

Joint regulation and labour market policy in Europe during the crisis

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Edited by

**Aristea Koukiadaki, Isabel Távora
and Miguel Martínez Lucio**

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Brussels, 2016

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Print: ETUI Printshop, Brussels

D/2016/10.574/01

ISBN: 978-2-87452-394-6 (print version)

ISBN: 978-2-87452-395-3 (electronic version)



The ETUI receives financial support from the European Union. The European Union is not responsible for any use made of the information contained in this publication.

Contents

Aristea Koukiadaki, Isabel Távora and Miguel Martínez Lucio	
Chapter 1	
Joint regulation and labour market policy in Europe during the crisis: a seven-country comparison	7
Aristea Koukiadaki and Chara Kokkinou	
Chapter 2	
The Greek system of collective bargaining in (the) crisis	135
Eugene Hickland and Tony Dundon	
Chapter 3	
Reform of joint regulation and labour market policy during the current crisis: the manufacturing sector in the Republic of Ireland.....	205
Sabrina Colombo and Ida Regalia	
Chapter 4	
The reform and impact of joint regulation and labour market policy during the current crisis: Italy	257
Isabel Távora and Pilar González	
Chapter 5	
The reform of joint regulation and labour market policy during the current crisis: national report on Portugal	321
Aurora Trif	
Chapter 6	
Social dialogue during the economic crisis: the survival of collective bargaining in the manufacturing sector in Romania	395

Miroslav Stanojević and Aleksandra Kanjuo Mrčela

Chapter 7

Social dialogue during the economic crisis: The impact of industrial relations reforms on collective bargaining in the manufacturing sector in Slovenia441

Carlos J. Fernández Rodríguez, Rafael Ibáñez Rojo
and Miguel Martínez Lucio

Chapter 8

The reform of collective bargaining in the Spanish metal and chemicals sectors (2008–2015): the ironies and risks of de-regulating employment regulation.....499

List of contributors.....555

Chapter 1

Joint regulation and labour market policy in Europe during the crisis: a seven-country comparison

Aristea Koukiadaki, Isabel Távora and Miguel Martínez Lucio

1. Introduction

The sovereign debt crisis, which began in Greece in 2010 and then spread to several other euro-zone economies, is having profound consequences for the labour law and industrial relations systems of the debt-affected member states and for the role of social policy at EU level. As a result of the austerity measures stipulated in loan agreements and/or recommendations issued by the International Monetary Fund (IMF), the European Central Bank (ECB) and the European Commission (EC) – acting often together as the so-called ‘troika’ – essential features of national labour law and industrial relations systems in countries such as Greece, Ireland, Italy, Portugal, Romania, Slovenia and Spain, have been, or are in the course of being, radically revised. Driven by the perceived need to initiate a process of ‘internal devaluation’ in order to restore national economic competitiveness, public deficit reduction measures have been coupled with deep structural labour market measures. The latter are aimed not only at ensuring wage moderation but also at changing essential features of industrial relations systems by changing employment protection legislation and collective bargaining (Deakin and Koukiadaki 2013). While such measures have been implemented in a number of countries, the timeframes of the measures vary, with some entering their third stage since the development of the crisis (for example, Greece and Ireland) and others still at the beginning (for example, Slovenia).

Given that social dialogue has been one of the key institutional features of the European social model, it is crucial to provide a detailed comparative analysis of the process, content and outcomes of collective bargaining, as influenced by the measures taken and the EU’s 2020 Strategy goals of high levels of employment and social cohesion (EC 2010a). Earlier

comparative studies have illustrated the positive impact of social dialogue in periods of crisis (Ghellab 2009). However, most research on the impact of the crisis fails to address the specific question of the role of the structural labour market adjustments in ‘reconfiguring the space’ for articulating management and employee interests and the development of social dialogue in a fragmented context. An important issue, thus, is to understand how the policy and legislative changes influence the form of collective bargaining at different levels and shape the content and outcome of collective agreements with regard to specific issues, such as wages, employment conditions and prospects, quality of work, work/life balance and gender equality.

In focusing on a key sector of economic activity, manufacturing, the research project was based on three central pillars. The first was a critical assessment of the nature and scope of measures concerning collective bargaining. Building upon prior research by team members that stresses the processes through which the effects of the crisis, which began in financial markets, were transmitted to labour markets through the interventions of the ‘troika’ (for example, Fernández Rodríguez and Martínez Lucio 2013; Koukiadaki and Kretsos 2012; Trif 2013), the research addresses the contextual aspect of the labour market measures. Two key dimensions are investigated here: labour market dynamics, as influenced by the worsening of the sovereign debt crisis, and the national political and regulatory frameworks of the response to the crisis, as influenced by the approach taken by supranational organisations – for example, the ‘troika’ of creditors – and recent developments in European economic governance.

The second pillar comprised a critical assessment of the actors’ responses and the process and nature of collective bargaining. The introduction of wide-ranging measures in social dialogue had the potential to lead to radical rather than incremental forms of innovation (Streeck and Thelen 2005). In the manufacturing sector, this could involve the destabilisation of multi-employer collective bargaining and other forms of coordination, with negative implications not only for trade unions, but also for employers’ associations and central government/regional authorities. In this context, it would be useful to develop a typology of the character of measure-driven agreements with regard to their procedural provisions and the factors influencing the pattern of responses by social partners. It would also be interesting to assess whether a new model of bargaining is

emerging, with clear reference points for employers and unions – albeit different in nature – or whether the developments are ad hoc, with no clear ideological or isomorphic underpinning.

The third pillar concerned the impact of the changes on the content and outcomes of collective bargaining. The measures involve a radical shift of the regulatory boundaries between statutory regulation, joint regulation by the social partners via bargaining and unilateral decision-making by management. On the basis that the terms of trade-offs between the social partners may in turn shift as well, the research collected and analysed qualitative data, including case studies, at national, sectoral/regional and company levels. It then integrated the effects of changes in some key dimensions, including, wage setting, employment conditions and prospects, quality of work, work/life balance and gender equality.

The present chapter synthesises the findings from the national reports and provides an assessment of developments across the three pillars identified above. The structure of the chapter is as follows. Section 2 provides an overview of the research methodology for the study. In this context, the rationale for the selection of the manufacturing sector, as well as the chosen EU member states is provided. The chapter also outlines the main research questions and the research methods used for the conduct of the studies at national level. As will be seen, these included not only interviews with key actors, but also cases studies at company level and the organisation of workshops with the purpose of testing and validating the design/results of the research project. The state of collective bargaining before the crisis constitutes the focus of Section 3. In this way, the analysis provides a critical evaluation of changes and continuities in national bargaining systems up to the emergence of the crisis. Attention is also paid to conceptualising bargaining systems in terms of rigidities, inefficiencies and so on, as identified by supranational institutions but also domestic actors. Section 4 deals directly with the institutional response to the economic crisis. As the response evolved at different levels and different stages, the analysis focuses on developments at both European and national levels, including, respectively, the introduction of economic adjustment programmes and the operation of the European Semester, but also measures promulgated and adopted at domestic level. Following this, Section 5 provides a detailed analysis of the substance of the labour market regulation measures taken in the seven countries. In this way, the analysis pays attention not only to the labour market

measures targeted directly at collective bargaining, but changes in other areas as well that may indirectly influence the scope for joint regulation, including employment protection legislation and working time. The impact of the measures on the structure and character of bargaining is assessed in Section 6; the analysis provides a typology of the impact of the changes and identifies factors explaining the differences and similarities between the EU member states. Section 7 discusses the impact of the measures on wage determination and other terms and conditions of employment. It also evaluates how the measures impacted on the role of different actors in determining these developments and critically analyses their significance. Section 8 provides a reflective discussion of the measures and their significance, while section 9 concludes with a summary of the main findings and policy implications.

2. Methodology: comparing changes and developments in industrial relations measures

With the overarching objective of investigating the impact of the labour market measures implemented in Europe during the crisis, the research took a comparative approach to examine the process and outcome of these changes in collective bargaining in seven countries: Greece, Ireland, Italy, Portugal, Romania, Slovenia and Spain. These countries developed more coordinated systems of regulation (especially Greece, Portugal, Slovenia, Romania and Spain) at a time¹ when organised and more coordinated systems of labour relations were being challenged in the 1980s and 1990s. Hence, they represent a specific part of the Europeanisation project, which has attempted to develop more thorough and systematic approaches to regulation in more difficult circumstances. The national case studies were conducted by the following teams of academics: Ireland: Tony Dundon and Eugene Hickland (NUI Galway, Ireland); Italy: Sabrina Colombo and Ida Regalia (Università degli studi di Milano, Italy); Portugal: Isabel Távora (University of Manchester) and Maria do Pilar Gonzalez (University of Porto, Portugal); Greece: Aristea Koukiadaki and Charoula Kokkinou (University of Manchester, United Kingdom); Romania: Aurora Trif (Dublin City University, Ireland); Slovenia: Aleksandra Kanjuo Mrčela and Miroslav Stanojević (University

1. The project was completed in January 2015 and the findings discussed here reflect the developments up to that time. We would like to acknowledge that the research was funded by the European Commission (project number VS20130409).

of Ljubljana, Slovenia); Spain: Carlos Jesús Fernández Rodríguez and Rafael Ibáñez Rojo (Universidad Autónoma de Madrid, Spain) and Miguel Martínez Lucio (University of Manchester). Throughout the project, consultation took place with the Advisory Board. Members included the following: Stavroula Demetriades (European Foundation for the Improvement of Living and Working Conditions), Simon Marsh (European Chemical Employers Group), Guglielmo Meardi (University of Warwick), Phillippe Pochet (European Trade Union Institute), Jill Rubery (University of Manchester) and Jeremy Waddington (University of Manchester and European Trade Union Institute).

The rationale for the selection of the seven countries was twofold. First, they were among the European countries most affected by the economic crisis. They have borne the brunt of the austerity measures and are closest – in theory – to experiencing paradigmatic changes in their systems of industrial relations. In other words, this is the closest that Europe has come, so far, to a post-regulated situation, at least in theory, because our project-based research reveals more complex and curious outcomes from the point of view of social dialogue. Second, their labour market regulations had undergone substantial measures associated with assistance programmes or recommendations of European and other supranational institutions. These measures were extensive and reveal a challenging legacy and tendency within the European Union. They also, in the main, represent a key constituency within the ‘new’ Europe that have come into the European Community at later stages and have not been always at the centre of core decision-making, apart from Italy.

As an important sector for the business systems of the countries in question, manufacturing was the focus of the study. From a methodological perspective, this sector was also selected because understanding the effects of the relevant measures on the industry with the longest tradition of collective bargaining, enduring industrial-relations institutions and good practices of multi-level collective bargaining would be particularly insightful. If the measures were sufficient to destabilise the industry with the most robust industrial-relations institutions, that would give us an indication of their potential for disrupting the overall system of industrial relations in each national context. These institutions were spaces in which the social dialogue agenda – in particular, the collective bargaining agenda – would act as a benchmark for the rest of the country.

In effect, manufacturing is an important benchmark for establishing coordinated systems of industrial relations.

The research in each of the countries sought to address four main questions:

- What are the implications of the measures for collective bargaining arrangements at cross-industry, sectoral and company level?
- What are the government and social partner strategies and approaches towards the broad labour market measures in collective bargaining, as influenced by the structural adjustment programmes and/or the recommendations of supranational institutions?
- What is the extent and nature of changes in management policy and practice and trade union approaches at sectoral and company level concerning the process and character (conflictual or consensual) of bargaining in light of the measures adopted?
- What are the implications of the measures for the content and outcome of collective bargaining at sectoral and company level, especially for wages and working time, but also issues such as work/life balance and gender equality?

In order to address these research questions we established partnerships with universities in the various countries and organised a team of academic researchers for carrying out the research in each of them. In some cases, a member of the coordinating team was directly involved in national cases (Greece, Portugal and Spain), allowing the hub of the project to be involved directly in nearly half of the research.

The study took place in two main stages:

- First stage: From January to March 2014 each team conducted a systematic review of prior regulatory traditions, the process of implementation and substantive measures concerning the legal framework regulating employment and collective bargaining in each country. This phase, which was based mainly on secondary sources, also examined the potential implications of labour market measures for the national systems of social dialogue, especially collective bargaining.
- Second stage: This phase involved the collection and analysis of primary empirical data, focusing mainly on understanding the impact of the measures on collective bargaining in manufacturing

in each country. This phase took place between April and September 2014. It involved a range of activities and in each country data gathering included three components:

- (i) Research interviews with relevant labour market actors who would be key informants about the impact of the changes on collective bargaining; these included political and organisational leaders, officers and legal experts from employers' associations and trade union structures that were involved in policy and practice of collective bargaining at the national and sectoral level. In addition, in some countries government officials from the ministry of labour and other relevant departments were also interviewed: in some cases this involved former ministers. The data from interviews were complemented with reports and documents provided by the social partners and government interviewees and with the collective agreements, when these were accessible. Experts at the university and social partners were also interviewed in some cases.
- (ii) National workshops took place with representatives from social partner organisations and served as platforms for exchanging views and establishing dialogue between social partner institutions and the academic teams with a view to promoting learning about the impact of the measures on collective bargaining. Some of these workshops also involved government officials from the ministry of labour or other relevant departments. In most of the countries this workshop took place at the beginning of the empirical phase and fulfilled the additional role of opening up access to relevant interviewees who could be key informants and to companies that could constitute relevant case study organisations. In Slovenia and Ireland the workshop was conducted at a later stage and in these cases it provided an opportunity to obtain additional data, clarify issues and validate the findings from the earlier stages of the research. In the case of Spain, the workshop involved the presentation of competing employer views, which allowed the event to become a detailed focus group in its own right. Some workshops were recorded and provided rich empirical data.

