actors to adjust their strategies and redefine their objectives.

### **3. Industrial relations trajectories between ‘loyalty’ and ‘exit’**

A remarkable piece of evidence provided by our study is the lack of outright examples of employers’ defection. Despite the increased possibilities (and even instances) of exit, this strategy has not become a predominant choice. Along the vertical axis of coordination, decentralisation has been promoted in many ways in recent years, but there is no clear evidence of a significant shift in the bargaining structure towards the workplace, especially in terms of an increasing incidence of derogatory deals. In France, until the latest Macron *ordonnances*, the social partners have been fairly keen to maintain the overall coordinating role of sectoral agreements and very few derogations were introduced, even when specific legislation allowed it. Similarly, in Spain, the coverage of decentralised bargaining has remained stable and there are important examples of the social partners reasserting and even strengthening bargaining coordination at industry-wide level, as in the case of the metalworking sector. In Italy, the legislation enacted in the summer of 2011, which introduced the possibility of ‘disorganised decentralisation’, has been used rarely and with great caution. In particular, the major national social partners soon thereafter completed a formal framework for firmly coordinating second-level agreements. In Belgium, the possible enhancement of the role of decentralised bargaining seems a response to the constraints introduced by the government, with a view to regaining the room for manoeuvre that legislative reforms reduced. Therefore, it is more a result of the dynamism of industrial relations than a sign of their weakening. In Germany, in the core manufacturing sectors, opening clauses now seem to be an established norm, embedded in a strong and well-functioning coordinating framework, in which sectoral social partners have a key role.

Interestingly, our cases show that the attachment to sectoral bargaining is particularly widespread among SMEs, probably because of the benefits of standardisation, such as transaction cost savings, combined with reduced distributional conflict at the workplace level. In addition, SMEs often need less formal work flexibility and ‘customised rules’ than larger enterprises, thanks to more direct and intensive personal relations. Therefore, strengthening decentralised bargaining may be less important for SMEs. Indeed, this may help to explain why, in countries where the role of SMEs is particularly important – such as Italy and Spain – efforts to expand the coverage of second-level bargaining often achieve little.

It is true that we are not able to observe the full picture. We do not know whether, outside the perimeter covered by the major social partners, collective relations are losing ground. We have no indications, for instance, about the use of reinforced managerial prerogatives by Spanish employers, or of the impact of the increased scope for derogatory deals in France, Italy and Spain on the bargaining power at workplace level, and therefore on the content of actual deals. Concession bargaining may be increasing or is the ‘gatekeeper’ role assigned to trade unions instead fostering the conclusion of mutual-benefit agreements? The erosion of collective bargaining coverage that we observe in Germany may suggest that, in fact, the main challenges do not come from decentralisation, but rather from de-collectivisation. The shift to second-level bargaining, including with broader room for derogations, may not threaten the role of multi-employer agreements, but it may not be enough to stop the erosion of the relevance of collective bargaining overall.

There are indeed some signs that the real threats to the current European collective bargaining systems may come from the weakening of horizontal coordination rather than from ‘disorganised’ vertical decentralisation. Taking inspiration from Hirschman’s work (Hirschman 1970), if ‘loyalty’ seems the prevalent response on the part of the core employers of established sectoral industrial relations, ‘exit’ may emerge as an appealing option for more peripheral industry actors. Moreover, in the case of low unionised sectors, the real challenge is how to extend collective employment relations and collective bargaining to new areas.

#### **4. The challenge of dualisation: is collective autonomy self-sufficient?**

Dualisation and segmentation are found in many economic and employment systems and they represent a current trend that could be reinforced in the near future (Emmenegger et al. 2012). Although this was not the focus of our analysis, we encountered some significant instances of this emergent feature. Even the highly regulated and coordinated Belgian system shows some elements of regime shopping between different joint committees, where the shift between them can represent an answer to growing competitive pressures. Similarly, in Italy the increase in the number of sectoral agreements registered at the National Council of the Economy and Labour (CNEL) is perceived by the social partners as a source of potential ‘contractual dumping’, which can endanger worker protections, as well as fair competition. Indeed,

the number of registered industry-wide agreements more than doubled between 2008 and 2017 from around 400 to 868 in September 2017. Germany is often regarded as an example of dualisation, including in the field of industrial relations, as shown by the data on sectoral collective bargaining coverage. The point here is whether and how it is possible to address segmentation and extend the reach of industrial relations and collective bargaining and strengthen horizontal coordination.