- (iii) Company case studies in the manufacturing sector involved interviews with company representatives, including senior management and HR managers, as well as workers' representatives from trade unions and other representative bodies. The interview data at this level were complemented by documentary evidence, including collective agreements where they existed and were made available. In some cases, management and workers' representatives were interviewed in a particular company, while in others sometimes only one side was interviewed. Much depended on the extent of access, although the project yielded a substantial set of data overall.

In order to enable comparability of the research and to capture the issues particular to each country, we sought to combine one industry that was common to all country contexts, with other industries chosen by each academic team based on contextual relevance and accessibility criteria. The chosen common industry was metal manufacturing due to its strong tradition of collective bargaining. Table 1 displays information on the sectors of the case studies in each of the seven countries. These were, in the main, manufacturing sectors and had strong traditions of social dialogue and collective bargaining. There were strong sectoral bargaining traditions and highly organised social partners.

Table 1 Company case studies and industries in each country

	Metal/ automotive	Food and drinks	Chemicals/ pharmaceuticals	Textiles/ footwear	Medical devices
Greece	X	X			
Ireland	X	X	X		X
Italy	X		X		
Portugal	X	X		X	
Romania	X	X			
Slovenia	X		X		
Spain	X		X		

Based on these two phases of the research, the academic teams in each country produced a national report that summarised their findings on the process and substance of the regulatory changes and how these affected their respective collective bargaining systems in practice. The comparison carried out in this report is based on the data provided by each of these seven reports. These reports were based mainly on interviews with the different levels of actors outlined earlier. However, in some reports the cases were presented in a case by case manner, while in others the reports used the cases to outline key themes, outcomes and narratives with regard to the measures taken.

The qualitative approach, complemented with secondary quantitative data, allowed us to begin to outline some of the insights, calculations, risks and concerns emerging from the national cases. It provided an insight at a specific moment of time into some of the questions emerging from the measures taken, from a range of individuals in a variety of organisations. We were also able to frame the responses and views on collective bargaining in a more historically sensitive approach. This allowed us to generate a series of important insights and findings, which are presented in this report and the national reports. In this respect, how the measures were understood and how they were located in terms of different national issues and concerns in relation to industrial relations and labour market regulation generally was central to the project. We were able to map the ways in which questions of collective bargaining derogations and the manner in which agreements were applied or not in terms of the different traditions and the strategic responses to them of different actors. Throughout the project these were understood in terms of how the industrial relations legacies were framed historically in terms of their contributions and limitations. The work of Locke and Thelen (1995) was therefore an important inspiration for the project in terms of how institutions and relations were understood and associated with broader issues and problems by leading organisations and regulatory actors, as well as the national political concern with joint regulation. Throughout the study the meaning of different aspects of the measures and their significance were compared in terms of actual developments and the meanings associated with them by key actors. This was important in allowing us to map some of the problems and concerns with changes in industrial relations and the way previous practices were seen in more positive terms than one would have imagined.

3. The state of collective bargaining and industrial relations before the crisis

3.1 Trends in collective bargaining and industrial relations in the pre-crisis period

The nature of collective bargaining across the seven member states in question varied significantly in terms of their labour relations institutions, especially their collective bargaining systems. However, there were commonalities in the way collective bargaining played an active role in creating a discussion and purpose in changing and improving terms and conditions of employment. In particular – albeit in different ways – the manner in which the national and the industrial sectoral level of dialogue framed discussions and agendas is significant in most of the national cases studied.

These may not be some of the strongest or more articulated systems of collective bargaining in Europe compared with some of their northern European counterparts (contradicting some of the criticisms of rigidities in labour relations systems expressed in these seven national case studies). However, the systems do appear to have a positive and constitutional underpinning for collective bargaining processes, except for Ireland, which relies on a more voluntarist tradition, as does Italy to some extent. Still, even in such cases national dialogue managed to frame the existence of a social partnership tradition, even if, as in Ireland, strong legally based rights concerning trade union recognition are lacking due to the influence of the British colonial legacy (Hickland and Dundon 2016). Overall, however, most of the countries in the research exhibit significant activity with regard to joint regulation and their institutional systems reproduce some, at least, of the features of a coordinated market economy (Hall and Soskice 2001).

Trade union membership in these countries has not been among the highest in Europe, but overall one sees a significant workplace presence in sectors such as metal and chemicals. In general terms, Eurofound, in a study by Mark Carley based on data for 2008 (see below), puts the seven countries within the following categories:

Table 2 Trade union membership as an average of the national workforce in 2008

Country	Percentage
Finland	over 90%
Belgium and Sweden	80%–89%
Denmark and Norway	70%–79%
Italy	60%–69%
Cyprus, Luxembourg and Malta	50%–59%
Romania	40%–49%
Austria, Ireland and Slovenia	30%–39%
Bulgaria, the Czech Republic, Germany, Greece, Hungary, the Netherlands, Portugal and the UK	20%–29%
Latvia, Poland, Slovakia and Spain	10%–19%
Estonia and Lithuania	below 10%

Source: Mark Carley (2009), EIRO <http://www.eurofound.europa.eu/eiro/studies/tn0904019s/tn0904019s.htm#hd2>, accessed 28 October 2014.

The cases we are concerned with are clearly in the second tier of trade union membership levels in Europe. However, except for Spain they are all above 20 per cent and in some cases closer to 50 per cent, as in Romania. The data reveal two things:

- (i) In most of these countries there is also a tradition of state sanctioned works councils or workplace representative elections: through these mechanisms of representativeness and bargaining rights, trade unions are considered to be the legitimate voice for the vast majority of workers, even if membership is below 50 per cent, on average. Even in Spain, in which trade union membership is below 20 per cent, over 80 per cent of the workforce participate in workplace representative and works council elections. This means that trade unions are important state sanctioned and legally recognised representative bodies for the workforce, especially in relation to collective bargaining.

- (ii) In the seven countries under analysis we see that such membership figures are actually fairly high, in particular given the political background of five of these countries. Greece, Portugal and Spain emerged from authoritarian contexts in the 1970s and had to construct liberal democratic systems of government and governance in a short period of time. They had to move from state corporatism or the direct state control of labour relations to societal or liberal corporatism in a very short period of time (Schmitter 1974). In the case of Portugal and Spain, military authoritarian rule lasted from between a third to half a century. Hence trade unions had to create independent structures very quickly (Martínez Lucio and Hamann 2009). Independent trade union representation in Romania and Slovenia prior to 1990 was dominated by the state and state-oriented parties with very little autonomy and tradition of bargaining and trade union activism of an independent nature. Social dialogue was symbolic and compulsory in nature (Trif 2016). This is important for our purposes because these countries have had to build up a system of independent collective bargaining – and systems of social dialogue in general – in a brief period and in a context in which workers and employers have not had the time to create traditions of social dialogue and reciprocal relations. Furthermore, relatively lower levels of membership mean that the onus for organising the activity and resources of the worker side falls on much weaker and more vulnerable national and sectoral organisations. What is more, in relation to Spain it has been argued that the industrial relations actors had to construct a system of *organised* labour relations and state intervention in the labour market, work and society at the very point in time (the 1980s and 1990s) when these post-war systems were becoming *disorganised* due to neoliberal economic policies and changes in the notion of the ‘Keynesian’ welfare state (Martínez Lucio 1998). This argument is particularly relevant to those five national cases, too.

In this respect, the achievements of these countries are notable. The representation of worker interests, and even of employer interests, is much broader in terms of bargaining functions and this leads to the key issue of how joint regulation was structured in such contexts prior to 2008. In fact, in 2013 EIRO research pointed to fairly significant roles for coordinating sectoral bargaining in such countries as Spain,²

2. See: <http://www.eurofound.europa.eu/eiro/cwb>.

where higher tiers of social actors played an important role compared with other contexts. Even in Ireland we saw national negotiations prior to 2008 evolving to deal with national wage-related issues. However, while these traditions vary, all the countries studied had some element of sectoral and/or state coordination in terms of wage increases and collective bargaining activity during the 1990s and 2000s. In many cases there was state support for the regulatory coverage of workers through sectoral or national agreements, and higher tier agreements in most cases were extended beyond those firms with company or workplace agreements of their own. In some cases, there were national agreements on pay to frame the negotiations, while in others – for example, Portugal – national-level negotiations more recently have concerned broader social issues and the minimum wage, although they have tended not to deal with wages.

In terms of establishing minimum working conditions and wages the higher tier in Greece could be extended to all workers and this pre-crisis approach allowed unions to negotiate beyond their particular areas of strong and embedded representation. This extension principle meant that lower level agreements were underpinned and regulated by multi-employer agreements. In many respects, this was also the case in Spain and other national cases. Sectors such as metal and chemicals in particular were known for such forms of coordination. In Ireland, where multi-employer bargaining was more complex and less developed, independent Joint Labour Committees established minimum pay for a range of less organised sectors, although national negotiations were important. In Italy, sectoral agreements have been an important platform for regulation of wages and conditions, backed up by periodic engagement with social dialogue at the national level, depending on the political contingencies of the time (Colombo and Regalia 2016). The removal through dialogue of the *scala mobile* in 1992 and the move towards a more concerted attempt at social dialogue based on competitive economic criteria had generated, even during the volatile political period of the 1990s and 2000s, moments of social participation. However, in various countries – such as Spain – although wages were seen to be significantly regulated by this multi-employer focus, the rigidities in terms of employment and redundancies were being seen by the OECD and others as a major impediment to significant competitive change in terms of labour mobility.

The basic characteristics of collective bargaining at various levels are summarised in Table 3:

Table 3 Main features of collective bargaining systems before the crisis

Country	Inter-sectoral level	Sectoral level	Company level
Greece	National general collective agreement (EGSEE)	<ul style="list-style-type: none"> – Predominance of sectoral bargaining – Statutory extension procedure 	<ul style="list-style-type: none"> – Terms and conditions on top of those set at higher levels – Union representation in companies employing more than 20 employees
Ireland	Framework of a series of national agreements (National Social Partnership Agreements)	<ul style="list-style-type: none"> – Some industry level agreements (for example, construction) – Extension procedure (REAs) 	Single-employer model of bargaining with limited intervention by the state
Italy	National general agreement between the two sides of industry on the rules of collective bargaining	<ul style="list-style-type: none"> – Predominance of sectoral bargaining 	<ul style="list-style-type: none"> – Lack of substantial coverage by company agreements – Concentrated in medium and large companies
Portugal	Social pacts (mostly tripartite) on employment and social issues, but not on income policies since the 1990s, except the national minimum wage	<ul style="list-style-type: none"> – Predominance of sectoral bargaining – Quasi-automatic extension 	Such agreements relatively rare; if they exist, they improve on sectoral agreements
Romania	National general collective agreement laying down a floor of rights	<ul style="list-style-type: none"> – 32 branches eligible and 20 branches with collective agreements – Statutory extension procedure 	<ul style="list-style-type: none"> – Terms and conditions on top of those set at higher levels
Slovenia	Practice of social pacts and consensually accepted income policies	Implementation of income policies by sectoral agreements	<ul style="list-style-type: none"> – Several thousand collective agreements at company level – Possibility for derogation <i>in pejus</i> from higher agreements
Spain	Loose social pacts and general national agreements on pay	<ul style="list-style-type: none"> – Principle of statutory extension – Ultra-activity period 	Fairly articulated bargaining and sector level frameworks for company bargaining but questions of implementation

Among these countries we can identify a curious framing of lower level collective bargaining. It is located in and supported primarily through national and/or sectoral activity and the importance of sectoral trade union structures and employers' associations has been reinforced over the past thirty years or so. This southern European model reflects specific types of organisation and state traditions linked to the importance of sector level activity (Molina and Rhodes 2007). In some cases, they reflect previous state corporatist structures (Lehmbruch 1985; Schmitter 1975) in authoritarian contexts, in which higher tiers were established or activities focused on the sectoral level, mutating during periods of democracy after the 1940s or the 1970s, in some cases into more robust voice mechanisms and spaces in which workers could organise and coordinate.

In the case of Portugal such mechanisms developed, for example, in a similar way to Italy and Spain. The role of the social dialogue-driven national forums and the importance of establishing a national reference point for wage negotiations (even if wages were not always explicitly discussed) and basic working conditions underpinned the sectoral frameworks. However, what is notable in the case of Portugal – and to a great extent this is mirrored in Spain and some other cases, too – is the emergence of a politics of social dialogue and, in particular, stable collective bargaining policies through the increasing prevalence of more moderate trade unions with a social democratic heritage or inclinations towards social dialogue, and the steady institutionalisation of the more radical majority left-wing trade unions. This development was important in countries such as Portugal and Spain in creating a tradition of social pacts and discussion which, while contingent on specific themes and aspects of social measure, managed to create a less conflictual industrial relations system. One needs to recall the political contexts of Greece, Italy, Portugal and Spain in the 1970s to truly appreciate the extent of labour relations 'normalisation'. In fact, there is an irony in discussing the pre-2008 labour relations panorama in these contexts. While certain forms of labour market rigidity remained in terms of internal and external labour markets, and while wages were determined through relatively regulated systems, the extent of social dialogue and the manner in which social pacts and sector-level discussions took place evolved significantly – rightly or wrongly, depending on one's point of view – from the expectations of the 1970s and 1980s, when social conflict appeared a more likely outcome.

The role of social dialogue and increasingly coordinated collective bargaining cultures – albeit more strategic and contingent than structurally embedded in cases such as Spain (Martinez Alier and Roca 1987) – was fundamental in stabilising the newly emerging democratic regimes. The role of so-called labour market rigidities in terms of the cost of making workers redundant, or the processes utilised to restructure firms, continued to exist precisely because they allowed such social dialogue. First, at a time when a labour relations system was emerging, social actors – including state agencies – did not deem it wise to overload the measures implemented or the transitional agenda by putting too many rights – or their removal – on the table for discussion just as these systems were taking form. Second, many of these rights, in countries such as Portugal and Spain, were seen as hard-won from the previous authoritarian contexts, as noted earlier. To that extent these ‘rigidities’ allowed for a system of dialogue to emerge on less embedded issues, even if the more sensitive issues were dealt with and to some extent reformed to a great extent prior to 2008 (such as automatic pay increases in Italy, labour classification systems in Spain, and others). Third, these supposed labour market rigidities were in fact maintained not fully reformed because welfare systems in all seven countries – but especially Greece, Ireland, Portugal, Romania, Slovenia and Spain – were not systematically developed compared with the Netherlands or Finland. These forms of compensating workers for labour market change are seen as a way of balancing the absence of long-term and broadly inclusive state benefit systems. The absence of long-term and stable unemployment benefit in Spain meant that redundancy payments acted as a social cushion for workers, given this lack of state support. Hence, rigidities in terms of labour market rights can be understood only in historical context.

Throughout these national contexts, especially those in southern Europe, larger companies have been able to develop their own frameworks and structures with regard to setting wages and conditions, cushioned by the minimums established at higher levels through sectoral arrangements. Small and medium-sized enterprises have been able to rely on higher tier agreements, whether at the sectoral or sectoral/regional level, to assist in the process of regulation and labour management. In some cases this leads to local sectoral agreements, which are more relevant for such firms. This principle of extension of the contents of higher tier agreements was common in all these contexts, especially in southern Europe, within the

framework of the project. This has also been supported, as in the case of Spain and Portugal, by the development of agreements that cover training and make it possible to establish links with new collective bargaining issues framed by new tripartite commitments and structures.

In the case of Romania and Slovenia we saw these higher tiers play an important role, with sectoral agreements in the former existing in 20 of the 32 sectors eligible for collective bargaining (Trif 2016). In Romania, trade unions played an active part in sector level activity and there was statutory extension of such sectoral agreements to all workers. In fact, this is an important feature of the European context, where representativeness, be it through works council elections or membership rates, constitutes a formal and state-sanctioned basis for the regulation of working conditions through higher tier mechanisms. In fact, according to Stanojević and Kanjuo Mrčela (2016) Slovenia can be considered to have been a relatively coordinated market economy even before 2008, due to a number of factors that set it apart from other post-communist nations. The replacement of general agreements for the private and public sector with sectoral agreements in Slovenia, which previously had 90 per cent coverage, is indicative of how the sector has become the prevalent and accepted space for regulation in the European Union. While trade union membership fell from 43 per cent in 2003 to 26 per cent in 2008 due to changes in legislation – among other factors – collective bargaining in Romania and Slovenia is present in workplaces, but guided by national and sectoral dialogue.

Prior to 2008 there were other changes in terms of the content of collective bargaining in the countries under consideration in this report. The notion that they were static (something the next section addresses) is questionable. In the case of Spain the emergence of equality legislation under the Zapatero government (2003–2011) meant that firms had to develop equality plans within collective bargaining frameworks. In many of the countries studied, we found examples of training and development entering the content of collective agreements in terms of rights to training and time off for training, for example, in Portugal. As in Italy and Spain this was normally sustained by national and regional social dialogue mechanisms on learning (for example, lifelong learning, new forms of skills and employability; Stuart 2007). In Portugal, there was a bipartite agreement on training in 2006 to improve qualifications and promote skills development and lifelong learning with a view to improving working and

living conditions, productivity and competitiveness. The social partners also committed themselves to making training a bargaining priority. All the union and employer confederations signed the agreement and invited the government to get on board (Social and Economic Council of Portugal 2006). In Greece, there were attempts – with mixed results – to widen the set of issues discussed within the framework of the National General Collective Employment Agreement (EGSEE). The driving force behind this was, in many cases, developments at EU level, either in the form of the recommendations made to Greece under the European Employment Strategy – for example, on employment and vocational training – or in the form of autonomous agreements concluded between the European social partners, for instance with regard to stress at work and teleworking.

What we therefore see is a degree of articulation and coordination in these seven countries, sustained by an element of renewal and change. The notion of a static system of collective bargaining prior to 2008 is an unfortunate and, in our view, incorrect stereotype.

3.2 The emerging political and strategic challenge to labour market regulation and collective bargaining before the crisis

What patterns or characteristics existed prior to 2008? Can we speak of an articulation of bargaining in these national contexts? The first context is the importance of multi-employer collective bargaining backed by varying degrees of social dialogue at the level of the state. In Ireland and Spain, for example, social partnership developed as a key feature of the national system of labour relations, although one could not argue that they mirrored Austrian or Finnish approaches. Second, agreements at the higher level were often extended to provide a cushion of support for the lower levels, which were more exposed or had less regulatory strength. The sector became the platform for organisation and regulation. In terms of manufacturing this was common in almost all the countries studied. The sector is the space within which the ‘common’ terms and conditions of work and the ‘shared’ experiences of work and activity can be coordinated. This has evolved steadily in these countries since the 1970s, forming a backbone of support for the ever diversifying and fragmenting nature of production.

Third, a culture of regulation and a sharing of expectations has emerged, albeit in varying ways, between the social partners. In many of the cases studied there was a sense of a shared history and struggle as different challenges – such as external competition, European integration and industrial change – have been addressed through formal and informal agreements. Whether these factors constitute a system of coordinated market economy is another matter. There is no doubt that the state has been helping trade unions to play these roles through training and institutional support, which in some cases has led to controversial experiences of proximity. However, by 2008 there was a system of flexible social dialogue and strategic corporatism responding to new social and economic changes and to an extent modernising to varying degrees (Martínez Lucio 2000).

There were gaps in this system and, in the first instance, critics pointed to the slow reform of labour market rights, for example, with regard to the costs of dismissal. To some extent, such labour rights were only partly open to negotiation. The sectoral level of bargaining was seen by the critics as a cover for the absence of a deeper discussion of and reflective approach to the role of social dialogue in relation to efficiency. Second, there was a concern that the space of medium and large firms was not being fully developed in terms of robust discussions on growing problems, for example, the competitive and productivity gaps with non-European competitors, such as China. Collective bargaining agendas appeared to be truncated and unable – or unwilling – to tackle deeper issues of workforce flexibility with regard to working time and practices. The ability to radically adjust wage rates in the face of economic shocks was seen by some as unachievable. However, this critique obscures the growing importance of learning and training, equality, and health and safety related issues within collective bargaining. Nevertheless, the inability to move away from a quantitative collective bargaining agenda, which emphasised minor or incremental changes (in whatever direction) in wages and working hours, and to adopt a qualitative one based on more substantive changes to employment practices and work routines through a much more flexible deployment of workers across space and time within a firm, began to be raised.

Third, critical voices to the right of the political spectrum began, even prior to the 2008 crisis, to undermine the partial social partnership consensus that had been generated on the European Union's 'periphery'.

In some respects, the critique of excessive institutionalisation was an emergent feature of countries such as Spain, although this sometimes came from new forums on the left, too, which were disillusioned with the proximity between the state and labour (see Fernández Rodríguez and Martínez Lucio 2013 for a discussion). There was a sense that organised labour was focusing its influence primarily on the sectoral and national levels, relying less on the workplace, as in Ireland and Spain. The debate in key parts of Europe was that trade unions were not present in a systematic way in various arenas and levels of the economy.

This concern emanated from various political quarters in the centre and on the right, which argued that the focus on the sectoral level was also a sign of growing weakness and lack of real and effective regulatory reach. Sectoral agreements allowed templates for discussion and local agreements to be developed locally, which did not bring to the negotiating table any significant measures on structural issues and labour market challenges. That is to say, it was argued that trade unions were using such regulatory processes to ensure some influence among a diversifying set of organisations and a workforce that was not always developing its own robust social dialogue and collective bargaining mechanisms and business-oriented involvement (see Ortiz 1998 for a comparison of the United Kingdom and Spain in the 1990s with regard to the presence of workplace systems of representation).

Finally – and unfortunately in the eyes of the authors of the present volume – much of this critique has been led by the Anglo-Saxon press, chiefly *The Economist* and the *Financial Times*, which have increasingly depicted the inflexibility of the countries with which we are concerned in terms of national stereotypes and even in a racist way. The term PIGS – to stand for Portugal, Italy, Greece and Spain – is racist, denoting undeveloped political systems (see Dainotto 2006 and, for a use of the term which raised formal complaints, Holloway 2008). Much of this discussion came at quite an early stage of the crisis and even before it in some instances. In the case of Spain labour market rigidities are seen as reflecting Spanish ‘laziness’ and immobility, a link to a darker Spain that plays on the notion of the ‘black legend’ (see Fernández Rodríguez and Martínez Lucio 2013 for a discussion).

4. The institutional response to the crisis at the European and national levels

4.1 European level

The Greek sovereign debt crisis of 2010, which since then has come to affect most peripheral economies in the European Union, exposed not only the structural weaknesses of certain EU member states, but also the weaknesses of governance of the euro zone. The structural problems of the Economic and Monetary Union (EMU) and their impact on the euro crisis are now fairly well understood (De Grauwe 2013): by joining EMU, member states lost both the external constraint of having to maintain a balance of payments and the capacity to respond to problems of inflation and unemployment through changes in the nominal exchange rate or the instruments of expansionary or restrictive monetary policy. Even though fiscal competences remained at national level, their use for expansionary purposes was severely restricted by the Stability and Growth Pact (Busch 2012). EMU membership generated structural strains because different types of political economy adopted a common currency: in this context, Portugal, Spain, Italy and Greece were often grouped together, as opposed to a group of northern countries led by Germany and including the Netherlands, Austria, Denmark and Finland (Hall 2012). Perceived characteristics of the former group included labour market rigidities (see Chapter 4) and a low administrative capacity for policy implementation, linking non-compliance with particular institutional and cultural deficiencies (La Spina and Sciortino 1993: 219–22).

From a labour law and industrial relations perspective, there is evidence to suggest that even with the gradual implementation of the EMU programme from the Maastricht Treaty onwards, and the deepening of single-market reforms, labour law at member state level did not undergo a fundamental change before the crisis.³ Part of the reason for this was a fundamental compatibility of labour law protection with the competitiveness agenda, which came to influence national and European policy-making at that time and which recognised the ‘beneficial constraints’ effect (Streeck 1997) of social policy on economic development and competitiveness. However, labour law regulation was unable to reverse the trend towards weaker collective bargaining systems and falling union density, and these developments, as they weakened

3. This paragraph draws on Deakin and Koukiadaki (2013).

the force of labour law protections on the ground, were responsible, at least in part, for the increase in inequality experienced in the large EU economies – as well as in the United States – during the period leading to the crisis. When the crisis of 2007–2008 emerged in the United States, connections between labour and financial markets meant that regulatory mismatches were transmitted from one market context to another, reinforcing and deepening the crisis (Deakin and Koukiadaki, 2013).

In the context of a deepening crisis affecting EU member states and challenging the European integration project, the institutional response at EU and member-state level evolved in different timeframes and in diverse ways. First, a number of EU member states received financial assistance programmes. The programmes can be divided into the following categories (Kilpatrick, 2014):

- (i) Non-euro-zone programmes: these have been introduced on the basis of Article 143 Treaty for the Functioning of the European Union (TFEU). This option has been used in the case of non-euro-zone member states, namely Hungary, Latvia and Romania.⁴
- (ii) Euro-zone programmes:
 - (a) bilateral (euro zone member states set up bilateral loans complemented by an IMF stand-by arrangement): provided financial assistance in the case of the first loan agreement for Greece (2010);
 - (b) European Financial Stabilisation Mechanism (EFSM) (on the basis of Article 122(2) TFEU):⁵ provided financial assistance in the cases of Ireland and Portugal;

4. Council Decision of 4 November 2008 providing Community medium-term financial assistance for Hungary (Decision 2009/103/EC). Council Decision of 20 January 2009 providing Community medium-term financial assistance for Latvia (Decision 2009/290/EC). Council Decision of 6 May 2009 providing Community medium-term financial assistance for Romania (Decision 2009/459/EC) amended by Decision 2010/183.