The traditional solutions from within the industrial relations systems essentially rely on organisational resources, such as the monopoly of representation and the leadership of certain sectors in pattern bargaining. But these are scarcely available nowadays, in open and diversified economies. Indeed, the autonomous regulatory capacity of social partners may not be sufficient to avoid defections and the fragmentation of the bargaining system. The social partners seem to be aware of such limitations and are open to accepting – or even asking for – legislative interventions on matters with regard to which they were previously keen to maintain autonomy.

This is the case, for instance, of Italy, where employers have started to recognise the importance of introducing formal representativeness criteria for employers' associations, as a means to stop the proliferation of sectoral agreements and avoid 'contractual dumping' by alternative sectoral deals signed by organisations expressly established to undercut collectively agreed economic and working conditions (so-called 'pirate agreements'). Given the problem of enforcement in this field, the social partners are increasingly open to letting the area of representation be regulated by legislation, something they have traditionally opposed. Such developments may even lead to the implementation of the *erga omnes* clause included in the Italian Constitution, which has remained unimplemented for 70 years, because the social partners did not support it. A similar shift in the social partners' orientation away from the rejection of legislative intervention can be found in the introduction of a statutory minimum wage in Germany. Clearly, the social partners may be in favour of legal regulation in the field of representation and collective bargaining if these are supportive of their role and autonomy. The Italian social partners may thus welcome legislation embodying the representativeness rules they jointly agreed and German employer associations and trade unions are happy with a system that recognises their role in defining the statutory minimum wage and takes into consideration developments in collectively agreed pay.

In other words, addressing the challenge of dualisation and dwindling horizontal coordination would require a significant change in the nature of recent government initiatives in industrial relations: more supportive measures in place of corrective actions (more a case of 'admission' instead of correction, if we follow the analytical framework proposed by Bordogna and Cella 1999).

## **5. Policymaking and social dialogue in a multi-level system: finally establishing a link?**

Our analysis suggests that, in the countries under investigation, employers and trade unions are willing and able to enforce the vertical coordination of collective bargaining,

even when legislative reforms weaken formal constraints, for instance and notably by abolishing or reverting the favourability principle. While it is not a general conclusion, it is reasonable to assume that this situation holds in countries in which industrial relations are similarly well established and the role of sectoral agreements is traditionally strong. This would apply to most continental western European countries.

Indeed, recent research on Ireland shows that sectoral coordination is viable also in the case of decentralised bargaining, if supportive institutions and industrial relations traditions are present, with the active backing of employers (Roche and Gormley 2017). Employers, in fact, are not keen to dismantle the collective bargaining machinery, which allows them to obtain flexibility and wage concessions and to maintain a collaborative relationship with trade unions. Although this seems to be an instance of institutional conversion and plasticity, collective bargaining institutions have remained in place and could be exploited in the workers' interests 'when unions regained enough confidence and power to push for pay rises' (Roche and Gormley 2017: 19).

Conversely, horizontal coordination seems more problematic because of the possible segmentation of the representational landscape, especially on the employers' side and even within industries, and because of the broadening gap in protection levels across the different segments of domestic economies. In this case, organisational resources and voluntarism may fall short. A statutory framework is probably needed and the main supportive tools in this field would probably be extension mechanisms and income policies. However, they belong mainly to the past and have been weakened by recent reforms, except in the form of wage freezes and restraint. Governments have rather gone in the other direction, promoting broader differences within sectors and across industries. In fact, the decentralisation of collective bargaining and the reduced scope for extensions, which emerged during the crisis, are two means of achieving these goals (Marginson and Welz 2014; Marginson 2015).