5. The EFSM was an emergency funding programme reliant upon funds raised on the financial markets and guaranteed by the European Commission, using the budget of the EU as collateral. Article 122(2) was used as the legal basis for Council Regulation 407/2010 ([2010] OJ L118/1), which stipulates the details of the mechanism.

- (c) European Financial Stability Facility (EFSF) (international agreement for the establishment of a private company under the control of the euro-zone member states):⁶ provided financial assistance to Ireland, Portugal and the second loan agreement for Greece;
- (d) European Stability Mechanism (ESM) (intergovernmental treaty):⁷ provided financial assistance to Cyprus.

On top of the financial assistance programmes directed towards individual states, the EU member states' coordinated response comprised a new set of rules on enhanced EU economic governance. These include the European Semester, the Six-Pack Regulations⁸ and the 2011 Fiscal Compact,⁹ denoting a new and challenging stage in the process of European integration and the direction of European social policy (Ioannou 2012). The European Semester – a mechanism by which the member states, after receiving EU-level recommendations, then submit their policy plans ('national measure programmes' and 'stability or convergence programmes') to be assessed at the EU level – constitutes a 'complex, multi-layered, multi-institutional process, which encourages, among other things, significant measures to labour law systems in some countries' (Barnard 2014: 7). This is because, within the framework of the European Semester, the Country-Specific Recommendations (CSRs) related to economic policy and employment under the European Semester procedure are adopted.¹⁰ As a result, EU member states become committed to economic policy coordination and are dissuaded from implementing policies that could endanger the proper functioning of EMU. In addition, employment comes at the centre of EU economic

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6. Decision of the Representatives of the Governments of the Euro Area Member States Meeting within the Council of the European Union, Council Document 9614/10 of 10 May 2010. The European Financial Stability Facility (EFSF) was created by the euro-area member states following the decisions taken on 9 May 2010 within the framework of the Ecofin Council.
 7. The ESM was preceded by an amendment of Article 136 TFEU to provide an explicit authorisation for the member states to have a funding mechanism. At present, the ESM is the main instrument for financing new programmes.
 8. European Council, 24/25 March 2001, Conclusions, 'Providing a new quality of economic policy coordination: the Euro Plus Pact'.
 9. European Council, 9 December 2011, Statement by the Euro Area Heads of State or Government, the aim being 'a new fiscal compact and strengthened economic policy coordination'.
 10. The recommendations referring to the Stability and Growth Pact are based on Council Regulation 1466/97 (OJ L 209, 2.8.1997) and those referring to the Macroeconomic Imbalance Procedure are based on Council Regulation 1176/2011 (OJ L 306/25, 23.11. 2011).

policy and member states are required to submit regular reports on their employment situation. Importantly, the Semester is underpinned by a Treaty-based system of surveillance and ex-post monitoring and recognises specific roles for the European Commission, the Council and the European Parliament. The European Semester mechanism was followed in 2011 by the so-called ‘Six-pack’ of five Regulations and one Directive, further reinforcing the Stability and Growth Pact. In March 2012, the intergovernmental Fiscal Compact (Treaty on Stability, Coordination and Governance in EMU (TSCG) was signed by 25 of the 27 EU member states, with the exception of the United Kingdom and the Czech Republic. The aim is to reinforce the Stability and Growth Pact and to introduce new control mechanisms. It requires national budgets to be in balance or in surplus and the rule has to be incorporated into national law within one year of the Treaty’s entry into force (Deakin 2014).

4.2 Implications of the EU’s institutional response for social dialogue and collective bargaining at national level

In the context of the financial assistance programmes received by member states, policies of ‘internal devaluation’ have been promulgated by supranational institutions. As we shall see in section 5, such policies involve, among other things, a set of structural measures in the area of labour law and industrial relations. In the absence of exchange rate flexibility, internal devaluation has been presented as the only feasible route to restore the competitiveness – in terms of unit labour costs – of the southern European member states in relation to Germany and other euro-zone states, including Austria and Finland (Deakin and Koukiadaki 2013). This competitiveness gap is in part the result of the social pacts that have depressed wage growth in the northern member states, as well as the high productivity achieved in part through the institutionalisation of workplace cooperation in those countries, but not so far replicated elsewhere (Johnston and Hancké 2009).

However, the focus of the reforms has been exclusively on labour market regulation issues. Indeed, an examination of the Council Decisions and Memoranda of Understanding (MoU) accompanying the financial assistance programmes received by the member states in crisis reveals that their provisions have been very intrusive in relation to national systems of labour law and industrial relations. An important aspect of

this intrusiveness is that they promulgate policies on a wide range of issues, including restrictions on social security benefits and cuts to state education and health care provision, as well as reducing minimum wages, extending the working week, removing legal support for multi-employer collective bargaining and encouraging fixed-term and temporary employment through changes to employment protection legislation. As Bruun (2014) has identified, the Troika has consistently focused not only on cutting wage costs but also on wage setting mechanisms and institutions. As we shall see in greater detail in section 5, a number of measures deal with extension mechanisms and derogations from higher level agreements.

With particular regard to wage determination and collective bargaining, DG ECFIN's report 'Labour Market Developments in Europe 2012' illustrates the objectives of the European Commission behind the structural measures imposed in return for financial support. Under the heading 'Employment-friendly Measures', DG ECFIN presented a long list of required 'structural reforms' which, apart from various issues of labour market deregulation (such as cuts in unemployment benefits, weakening of employment protection legislation and raising the retirement age) also has a subsection on the 'wage bargaining framework'. This includes the following suggestions: cut statutory and contractual minimum wages; reduce bargaining coverage; decrease (automatic) extension of collective agreements; 'reform' the bargaining system to make it less centralised, that is, by removing or limiting the favourability principle; introduce/extend the possibility to derogate from higher level agreements or to negotiate company-level agreements; promote measures that result in an overall reduction in the wage-setting power of trade unions (see also Schulten and Müller 2013). In a similar vein, the ECB noted in its 2012 working paper *European Labour Markets and the Crisis*:

More recently, the ongoing labour market reforms in countries such as Greece, Ireland, Portugal, Spain and Italy include some important measures to increase wage bargaining flexibility and reduce excessive employment protection, and constitute appropriate first steps to improve labour market and competitiveness performance in these countries and in the euro area as a whole.

The measures taken have been in line with the need to ensure wage moderation, but also to amend essential features of national collective labour law systems, setting a decentralised, company-based bargaining system as the benchmark. According to Schulten and Müller (2013), this is because it is believed that such a system allows companies to better adjust to varying economic developments. Early assessments of this rapidly changing regulatory framework for economic policy governance in the EU and the euro zone emphasised their crucial direct and indirect impact on labour law. According to Barnard, ‘the EU’s response to the crisis ... has presented a more pernicious threat to the workers: EU or EU/IMF sanctioned deregulation of employment rights at national level [risks] an EU-driven race to the bottom’ (Barnard 2012: 98).

From a procedural point of view, the degree to which due respect is paid to the outcomes of social partners’ agreements, if any, at domestic level is also significant. With particular regard to the role of the social partners, Article 152 TFEU reads ‘the Union recognises and promotes the role of social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.’ There is evidence to suggest that the conditionality required of member states does not respect the diversity of national systems, including the role ascribed to social partners and the principle of democracy. The lack of transparency and the conduct of dialogue in the MoU negotiations was recently criticised in a European Parliament resolution on the role of the Troika, which stressed the possible negative impact of such practices on political stability in the countries concerned and citizens’ trust in democracy and the European project (European Parliament 2014, point 30). This can be illustrated in relation to Portugal, Greece and Romania. On a positive note, the MoU in the case of Portugal stipulated that ‘measures in labour and social security legislation will be implemented after consultation of social partners, taking into account possible constitutional implications, and in respect of EU Directives and Core Labour Standards.’¹¹ In the case of Greece, no such provision was incorporated in the first programme, but the 2012 MoU that accompanied the second financial assistance programme included a similar provision to that of the Portuguese MoU. But while consultation rights were recognised with regard to Portugal and the second adjustment programme for Greece, the MoU in both cases fell short of explicitly stipulating that consultation

11. See: http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf, page 21.

should take place with a view to reaching agreement or that negotiation should take place between the social partners or with the government with regard to the extent and nature of the measures.

Furthermore, concerning social dialogue in practice, there is evidence to suggest that even where consultation provisions were included in the MoU – for example, that of Portugal – they were limited in some cases. In Portugal, discussions were held between a delegation of IMF, Commission and ECB officials with the employers' and trade union confederations soon after Portugal requested financial assistance. Two agreements with the social partners were reached but – notably – without the participation of the General Confederation of Portuguese Workers (CGTP). The first, entitled 'Tripartite Agreement for Competitiveness and Employment', contained a wide range of measures, including: the reduction of severance payments to 20 days per year of service; a 12-month limit on benefits with the maximum payment equivalent to 20 times the minimum wage and the creation of a fund to manage benefits. These measures were then included in the MoU concluded in May 2011. Importantly, the MoU introduced a number of additional measures on working time and industrial relations, including sectoral collective agreements and the conclusion of collective agreements by works councils. On 18 January 2012 and following extended negotiations, the Portuguese government reached a second agreement with the social partners, which addressed a series of structural measures; this was the so-called 'Commitment for Employment, Growth and Competitiveness'. The agreement contained a series of measures concerning revision of the Labour Code, as foreseen by the MoU, and substantially increased labour market 'flexibility', involving the reduction of severance pay, unemployment benefits and duration, loosening the definition of fair dismissal, making working hours more 'flexible' and facilitating collective agreements at company level. However, there is evidence to suggest that no social dialogue took place between the Portuguese government and the social partners with regard to the introduction of certain measures, notably the introduction of new regulations on the criteria for extension of collective agreements (Távora and Gonzalez 2016).

In the case of Greece, during the negotiations on the second financial assistance programme, the cross-sectoral social partners came to an agreement in February 2012.¹² In a letter sent to domestic political

12. Letter from the three employers' organisations (SEV, GSEVEE and ESEE) and the GSEE to Prime Minister Loukas Papademos, 3 February 2012, Athens.

actors, but also to EU institutional actors, they outlined their agreement concerning the preservation of the thirteenth- and fourteenth-month wage and minimum wage levels, as stipulated by the national general collective agreement, and maintenance of the after-effect of collective agreements. However, the Troika failed to pay the agreement due regard. On the basis that the outcome of the social dialogue to promote employment and competitiveness ‘fell short of expectations’ (Ministry of Finance 2012: 25) the 2012 MoU stipulated a number of further amendments to labour law that went against the agreement of the social partners. Similar to Greece, a protocol was concluded in Romania by the union leaders of the five confederations and the main opposition party in 2011 that involved a promise by the latter to reverse the labour market measures in exchange for the unions’ political support for the 2012 elections. But, as outlined in the country report on Romania (Trif 2016) the European Commission and the IMF objected to the draft law prepared by the union confederations on the basis of the process used to modify legislation and ‘strongly urged the authorities to limit any amendments to Law 62/2011 to revisions necessary to being the law into compliance with core ILO conventions’.¹³

Besides the substantive issues and the procedures for adopting these measures, an interesting feature is the inclusion – or not – of potential impact evaluation exercises or follow-up mechanisms in order to assess and correct any possible problems arising out of the measures. In the case of Portugal, a modification in the MoU was introduced in 2012, which provided that, in carrying out its monitoring duties, the Commission, together with the ECB and the IMF, was to ‘review the social impact of the agreed measures’ and to recommend necessary corrections in order to ‘minimise harmful social impacts, particularly on the most vulnerable parts of the society’.¹⁴ This provision was added, as it was not present in

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13. Joint Comments of European Commission and IMF Staff on Draft Emergency Ordinance to Amend Law 62/2011 on Social Dialogue (October 2012), at <http://www.ituc-csi.org/IMG/pdf/romania.pdf>. Among other things, the EC and the IMF opposed proposed changes concerning industrial action and the legal protection of employee representatives involved in collective bargaining, but agreed to the proposals on changes in the representativeness criteria for unions at local level and the number of members required to form a union.
 14. The paragraph reads: ‘In order to ensure the smooth implementation of the Programme’s conditionality, and to help to correct imbalances in a sustainable way, the Commission shall provide continued advice and guidance on fiscal, financial market and structural measures. Within the framework of the assistance to be provided to Portugal, together with the IMF and in liaison with the ECB, the Commission shall periodically review the effectiveness and economic and social impact of the agreed measures, and shall recommend necessary corrections with a view to enhancing growth and job creation, securing the necessary fiscal consolidation and minimising harmful social impacts, particularly on the most vulnerable parts of Portuguese society’ (emphasis added).

the original version, to Council Implementing Decision 2011/77/EU¹⁵ and Council Implementing Decision 2011/344/EU¹⁶ concerning Ireland and Portugal, respectively (Costamagna 2012). This kind of provision cannot be found in the decisions addressed to Greece in the first financial assistance programme. Neither was such a provision included in the Council Decision addressed to Greece on the second economic adjustment programme.

While Spain, Italy and Slovenia were not direct recipients of financial assistance programmes, there is evidence to suggest that other forms of intervention from supranational institutions – notably the CSRs under the European Semester procedure – have steered labour market measures in these countries as well.¹⁷ In the case of Spain, the ESM was the source of an assistance programme, provided only to the financial sector.¹⁸ Crucially, the programme was accompanied with a set of requirements regarding structural measures that was broadly similar to those of EU member states in receipt of financial assistance programmes.¹⁹ Furthermore, the insertion of limitations to public deficit levels in Article 135 of the Constitution was attributed to pressures from other EU member states and the ECB (Boto and Contreras 2012: 132). In this context, a secret letter by the ECB was sent to the Spanish Central Bank that outlined the nature and extent of measures, including in the labour market (De Witte and Kilpatrick 2014).

These developments highlight important issues with regard to the implications of the conduct of supranational institutions during the crisis for democratic dialogue and transparency in the process of adopting labour market policies. Furthermore, the 2012 labour law measures were precipitated partly by the European Semester Programme and the CSRs for Spain. These included, among other things, recommendations for decentralising collective bargaining by facilitating company-level derogations from higher labour standards, reducing the ‘after-effect’ period of collective agreements and introducing possibilities for concluding

15. Article 3(9).

16. Article 3(10).

17. It should be noted here that Greece, Ireland and Portugal did not receive any additional recommendations under the European Semester procedure but were in general recommended to implement their respective MoU (see Table 4).

18. The ESM disbursed a total of 41.3 billion euros to the Spanish government for the recapitalisation of the country’s banking sector. On 31 December 2013, the ESM financial assistance programme for Spain expired.

19. The structural measures were implemented under the Excessive Deficit and Macroeconomic Imbalances procedures.

company agreements by non-union groups of employees (Schulten and Müller 2013). But, as Barnard explains, neither the Spanish Parliament, nor trade unions were involved in the discussions, which were confined to civil servants and advisers (Barnard 2014: 7).

Similarly, despite the fact that Italy did not receive any financial assistance programme, there was evidence of significant pressures exerted by the ECB and the European Commission with a view to introducing similar measures in its labour market. First of all, Italy was also the recipient of CSRs for promoting labour market flexibility in individual labour law and changes were called for in the collective bargaining system in order to promote productivity. For example, recommendations were made for decentralisation of collective bargaining by facilitating company-level derogations and wage moderation in general. A number of policies introduced since 2011 also bear a strong resemblance to a ‘secret letter’ to the then Italian prime minister signed jointly by both the incoming and outgoing presidents of the ECB and outlining structural measures similar to those in the CSRs.²⁰ Finally, Slovenia, which was also struggling in the crisis, did not become the subject of a complete financial assistance programme but still received important EU instructions with a social focus. For instance, the 2010 exit strategy prepared by the Slovenian government was significantly influenced by the EC Recovery Plan (Stanojević and Kanjuro Mrčela 2016). On top of these, the CSRs included proposals on minimum wages and wage moderation. Consistent with the latter, the 2010 plan defined a set of structural measures, including with regard to labour law and social security.

4.3 Assessment of the role of supranational institutions in the national labour market measures

While one would expect that the crisis would halt, at least temporarily, the project of European integration, the evidence from the research project suggests otherwise, at least in the area of EU social policy and industrial relations. First, in terms of subject matter, the financial assistance programmes for those EU member states principally affected by the crisis touch upon ‘many key aspects of national welfare regimes in a way that seems to go far beyond the limits imposed by the Treaties on the EU’s

20. See http://www.corriere.it/economia/11_agosto_08/lettera-trichet_238bf868-c17e-11e0-9d6c-129de315fa51.shtml.

capacity to intervene in this field' (Costamagna 2012: 15). Importantly, Article 153(5) TFEU rules out any EU intervention with the intention of harmonising wages and collective bargaining. The exclusion of wage policy competence from the TFEU can be contrasted with the recurrent reference in the MoUs of the enforcement of wage moderation, imposed on national social partners in ways that sometimes constitute, as the ILO points out, an undue invasion of collective autonomy, as well as a violation of core labour rights (ILO 2012a). In a similar vein, the role of supranational institutions (mainly the ECB and the European Commission) has been instrumental in the adoption and implementation of labour market measures in the other countries (Italy, Spain and Slovenia). In response to these developments, which challenge the scope of EU competence in the area of social policy, 'legal mobilisation' strategies have been developed involving the EU Courts, albeit with no success so far.²¹

At the same time, the approach of the supranational institutions to the normative elements of the policies promulgated at national level challenges the pre-existing consensus on the European Social Model. The latter was traditionally characterised by its unique dual focus on economic and social principles, including a high coverage rate of collective agreements and a designated role for trade unions and employers. In its 2010 Industrial Relations in Europe Report, the Commission noted that voluntary collective bargaining plays a key role in industrial relations and is a defining element in social partnership within and beyond the EU (European Commission 2010). This can be contrasted with the view of ECB President Mario Draghi, who pronounced the European Social Model dead in a February 2012 blog for *The Wall Street Journal*: 'The European social model has already gone when we see the youth unemployment rates prevailing in some countries'. He later resurrected it in *Die Zeit*: 'Competition and labour markets have to be reinvigorated. Banks have to conform to the highest regulatory standards and focus on serving the real economy. This is not the end, but the renewal of the European social model' (Draghi 2012).

Equally important, in terms of regulatory instruments, there has been an increase in harder forms of intervention, including, for instance, placing

21. See, among others, Case T-541/10, *AEDY and Others v Council*, OJ C 26/45, 26.1.2013; Case T-215/11, *AEDY and Others v Council*, OJ C 26/45, 26.1.2013; C-128/12, *Sindicato dos Bancários do Norte and Others v BPN – Banco Português de Negócios, SA*, OJ C 151; C-434/11 *Corpul Național al Polițiștilor*, Order of 14 December 2011; C-134/12 *Corpul Național al Polițiștilor*, Order of 10 May 2012; C-462/11 *Cozman*, Order of 14 December 2012. For an analysis, see Kilpatrick (2014) and Koukiadaki (2014).

member states under the EU's 'multilateral surveillance procedure' and imposing sanctions in case of non-compliance. This marks a significant departure from the previous EU approach of largely limiting itself to making more or less non-binding recommendations on national wage and labour market policies as part of its economic and employment policy guidelines. In the past, as Busch *et al.* suggest, 'at most, it [the EU] sought to influence national developments within the framework of "soft" forms of governance, such as the "Open Method of Coordination", by propagating international best practices' (Busch *et al.* 2013). However, the decision-making and coercive sanctioning powers that the Commission has acquired in the context of the European Semester process and the fact that EU member states may face financial sanctions if they are made subject to the Stability Pact's Excessive Deficit Procedure (EDP) and the Excessive Imbalance Procedure (EIP) points to the adoption of 'harder' forms of regulation and governance with significant implications both for national systems of labour market regulation and for European integration. Nevertheless, in relation to issues of process, there was evidence of a lack of transparency and conduct of dialogue in the MoU negotiations. In a recent study, Eurofound (2014) also reported that the ongoing pressures of globalisation and the economic crisis have created a tendency for governments to decide on and implement interventions very quickly, often without properly consulting the social partners. This was recently criticised in the European Parliament's resolution on the role of the Troika (which we have already mentioned), which stressed the possible negative impact of such practices on political stability in the countries affected and on citizens' trust in democracy and the European project.²²

Based on these developments, it can be argued that the economic crisis has accelerated European integration and there is evidence of a transfer of decision-making on labour law and industrial relations from the national to the supranational level. At the same time, the normative goals of European social policy in the field of industrial relations have been re-orientated, moving away from the pre-crisis European Social Model to the postulates of neoliberalism, which demands labour market 'flexibility' to compensate for 'rigidities' elsewhere, including, in this case, the effects of a strict monetary policy (Deakin and Koukiadaki 2013).

22. European Parliament resolution of 13 March 2014 on the enquiry into the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries (2013/2277(INI)), point 30.

Table 4 Commitments and recommendations on wage policy in the EU member states, 2011–2014

Country	Euro Plus Pact commitments in 2011	European semester recommendations for 2011/2012	European semester recommendations for 2012/2013	European semester recommendations for 2013/2014	Financial assistance programmes
Greece	Wage setting mechanisms	Implement commitments under financial assistance programmes	Implement commitments under financial assistance programmes	Implement commitments under financial assistance programmes	Change annual update mechanism for minimum wage
Ireland	Wage setting mechanisms	Implement commitments under financial assistance programmes	Implement commitments under financial assistance programmes	Implement commitments under financial assistance programmes	Wages not directly addressed
Italy	Wage setting mechanisms	Ensure that wage growth better reflects productivity developments	Monitor and, if needed, reinforce implementation of the new wage setting framework	Ensure effective implementation of wage setting measures	No
Portugal	Wage setting mechanisms	Implement commitments under Memorandum of Understanding of 17 May 2011	Implement commitments under Memorandum of Understanding of 17 May 2011	Implement commitments under Memorandum of Understanding of 17 May 2011	Freeze wages in the government sector (nominal) 2012–2013; promote wage adjustments in line with productivity at the firm level
Romania	Wage setting mechanisms Public sector wage developments	Implement commitments under Memoranda of Understanding (June 2009 and June 2011)	Implement commitments under Memoranda of Understanding (June 2009 and June 2011)	Complete the EU/IMF financial assistance programme	Wages not directly addressed
Slovenia	Wage setting mechanisms	–	Ensure wage growth supports competitiveness and job creation	Ensure wage growth supports competitiveness and job creation	No

Source: Marginson and Welz, 2014.

4.4 The role of national-level social actors in the adoption of measures: undermining social dialogue and solidarity

The measures taken on collective bargaining and labour relations generally have been exhaustive. We shall look at the range of actors involved in the adoption of such measures and the extent to which social dialogue has influenced the extent and nature of the labour market changes. The process by which labour relations measures are adopted has been subject to all manner of direct and indirect influences and the role of social dialogue has been limited, to say the least. The social dialogue gains of previous years have been marginalised, despite a number of curious ironies.

Within the various contexts the social and political dimensions of labour relations have been recalibrated and destabilised by efforts to exploit the crisis to push through certain labour measures, as already mentioned. These were based on the narrative that labour market measures – both collective and individual – are necessary in exchange for financial support and supranational coordination. The question of economic ‘solidarity’ between and within nation states has been developed, or rather redefined, within a neoliberal framework, based on the argument that allegedly ‘antiquated’ labour systems have to be replaced. Labour, in other words, is portrayed as an obstacle to modernisation and measures designed to reduce general labour costs are presented as the only means of achieving long-term economic development and renewal. This is a basic productivity model approach to economic development, based on orthodox notions of competition. Hence, labour becomes the object of measures applied and of disciplinary processes, purportedly to ensure the future income generation capable of stabilising the European economy. It is very much a matter for debate whether labour is the source of the economic crisis and the EU’s financial difficulties, but it has certainly been taken as a target for intervention in the official response to the European crisis.

The role of the supranational institutions has been key across the board, although it is important to note that they have operated through national organisations and national ‘allies’ of the Troika. The manner in which political alliances are constructed for the purpose of implementing labour market measures and the ways in which traditional forms of social dialogue are engaged with need careful discussion. At the heart of these

developments is the formal discussion and negotiation of Memoranda of Understanding (MoU), which focus mainly on what nation states must do domestically in return for external support from international bodies. These are seen as mere political facades by some critics, disguising a further neoliberal shift in policy-making.

In the case of Greece, initial attempts at dialogue took place in response to the loans provided for the country. The Troika initially focused on pay freezes, as in Spain. The initial developments in terms of quantitative constraints, which did not undermine the basic form and content of collective agreements, were common. The use of direct cuts in public sector pay was also an initial point of departure for national governments in response to the Troika's demands. Public sector pay and minimum wages were a key target because of their easy accessibility and, in some cases, due to the distinctive collective bargaining traditions attached to them. In Ireland, cutting the national minimum wage was one of the first measures, which once more reflected the cost-based and short-term approach taken by the authorities. The MoUs were a focus for measures to be taken within the state, although initially measures applied to wage levels and wage containment, against the background of talk of panic and crisis. The state resorted to direct intervention in terms of the contents of collective bargaining. These changes were not, in the main, sought through national agreement. In some cases there were attempts to include a broad set of social partners in discussions on labour market measures, although in the initial stages these were influenced by the climate of national emergency and related discourses of national salvation.