The prospects of a renewed political initiative in support of inclusive industrial relations institutions are not very strong at present. But, as in the case of 'plastic institutions', a new cycle may emerge. Growing inequalities, compressed wages and fragile recovery suggest that some, at least moderate but generalised, income increases can meet the demands of a significant share of the workforce in low-paid jobs, as well as support economic growth, through the expansionary impact on domestic demand. Industrial relations and collective bargaining could provide an appropriate framework for implementing such wage policies (OECD 2012), as they incorporate a structural link with competitiveness requirements by operating through labour-management agreements. Moreover, they can ensure broader protection of workers' rights, which goes beyond their simple economic interests. However, pursuing collective goals requires social partners who are committed to representing broad interests and implementing inclusive deals. In this sense, preserving their constituencies and extending their reach to new areas of employment and the economy appear key components of any 'new start for social dialogue' at national level.

What is the role of the European Union in all this? Our study shows that the EU can and does play a fairly important role. The national level probably remains decisive for



actual developments and the key strategic interactions still take place in the domestic context. However, the constraints imposed by the Stability and Growth Pact, as well as the economic policies promoted by the European Union have a substantial impact on the content and framing of national-level developments. Of course, this is a two-sided relationship, between the supranational and national levels, and it is affected by EU and national developments alike.

In its early years after 2010, the European Semester had a role in the diffusion of initiatives aimed at increasing decentralisation and reducing the coordination capacity of national industrial relations systems, as illustrated by our country cases. This was part of the blueprint for structural reforms and was meant to strengthen the scope of market mechanisms, on the assumption that it would help speed up and reinforce recovery. This strategy achieved limited results and new tensions emerged. They included, on one hand, problems in ensuring effective coordination between the EU and national levels of policymaking and, on the other hand, defining the balance between economic and social goals and policies at EU level.

Importantly for our argument, in recent years EU initiatives have been reinforcing the emphasis on social partner involvement in policymaking at all levels. The new start for social dialogue launched in March 2015, the proclamation of the European Pillar of Social Rights in 2017 and the rebalancing of economic and social objectives in the European Semester all go in the direction of broadening the scope of social dialogue and industrial relations. They recognise the role of the social partners and provide topics on which bipartite and tripartite relations can develop at EU and – possibly more significantly – at national level. Moreover, with a stronger emphasis compared with the past, the European Semester now requires the involvement of the social partners in policymaking at national level, which may constitute a small but important help in re-establishing social partnership, in which lately government unilateralism has usually prevailed.

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## List of contributors

**Maria Concetta Ambra** is currently a postdoctoral research fellow at Sapienza University of Rome. She was previously a research fellow at the Université D'Aix-Marseille, comparing Italian and French unions and analysing the role of the state in the transformation of industrial relations in Italy and France. Her current research interests include the interdependence between collective bargaining, welfare and industrial relations. She is also the author of publications on trade union strategies for organising and representing non-standard workers.

**Reinhard Bispinck** was head of the Institute of Economic and Social research (WSI) within the Hans Böckler Foundation in Dusseldorf until April 2017. As head of the WSI Collective Agreement Archive he has been researching collective bargaining policy and industrial relations in Germany for many years.

**Kristian Bongelli** works as a policy advisor at the ETUC and is a member of the team dealing with EU economic governance. He also works on the coordination of collective bargaining and wages and is co-responsible for the related ETUC permanent committee. He obtained a master's degree in law at the University of Macerata before specialising in labour law and industrial relations at the University of Milan.

**Mimmo Carrieri** is a full professor of economic sociology and sociology of employment relations at the Department of Economic and Social Sciences, Sapienza University of Rome. He is currently the president of the Italian Association for Industrial Relations Studies. His main research interests are trade unionism and industrial relations. His recent publications include: *Verso nuove relazioni industriali* (with Tiziano Treu, 2013), *A Redesigning of Bargaining? Trade Union Relations in the Italian Public Sector*, *Labor History* (2017); *Industrial Relations in Italy in the 21st Century* (with L. Baccaro and V. Pulignano, *Employee Relations*, forthcoming); *Left-of-Centre Parties and Trade Unions in Italy: From Party Dominance to a Dialogue of the Deaf* (with L. Mattina, Oxford, 2017).