The move to unilateral action on the part of the state was seen as a response to a specific set of conditions externally imposed on the nation, which enabled governments to shift culpability and legitimise the lack of social dialogue by means of the first wave of emergency measures. In Italy, the initial discussions focused on measures to support those effected by the crisis in the first instance and there were signs of social dialogue for a short while, in terms of labour market alleviation measures (Colombo and Regalia 2016). The crisis of the state in Italy linked to controversies surrounding Prime Minister Berlusconi compounded the problems affecting social dialogue and its diffusion.

In Portugal, the MoU was seen to require the support and legitimacy of the main political parties and political dialogue seemed to be extensive during the initial period, although concrete measures were not much in evidence at that stage. Central to the situation in Portugal has been a desire for a consistent cross-party response to the Troika and clear negotiations. This was required because the negotiations on the assistance programme took place under a caretaker government after the fall of the socialist government and before the elections, in order to secure implementation of the programme irrespective of which party won the elections (Távora and Gonzalez 2016). This led to agreements on the need for changes and revisions of the Labour Code oriented towards competitiveness in exchange for various social and employment provisions of support in 2012, although not all trade unions signed. What emerges in relation to Portugal is how the emergence of a divided labour movement facilitated a truncated form of social dialogue throughout the crisis. This could perhaps be explained by the ways in which the Portuguese state has created a more complex form of alliances and tacit agreements with most of the social partners and political actors through a *discourse of equivalence* (Laclau and Mouffe 1984), which claims that the nation is besieged and requires unity in the face of external threats. While the far left has not been central to this political process and discourse and thus the Portuguese situation contrasts with that of Greece, where many trade unions and social movements have exercised strong opposition to a state which has been less able to create popular alliances around labour market measures and change, and the crisis generally.

In central and eastern Europe we see a more extreme approach that basically questions and even denies the role of social dialogue. The two national loans for Romania in 2010 were based on a similar set of agreements. The centre-right government had already developed a discourse of antagonism towards labour relations and, similar to Spain (which we will discuss below), has adopted a more 'market'-oriented agenda. As with other countries the initial engagement with the crisis was based on cutting public sector wages by 25 per cent (Trif 2016) and making changes to a range of social benefits. This initial quantitative stage of the response, which focused on income, was premised on controlling those aspects of the labour relations system that are directly accessible. It required, as in Spain, the stigmatisation of public sector workers and their supposed privileged status in the labour market. Hence, the policies

rested on a political discourse of stigma similar to that of the New Right in the United States and the United Kingdom, which first emerged in the 1980s, with labour being portrayed as problematic and inward-looking (Hall 1988). Labour and 'government' are seen as barriers to progress and policy measures are legitimised by drawing an ideological line, excluding those who are seen as unable or unwilling to 'sacrifice' in the current context.

This antagonism towards labour relations was never really apparent in Romania in the past (Ban 2014, quoted in Trif 2016) and in the case of Slovenia has played less of a role, although the elements are present. However, as the crisis developed, the antagonism of political discourse towards the labour relations system also gained ground in Romania, very much fostered by the centre-right government, which called for a radical decentralisation of bargaining and the transformation of labour rights. This was done by means of amendments of the Labour Code and by making it easier to dismiss workers, as well as by undermining sectoral agreements in terms of union and employer representativeness. These changes to representativeness criteria mean that it is harder for legitimate sectoral agreements to be signed. The change in government in 2012 did not bring any major reversal of these measures and the extent of social dialogue has been seriously limited and weakened. The latter phases of the post-2008 period in the countries under examination appear to have followed the Romanian path, although within a context of some social engagement and public dialogue in Greece, Italy, Portugal and Spain. In general, one can see a pattern emerging which is important for understanding how dialogue on change has emerged, especially after the first stage of 'quantitative' responses.

The role of the social actors in the adoption of measures is complex. In some cases they have been reluctant to engage and even when they have, they focused on specific types of measures of a piecemeal nature, with very few concessions in terms of workers' rights or social support. First, there have been increasing provisions enabling employers to opt out of agreements on the basis of adverse economic circumstances. Generally speaking, national governments have driven this forward in explicit or covert alliance with employers. That is not to say that employers have wholeheartedly agreed with these measures or have not expressed concern about them (as we show in later sections). However, this aspect of the measures implemented has tended to involve the trade union movement

much less and has been based on using direct legislative means. As we saw earlier, in most cases public sector pay has been cut substantially, but in relation to the private sector government action has been most evident in relation to sectoral agreements. In Ireland and Spain, the ability to opt out of pay clauses, for example, was challenged in court, although unsuccessfully. In Portugal, some tripartite discussions in March 2011 did manage to achieve a level of agreement on decentralising bargaining and reducing dismissal costs, but this involved only one part of the trade union movement and reinforced divisions in Portuguese industrial relations. However, these agreements and the attempt at social dialogue were unable to create a general framework of support and consensus as further austerity measures came to be adopted. In fact, as previous measures that had been presented as temporary remained in place and the pursuit of austerity was intensified, the previous weak consensus collapsed. Much of this may be due to the fact that social dialogue requires stable processes and reciprocal arrangements over time. The manner in which measures have been implemented, compressed into such a short period of time, means that there are fundamental limits on establishing a more comprehensive approach to gains and concessions.

Many of these measures are in direct response to the paradigm shift in the contents of MoUs and in the Troika, which extol the decentralisation of collective bargaining as a panacea for both the crisis and the structural problems facing the European economy. Part of the liberal market approach is a belief that workplaces and firms need to develop more internally flexible labour markets and have greater flexibility to hire and fire. Hence, secondly, a range of major rights providing employees with some compensation for labour market changes and restructuring have been removed from systematic national dialogue in most cases. The fundamental policy shift with regard to resources and representativeness thresholds has not been the subject of any significant social dialogue and debate. In Italy, trade unions criticised the fact that they were not given an opportunity to debate the measures implemented by the Monti government in 2011–2012 and there was sense that the progress made in previous years in reforming the system of redundancy payments and pensions, for example, had not been built on, but instead had been pushed to one side.

Third, in addition to collective bargaining measures, trade union rights have been eroded. Representativeness thresholds for the purpose of

collective bargaining have been changed in various countries, such as Romania, as we will discuss later. What is more, there has been a systematic calling into question of labour representation, with campaigns in countries such as Spain, where, for ideological reasons, the trade union movement have been portrayed in highly negative terms and previous trade union legislation prohibiting limited picketing has been invoked, leading to the arrest of trade union representatives.

Fourth, this is not to say that there have been no government negotiations with the social partners across a range of issues. In Spain, we have seen partial agreements on pensions and there have been a number of training agreements and provision of funds. In Portugal, there have been partial negotiations on developing some forms of support for workers in relation to the effects of unemployment. The key issue there was that the social partners were involved in decision-making, although the two unions had different responses: UGT signed agreements that paved the way for the measures implemented, whereas CGTP opposed them and organised protests, strikes and demonstrations throughout the crisis period. As the government progressively reneged on elements of the agreements UGT joined CGTP in these protests. Employers at certain points also protested against excessive austerity and accused the government of reneging on agreements covering a range of issues, including measures to stimulate growth and commitments to support social dialogue and collective bargaining. In Greece the second loan agreement saw some attempt to involve the social partners but this was not as successful: although it was agreed to keep certain aspects of the wage system, such as the thirteenth- and fourteenth-month payments, and to maintain minimum wage levels, the pressure from the Troika continued and eventually there was a move towards legal mobilisation and pressure as social dialogue faded. Challenges to government decisions have led trade unions to resort to the ILO and other supranational bodies beyond the core reforming institutions: this has been done to obtain support for arguments that many of the measures implemented undermine basic ILO Conventions (this is addressed in more detail in later sections).

Fifth, the resources available for worker training and development have been limited in all cases, due to the nature of the crisis and the fiscal deficit. This means that the development role of the social partners in this area has been steadily eroded, although some funds have been targeted on younger workers in, for example, Italy and Spain, perhaps because of

the alarming levels of youth unemployment in those countries. However, negotiating specific types of ‘alleviating’ policies, which may be seen to legitimate national austerity policies, is a high-risk manoeuvre for many trade unions.

The political and social pressures on the trade union movement have emerged from various directions, not just the Troika or the national governments forcing measures through. As time has gone by, the effects of the measures implemented and the continuing inability of the trade union movement to respond to them effectively, both politically and in practice, has to some extent called the trade unions’ legitimacy into question.

5. The content of the measures in the area of labour law and industrial relations

One essential aspect of the economic crisis in Europe and its management is the making of wide-ranging – sometimes dramatic – amendments to labour market regulation, including national systems of collective bargaining and wage determination. All the EU member states included in the present study have adopted significant labour market measures since the start of the economic crisis. As illustrated in section 4, the majority of these EU member states have been subjected to specific conditions set out in loan agreements and the accompanying Memoranda of Understanding (MoU): Greece, Ireland, Portugal and Romania. While Italy, Slovenia and Spain have not been subject to such assistance (with the exception of the financial sector in the case of Spain), they have been subject to reinforced budgetary rules, reinforced Excessive Deficit Procedures and a Macroeconomic Imbalances Procedure. Moreover, the ECB’s ‘secret’ letters to Italy and Spain were instrumental in determining the nature and extent of labour market measures later promulgated at domestic level (see section 4).

In this context, in this section we identify the most important changes made to employment protection legislation and collective bargaining. Particular attention will be paid to measures with the potential to alter the existing configuration of managerial prerogative, joint regulation by management and unions and state intervention by, for instance, replacing contractually agreed terms with statutory ones. We then provide a

critical assessment of the scope of the measures, their nature and their potential implications for domestic systems of wage determination and collective bargaining.

5.1 Changes in employment protection legislation, atypical employment and working time²³

With a view to promoting a ‘competitive climate’ by increasing labour market flexibility, youth employment and creating new forms of work, wide-ranging changes have been introduced in national labour law. The measures in this area were consistent with the critique advanced against some EU member states concerning labour market rigidities, with particular emphasis on dismissal protection and atypical employment. This meant that the amendments targeted a number of issues related to employment protection legislation, including dismissal protection, flexible forms of employment and working time (see also Deakin and Koukiadaki 2013).

First, based on the alleged need to reduce labour costs, significant alterations have been made in the regulation of individual and collective dismissal. In Greece, Spain and Portugal the notification period for individual dismissals and dismissal compensation was reduced.²⁴ Furthermore, the grounds for dismissal were extended in Spain and Portugal.²⁵ In Italy, recent legislation provides for the replacement of reinstatement with compensation in the case of unlawful dismissals due to economic or other objective reasons; caps were also introduced with regard to dismissal compensation in certain cases.²⁶ With regard to collective dismissals, changes were introduced to thresholds in

23. The measures implemented in the public sector are not discussed, as the latter is outside the scope of the present research project.

24. In Greece, see Law 3863/2010. In addition, during negotiations in autumn 2012, the Troika demanded further changes, namely the reduction of the notification period from six to three months, and the reduction of dismissal compensation from 24 months to 12 months maximum. In Portugal, the amendments to dismissal legislation aimed specifically at aligning (by reducing) dismissal compensation to the average level in the EU and providing for a common legal framework for open-ended and fixed-term contracts alike (see Law 53/2011 and Law 23/2012). In Spain, see Royal Decree 10/2010 and Law 3/2012.

25. But in Portugal, within one year of these measures being implemented, the Constitutional Court partly revoked the changes facilitating dismissal of workers on grounds of unsuitability and job extinction (Acórdão do Tribunal Constitucional n.º 602/2013, 22/10/2013).

26. See Act 92/2012. The judge can still decide for reinstatement when the economic reasons were found to be ‘patently non-existent’.

Greece.²⁷ In other EU member states, amendments were made to the procedures governing redundancies by reducing advance notice (Spain and Portugal) and by removing the requirement for authorisation of redundancies by the public authorities (Spain).²⁸ In Slovenia, the 2013 Employment Relations Act (ZDR-1) reduced the notice periods for dismissals and simplified the dismissal procedure. In Ireland, the Social Welfare Act 2012 abolished the entitlement of employers to claim a redundancy rebate for any statutory redundancy payments made after 1 January 2013 (the rebate had been reduced from 60 per cent to 15 per cent in the Social Welfare Act 2011).

Furthermore, a number of changes were introduced with regard to atypical forms of employment. In Greece, the probationary period of open-ended employment contracts was increased from two to 12 months, which introduced a new form of fixed-term employment contract of one year's duration into the labour market.²⁹ In Spain, a new type of contract that provides social security benefits (tax breaks and reductions in social security contributions), as well as labour law benefits (one-year probationary period with the possibility to end the contract at will during that time) was created with the aim of encouraging companies to recruit certain categories of employees (unemployed and women).³⁰ In Romania, the probationary period was extended from 30 to 90 days for workers and from 90 to 120 days for managers;³¹ changes were also made with regard to fixed-term work.³² In Greece, the maximum duration of fixed-term contracts was extended from two to three years. In Portugal, the 2012 and 2013 measures provided greater scope for additional, extraordinary renewals of fixed-term contracts.³³

In Spain, Law 3/2012 stipulated the conversion of fixed-term contracts to open-ended ones if employment exceeds two years of service under successive contracts. In addition, Royal Decree 1796/2010 laid down provisions for the operation of private placement agencies. In Italy,

27. Law 3863/2010.

28. Law 3/2012 and Law 76/2013.

29. Law 3899/2010.

30. This type of contract can be used only by companies that employ fewer than 50 employees and provides the benefit of lower social security contributions for employers (see Law 3/2012). The possibility of concluding such contracts will remain in force until the unemployment rate falls below 15 per cent.

31. Article 31(1) of the Labour Code.

32. In Italy, Act 92/2012 aims to limit the improper use of flexible contracts.

33. Law 3/2012.

Act 92/2012 stipulates that there is no need for the specific indication of an objective business need in the case of first fixed-term contracts, for a maximum period of 12 months. In Romania, the maximum length of fixed-term contracts was also extended from 24 to 36 months.³⁴ Furthermore, as a result of the changes in Article 96(2) of the Labour Code, the minimum wages of temporary workers are no longer the wages received by the employees of the user, but the national minimum wage (Chivu *et al.* 2013: 29–30). In Slovenia, recent changes focused on limiting the use of fixed-term employment, although that was combined with the increasing (external) flexibilisation of ‘rigid’ forms of employment in terms of dismissal protection (Stanojević and Kanjuo Mrčela 2016).³⁵

Managerial prerogative was reinforced by amendments to the regulation of working time (Deakin and Koukiadaki 2013). In turn, this may imply a shift in the role of collective bargaining/consultation with employee representatives (whether unions or otherwise) on such issues. In Portugal, Law 23/2012 provided for the reduction of additional overtime by 50 per cent and the elimination of compensatory time-off and a number of public holidays. It also expanded the legal regime of ‘working time accounts’ by allowing the conclusion of agreements between the employer and individual employees and the application of the scheme to employees not covered by collective agreements.³⁶ In addition, the legal framework concerning the temporary reduction of working time and suspension of employment due to business difficulties was extended to allow more flexibility for the employer.³⁷ In Italy, the Stability Act 2012 provided for the possibility to include flexibility clauses in part-time contracts empowering the employer to modify the duration of working time or its distribution.³⁸ In Spain, Law 3/2012 introduced a number of measures designed to promote working time flexibility, including abolition of the prohibition of overtime in part-time work; the extension of the scope for flexible allocation of working hours over a year;³⁹ and

34. In addition, the list of accepted justifications for concluding fixed-term contracts was extended. For instance, the employer is now able to conclude such contracts not only in the case of increased activity, but also in the case of decreased activity, or indeed, of any structural modification to the activity (for an analysis, see Chivu *et al.* 2013).

35. Employment Relationships Act 2013 (ZDR-1).

36. For a discussion, see Canas (2012), 86.

37. See Law 23/2012.

38. Art 22(4).

39. Royal Decree 7/2010 had initially provided that collective agreements should identify a minimum and maximum limit of working time that could be distributed irregularly throughout the year.

the abolition of a requirement on employers to obtain permission from the public authorities in order to temporarily reduce working hours or to implement temporary lay-offs. In addition, employers acquired the right to move employees within occupational groups, if this can be justified for technical or organisational reasons.⁴⁰

In Greece, the period of short-time working was extended to nine months per year and the scope for concluding agreements between employers and unions on working time arrangements at company level was extended.⁴¹ In addition, new possibilities were provided for determining working time arrangements, including extension of the period for calculating working time from four to six months and the provision of compensatory time-off instead of pecuniary payment for overtime.⁴² In Romania, employers were given the scope to unilaterally reduce the working week and corresponding wages from five to four days.⁴³ Furthermore, the reference period for calculating maximum weekly working time, which cannot exceed 48 hours, has been extended. Until now, Romanian law has stipulated a reference period of only three months, which was a more favourable legal norm than that stipulated in Directive 2003/88/EC. Accordingly, the new law extends the reference time period to four months.⁴⁴ The employer is also now able to compensate for overtime not within 30 days (as it was before March 2011), but within 60 days. Finally, it has become possible to grant free days in advance, in order to compensate future overtime.

40. Law 3/2012.

41. It is important to note that so-called 'associations of persons' acquired the right to negotiate working time arrangements.

42. Law 3986/2011.

43. According to Article 52(3) of the Labour Code, 'in case of temporary reduction of activity, for either economic, technological, structural or any similar reasons, for periods exceeding 30 working days, the employer shall have the possibility to reduce working time from 5 to 4 days per week, and to reduce wages accordingly, until the cause that led to the reduction of working time disappears, after prior consultations with the representative union at company level or with the representative of the employees, as the case may be.'

44. The Labour Code provides that collective bargaining agreements can derogate by providing reference periods of time longer than four months, but not exceeding six months. With a requirement of complying with the regulations on employee health and safety, for objective reasons, either technical or related to work organisation, collective bargaining agreements can even derogate for longer reference periods than four months but not exceeding 12 months (Chivu *et al.* 2013: 32).

5.2 Changes in wage-setting and collective bargaining systems

Particular efforts have been made to alter existing wage setting systems, as well as procedures for collective bargaining, mediation and arbitration. The changes were in line with the need to ensure wage moderation but also to amend essential features of the collective bargaining systems.

In terms of wage moderation, the first changes were made to the contents of collective agreements and directly at statutory wage levels. In Greece, legislation was introduced in 2010⁴⁵ providing that arbitration awards issued by the Organisation for Mediation and Arbitration (OMED) would be of no legal effect in so far as they provided for wage increases for 2010 and the first semester of 2011. In 2012, an immediate realignment of the minimum wage level, as determined by the national general collective agreement, was introduced, resulting in a 22 per cent cut at all levels based on seniority, marital status and whether wages were paid daily or monthly.⁴⁶ Later, a freeze in the minimum wage was prescribed until the end of the programme period in 2015. In addition, clauses in the law and in collective agreements that provided for automatic wage increases dependent on time, including those based on seniority, were suspended, until unemployment falls below 10 per cent.⁴⁷

In Portugal, Law 23/2012 imposed restrictions on collective bargaining, prohibiting the provision of more favourable terms – for example, concerning overtime pay – through collective agreements for two years, but was partially overturned by the Constitutional Court.⁴⁸ In addition, the national minimum wage was frozen at 485 euros in 2011, breaching a historical tripartite agreement with all the social partners to increase the national minimum wage to 500 euros in 2011. In Ireland, the 2009 recovery plan included a suspension of the private sector pay agreement negotiated under the so-called ‘Towards 2016’ social partnership

45. Article 51 of Law 3871/2010 on ‘Financial Management and Responsibility’.

46. A further 10 per cent cut for young people, which applies generally without any restrictive conditions (under the age of 25) was stipulated as well, and with regard to apprentices, the minimum wage now stands at 68 per cent of the level determined by the national agreement.

47. Act 6 of 28 February 2012 of the Ministerial Council.

48. The Court found against the restrictions on collectively agreed pay rates for overtime work after the expiry of the two-year temporary period, which was due to end on 31 July 2014. Responding to employers’ demands, the government recently approved a new law (48-A/2014) in parliament extending the suspension period until the end of the year. It is useful to add that the 2009 and 2012 labour measures provided that collective agreements could only set more favourable conditions than legislation in certain specified areas, many of which concerned equality and discrimination.

agreement, except in certain circumstances. However, the 12.5 per cent cut in the minimum wage for new hires, which had become applicable in February 2011, was reversed when the Fine Gael/Labour coalition came to power in March 2011. In Spain, Act 3/2012 also introduced the possibility for employers to opt out from collective bargaining, if the enterprise records a drop in its revenues or sales for six consecutive months. In Romania, the tripartite agreement on the evolution of the minimum wage and on the minimum wage/average salary ratio over the period 2008–2014 was abolished.⁴⁹

A range of measures were also introduced with the objective of moving wage setting closer to the company level. In Greece, recent legislation provided that all firms have the capacity to conclude firm-level collective agreements that derogate *in pejus* from sectoral agreements.⁵⁰ In addition, during the application of the Medium-Term Fiscal Strategy Framework, there was a temporary suspension of the principle of favourability in the case of the concurrent implementation of sectoral and firm-level collective agreements. In Italy and in line with the ECB recommendations, as outlined in the ‘secret letter’, legislation for the first time provided the possibility for so-called ‘proximity agreements’ at company and territorial level to derogate from the statutory provisions on ‘all aspects of labour organisation and production’, including: working hours, fixed-term work contracts, part-time work contracts, temporary agency work, hiring procedures and dismissals.⁵¹ While the resulting agreements still have to conform with the Italian Constitution, EU norms and international requirements, the changes represented a radical shift concerning the role of legislation in laying down labour standards.⁵²

In Portugal, the government’s commitments to the Troika foresaw major changes in the collective bargaining system, including the creation of a possibility for collective agreements to define conditions

49. The agreement was signed on 25 July 2008 by the government of Romania with all 13 employer confederations and all five national trade union confederations that were representative at the time.

50. Law 4024/2011.

51. With some exceptions (such as discriminatory dismissal, pregnant workers, mothers with babies under the age of one, dismissal during maternity leave, or dismissal of employees who have requested parental or adoption leave). The 2009 agreement signed by Confindustria, UIL and CISL introduced the possibility of ‘opting-out clauses’ in relation to national agreements in order to cope with territorial or economic crises or to foster economic growth.

52. For an analysis of this, as well as the Fiat agreements that made use of this option, see Loi (2012), 268–270.

under which works councils can negotiate functional and geographical mobility, working time arrangements and remuneration. Similarly, in Spain, the government enacted a series of labour laws that modified collective bargaining rules. The most recent law decentralised collective bargaining to a greater degree than the measures brought in by the previous government. Similar to the previous legislation (Royal Decree 7/2011), the new legislation (Law 3/2012) gives precedence to company-level agreements over sectoral and provincial agreements in areas such as pay, working time, work organisation and work/life balance.⁵³ In Slovenia, the 2013 Employment Relations Act introduced possibilities for derogations from the statutory provisions via bargaining on a number of issues, including overtime work, working time organisation, minimum notice periods and employment conditions related to fixed-term and agency workers. The act does not define any time limits on such derogations or any particular justification that employers need to show when applying a derogation.

Besides promoting company-level bargaining, there were changes with regard to state support for extending collective agreements at sectoral level. In some EU member states, changes concerned the criteria for extension. In Portugal, changes were introduced in 2012 in the representativeness criteria used for the extension of collective agreements. In this case, a collective agreement could be extended only if the firms represented by the employers' association employ at least 50 per cent of the workers in the industry, region and occupation to which the agreement applied. In 2014, further changes were announced that were intended to reflect the national economy more accurately, paying attention to the nature of employers' associations' membership, that is, whether they include SMEs. The case of Greece represented a rather extreme case in this category, because extension of sectoral and occupational collective agreements was suspended during the application of the Medium-Term Fiscal Strategy Framework.⁵⁴ Similarly, in Romania, changes included the replacement of branches with economic sectors and the introduction of new criteria for the extension of sectoral agreements: under the new provisions, agreements can be extended only if the members of the employers' associations that signed the agreement employ more than 50 per cent of the labour force

53. Royal Decree 10/2010 provided that, in the absence of workers' legal representatives at company level and for the purpose of concluding collective agreements at that level, employees would be able to confer representation on a commission made up of a maximum of three members belonging to the most representative trade unions in the sector.

54. Law 4024/2011.

in the sector (Trif 2016). In Ireland, the Ministry for Enterprise, Trade and Innovation later carried out a review of the framework of Registered Employment Agreements (REAs) and Employment Regulation Orders (EROs).⁵⁵ On the basis of the recommendations of the ‘Duffy-Walsh review’⁵⁶ and the case-law developments, the Industrial Relations (Amendment) Act 2012 set stricter conditions for the establishment and variation of EROs and REAs.⁵⁷

Besides promoting company-level bargaining, changes were recorded with regard to the criteria for employee representation. In Greece, so-called ‘associations of persons’ were given the capacity to conclude enterprise-level collective agreements that can derogate *in pejus*.⁵⁸ In Italy, it was originally planned that ‘proximity agreements’ could be signed by ‘union representation structures operating in the company’. The ambiguity in the term used created the risk that weak enterprise-level unions could enter into agreements with employers, thus contributing to different levels of employment protection depending on the socio-economic situation of the region in which the enterprise was located (Loi 2012: 268). Article 8 of Act 148/2011 now provides that ‘proximity agreements’ should be signed by ‘trade union organisations operating in the company following existing laws and inter-confederal agreements’, including the national agreement of 28 June 2011.⁵⁹ In Portugal, the 2012 changes included decreasing the firm size threshold to 150 workers before unions can delegate power to conclude collective agreements to works councils. In Romania, the 2011 Social Dialogue Act introduced limitations in a number of collective rights, including the

55. In July 2011 the High Court declared sections of the legislation governing the ERO system unconstitutional.

56. Ministry for Enterprise, Trade and Innovation (2011). The review found that maintenance of the framework of the Joint Labour Committees and the REAs was necessary and justified, but concluded that the system needed a radical overhaul and made a number of recommendations in order to make it more responsive to changing economic circumstances.