**Andrea Ciarini** is Assistant Professor at the Department of Social and Economic Sciences of Sapienza University of Rome. He is scientific coordinator of the Laboratory Semper and member of the research unit *Lavoro e Organizzazioni*. He was visiting researcher at the London School of Economics and Political Sciences and at KU Leuven University. His main research interests are comparative welfare studies, labour market policies and industrial relations.

**Salvo Leonardi**, PhD at the University of Rome, is Senior Researcher at the Fondazione Di Vittorio for industrial relations. A member of numerous international research networks and project manager (for example, of DECOBA), he is also the author of many publications in academic journals of labour law and industrial relations.

**Roberto Pedersini** is Associate Professor of Economic Sociology at the University of Milan. He has long and extensive experience in the study of employment and industrial relations. His main current research interests concern labour market regulation and policies and industrial and employment relations. He has both participated in and coordinated several research projects in these fields since the early 1990s at both national and international level. He has collaborated with the International Labour Office, the European Commission and the European Foundation for the Improvement of Living and Working Conditions on several occasions. He was chief editor of the 2014 edition of the European Commission's biennial Industrial Relations in Europe report.

**Udo Rehfeldt** is a political scientist and senior researcher at IRES in Noisy-le-Grand (France). He is the French correspondent of the ETUI network on Worker Participation in Europe and has taught comparative industrial relations at the University of Paris-X-Nanterre.

**Fernando Rocha** holds a degree in sociology and an MA in industrial relations. His current position is Director of the Studies Department at Fundación 1º de Mayo, the research institute of the Spanish trade union Comisiones Obreras (CCOO). He is involved in various research networks, has participated in various European research projects and has many publications on industrial relations, collective bargaining, employment and social policies.

**Thorsten Schulten** is Senior Researcher at the Institute of Economic and Social Research (WSI) within the Hans Böckler Foundation in Dusseldorf. He also teaches political science as an honorary professor at the University of Tübingen.

**Ine Smits** is a junior researcher at HIVA-KU Leuven in the Work and Organization research group. Her work concerns job quality and job types, as well as trade unions and their involvement in policymaking. She is involved in the InGRID research network as project assistant and research associate.

**Sem Vandekerckhove** is a senior researcher at HIVA-KU Leuven. His research deals with working conditions and employment conditions, focussing specifically on the institutional effects of social dialogue on issues such as poverty, wage inequality and the gender pay gap. He has been involved with the EC 6th Framework Project PIQUE and the 7th Framework Project WALQING, co-authored Eurofound reports on job quality and wage evolutions and participated in the TURI projects on Collectively Agreed Wages in Europe, and the EC Mutual Learning Programme peer review on minimum wages and the gender pay gap.

**Guy Van Gyes** is a research manager at HIVA-KU Leuven. His interests include industrial relations, employment conditions and employee participation. His main subject of interest is the role of trade unions and the position of employees in organizational development (well-being at work, innovative work, engagement). A further specialization is the study of wage-setting systems and collective bargaining. He has been involved in many European research projects and is currently co-ordinating the InGRID research network. As policy expert, he has worked with and been consulted by organizations such as the European Commission, federal authorities and European and Belgian social partners.

**Dries Van Herreweghe** has been a junior research associate in the Work & Organization research group at HIVA-KU Leuven since 2016. He is mainly involved in research on trade union-related topics and is a national Eurofound correspondent. Catherine Vincent is a Senior Researcher at IRES (Noisy-le-Grand, France). She is a sociologist specialising in industrial relations. Her current research interests include collective bargaining, employee workplace representation and social dialogue in the public sector. She has been involved in a broad range of European research projects on collective bargaining and co-authored many publications on wage bargaining.