57. JLCs will be more restricted in the extent to which they can award changes in rates of pay and companies will be able to derogate from EROs in cases of financial difficulty. The Act also provides for Ministerial and Parliamentary oversight of the ERO/REA system and for clarifying the definition of ‘participating parties’ (that is, employers and trade unions, or groups thereof).

58. Law 4024/2011.

59. The inter-confederal agreement of 28 June 2011 defined the criteria for union representativeness, provided for the generally binding character of company agreements approved by a majority of unions/works councils and extended the possibilities for company-level derogations from national collective agreements. In contrast to the 2009 agreement, the 2011 agreement provides that derogation *in pejus* can take place only if there are no restrictions in place in the national collective agreement (Loi 2012: 274–275).

right to organise, strike and bargain collectively. First, changes were introduced at company level, including a requirement that only unions with more than 50 per cent union density can negotiate company-level agreements and a minimum of 15 workers from the same company is required in order to form a union. Furthermore, only one trade union may be representative at unit level. In addition, the 2011 measures reduced the protection of union leaders against dismissal after the termination of their mandate, together with the suppression of the right to paid time off for performing union activities, and introduced obligatory conciliation before industrial action.

Substantial changes were also introduced in some EU member states regarding the length of collective agreements and their ‘after-effect’ period. Under the new legislation in Greece, collective agreements can be concluded for a maximum duration of three years. Collective agreements that have expired will remain in force for a maximum period of three months.⁶⁰ If a new agreement is not reached, after this period remuneration will revert back to the basic wage, as stipulated in the expired collective agreement, plus specific allowances until replaced by those in a new collective agreement or in new or amended individual contracts.⁶¹ In Portugal, the 2009 measures provided clarification regarding the expiry and after-effect period of agreements, limiting the latter to the period of conciliation, mediation and arbitration or a minimum of 18 months, after which any of the parties could require termination of the agreement; measures implemented in 2014 reduced the after-effect period even more. Law 3/2012 in Spain provided that the ‘after-effect’ period of collective agreements should be limited to one year.⁶² In Romania, collective bargaining agreements can now be concluded only for a period of between 12 and 24 months.⁶³

In some EU member states, measures concerning mediation and arbitration were also implemented. The 2012 measures in Greece for the first time allowed recourse to arbitration only if both parties consent

60. Act 6 of 28.2.2012 of the Ministerial Council.

61. The allowances covered include those based on seniority, number of children, education and exposure to workplace hazards.

62. Earlier legislation (Royal Decree 7/2011) had also introduced the requirement that all collective agreements should introduce specific time limits for the negotiation of a new agreement. Until then and according to Article 86(3) of the Workers’ Statute, a collective agreement that had expired would remain in force until a new agreement could be concluded.

63. Under the old law, a collective bargaining agreement could be concluded for a minimum term of 12 months; no maximum duration was provided for.

and arbitration is to be confined solely to determination of the basic wage/salary. However, the prerequisite for an agreement between the two sides was later declared unconstitutional by the Council of State.⁶⁴ In Spain, Law 3/2012 introduced compulsory arbitration regarding the application or modification of collective agreements in the absence of voluntary bilateral application by the parties concerned. In Portugal, the 2009 revision of the Labour Code created the possibility of ‘necessary arbitration’ (in addition to voluntary and compulsory arbitration), which can be requested by any of the parties when they fail to reach a new agreement 12 months after the expiry of the previous agreement.⁶⁵

More radical changes that affected the nature of national-level collective bargaining were also promoted. In the case of Greece, it was intended that the government, together with the social partners, would prepare a timetable for an overhaul of the national general collective agreement. Law 4093/2012,⁶⁶ which was adopted at the end of 2012, now provides a process for setting statutory minimum wages for workers employed under private law. The national collective labour agreement continues to regulate non-wage issues, which apply directly to all workers. However, if the agreement also stipulates certain wage levels, then these are only valid for workers employed by members of the contracting employers’ federations. In Romania, the 2011 Social Dialogue Act abolished the legal obligation of the representative employers’ associations and trade unions to get involved in collective bargaining at cross-sectoral level, which used to determine the national minimum wage. Finally, in Ireland, the consensus/corporatist approach embodied in social partnership was ended in 2010, as the government pursued unilateral policies rather than negotiated ones, signalling a shift from national to enterprise-level bargaining. In Slovenia, the so-called ‘Fiscal Golden Rule’ and measures to overhaul referendum legislation were adopted in 2013, with implications, as we shall see later, for the model of neo-corporatism in social dialogue (Stanojević and Kanjuo Mrčela 2016). In line with a principle adopted in many EU member states in response to the eurozone crisis, the general government budget will now have to be balanced, with exceptions possible only under ‘extraordinary circumstances’.

64. Council of State, 2307/2014 decision.

65. Law 7/2009 of 12 February, Articles 510 and 511.

66. ‘Ratification of Mid-term Fiscal Strategy 2013–2016 – Urgent Regulations relating to the Implementation of L.4046/2012 and the Midterm Fiscal Strategy 2013–2016’.

5.3 Critical assessment of the measures

Based on an analysis of recent developments in social legislation in Europe, there is evidence to suggest that some common trends have developed. Changes in national systems of collective bargaining are proceeding alongside significant amendments in employment protection legislation, including collective redundancies, flexible forms of employment, contracts for young workers and dismissal compensation. These measures not only modify the individual employment relationship but also have the potential to shift the boundaries between state regulation, joint negotiation and unilateral decision-making by management.

Following Gazier's (2009) conceptualisation of the impact of the crisis, it is possible to distinguish between three types of interaction between the crisis and labour market measures. The first is a *shock* effect: there was evidence that in some EU member states the measures taken have been against well-established norms and institutions of collective bargaining that were accepted and supported by the majority of stakeholders. The amendments in Italian legislation providing scope for derogations from statutory standards provide a good example of this. The second is a *revelation* effect: this is, where there is a broader affinity between the direction of labour market measures and the industrial relations context and approach adopted by at least some actors before the crisis. In this context, the changes in the systems for national inter-sectoral agreements in Greece and Romania represent an example of this. While such measures had not been publicly promulgated before the crisis by any of the stakeholders, there was evidence to suggest that they were consistent with the approach of some employers' organisations. The third is an *acceleration* effect: in this case, there is a direct relationship between the measures and the industrial relations context and approach adopted by the actors before the crisis. The most prominent example here is arguably the relaxation of rules on individual and collective dismissals in, among others, Spain and Greece and the collective bargaining measures in Portugal that in some ways were a continuation of those taken in 2003.

A second common trend was further identified in the nature and scope of measures implemented. The majority of EU member states concentrated during the initial stages of the crisis (2008–2010) on intervening directly in wage regulation, for instance by reducing minimum wage levels and

declaring void any collective agreements providing wage increases, the objective being to reduce labour costs directly. In conjunction with these, new ways for introducing greater flexibility in the organisation of work, including, among other things, working time and dismissal protection, were also introduced during the first period. In line with the conceptualisation of labour market regulation before the crisis, these measures were aimed at removing some labour market ‘rigidities’, such as high dismissal costs and lack of flexibility in employment contracts (see section 3). In this context, some of the measures, such as company subsidies for working time reductions and support for workers being made redundant, were temporary in nature (for instance, the measures in Slovenia and Romania).

In contrast, the second phase (2011–2014) was focused predominantly on more structural issues, including – importantly – the collective regulation of terms and conditions of employment by means of collective bargaining. According to Marginson (2015) it is possible to distinguish between three categories of measures. The first refers to the reduction of the coverage of collective bargaining, including restricting/abolishing extension mechanisms and time-limiting the period in which agreements remain valid after expiry. The second concerns bargaining decentralisation and includes any measures related to the abolition of national, cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle, and introducing new possibilities for company agreements to derogate from higher level agreements or legislation. The third category refers to weakening trade unions’ prerogative to act as the main channel of worker representation (Marginson 2015: 104). In most of these cases, the measures were permanent and paradigmatic in nature, as they sought to restructure the landscape of collective bargaining. But there were some measures that were temporary, such as the temporary suspension of the favourability principle and extension mechanisms in the case of Greece. However, the extent to which those are truly temporary in nature is questionable. In light of the new landscape of industrial relations in Greece (see Koukiadaki and Kokkinou, 2015), it difficult to predict how the industrial relations actors will respond to the potential lifting of the suspension of the extension mechanisms once the Medium-Term Programme has been completed.

Another dimension of the measures implemented is the degree to which they were consistent with the commitments undertaken by national governments in the context of financial assistance programmes or other instruments of coordination at EU level, most notably the European Semester. There is evidence to suggest that a number of national measures were aligned with the policy direction of the supranational institutions. As discussed in section 4, a key objective of DG ECFIN's catalogue of 'structural reforms' has been the radical decentralisation of collective bargaining and reduction of the regulatory power of collective agreements and hence of the power of trade unions. In conjunction with this, the European Semester has been particularly influential in the area of wages and collective bargaining. As Schulten and Müller have pointed out, 'a comparison with the measures that have been implemented in the southern European countries suggests that DG ECFIN's catalogue served as the blueprint for the changes in the collective bargaining systems in Greece, Spain and Portugal' (Schulten and Müller 2014: 103). In addition, the rationale for introducing the measures at national level was influenced by the DG ECFIN's advocacy of promoting company-level bargaining on the basis that it best reflects the new economic and social circumstances of companies (see, for instance, the country reports for Greece and Romania 2015). A large number of these measure initiatives were also among the 'Going for Growth' policy recommendations of the OECD (2012a).

But related to this, there is evidence to suggest that in some cases these pressures were curtailed to some extent by joint initiatives between the social partners. The Italian case illustrates this succinctly. As analysed above, the government attempted to intervene in the regulatory framework governing collective bargaining by law.⁶⁷ In reaction to this, the social partners concluded an inter-sectoral agreement on productivity in November 2012, which further specifies the derogatory potential of decentralised bargaining and assigns 'full autonomy' to second-level agreements on specific and important topics, such as work organisation and working time. These positions were in line with the traditional voluntarism of Italian industrial relations, strongly based on the practices and customs of representative organisations. Similarly, in Ireland, there was some evidence to suggest that efforts were made to place safeguards on the extent of measures in the labour market. In this context, a national protocol for the orderly conduct of industrial

67. Article 8 of Law 148/2011.

relations and local bargaining in the private (unionised) sector was concluded by IBEC and ICTU in 2011, which has since been renewed in November 2012. The protocol was symbolic, and served as a mechanism to show the dispute resolution agencies of the state that ICTU and IBEC still recognised one another (Regan 2013: 15).⁶⁸ In contrast, in Portugal, two agreements were also concluded between the social partners, except CGTP, which strongly opposed the measures. However, as we saw in the previous section, both the MoU and national legislation went further than the scope of the agreements by the social partners.

From a legal perspective, what is certain is that ‘the measures have reached deep into the national systems’ (Barnard 2014: 25). It can be argued that in some respects they are inconsistent with previous judicial, legislative and constitutional acknowledgement of the right of freedom of association, collective bargaining and the role of trade unions in the ‘European Social Model’ (Koukiadaki 2014). An important aspect here is the recourse of different actors to legal mobilisation in order to challenge the measures. In some cases, there was evidence that the absence of processes of social dialogue led to increasing ‘legal mobilisation’. This was the case, for instance, with regard to Greece, Romania and Spain. However, legal mobilisation was not confined to EU member states without social dialogue. The case of Portugal illustrates this very well. Despite the fact that some of the measures relied on the agreements between the majority of the social partners, a number of those (especially those related to public sector workers) were challenged before the Constitutional Court. Broadly, legal mobilisation has taken place at two levels, national and international. At national level, applications for judicial review have been made against government decisions that provided for wage cuts and measures in bargaining systems, albeit with mixed results (see, for instance, the cases of Greece and Portugal). At international level, a number of international organisations have emphasised the non-compatibility of the austerity measures with fundamental rights, including the ILO Committee on Freedom of Association, the European Committee of Social Rights and the UN Committee on Economic, and Social and Cultural Rights. Other cases involving the European Court of Human Rights and the EU courts have been less successful.⁶⁹

68. See also national report on Ireland.

69. For an analysis, see Koukiadaki (2014).

From an industrial relations perspective, the changes are manifested in four main pillars of the employment relationship: (i) they challenge the role of full and open-ended employment and instead promote flexible forms of employment; (ii) they encourage working time flexibility that is responsive to companies' needs; (iii) they weaken employment protection, both individual and collective; and (iv) they modify the pre-existing configuration in the systems of collective bargaining and wage determination. In introducing these changes in the first three pillars (i–iii), the measures have substantially increased the scope for unilateral decision-making on the part of management. On top of these, the changes in the fourth pillar (iv) have intervened directly in the landscape of collective bargaining. In providing for new forms of representation, suspending/amending the system for the extension of agreements, abolishing the favourability principle, as well as the unilateral recourse to arbitration and introducing/extending non-union forms of employee representation, the measures are shifting the balance from joint regulation to state unilateralism and managerial prerogative, with significant implications for the role of the industrial relations actors. In light of these developments, it may be argued that the legislative changes in national labour law did not simply aim to restrict the level of wages and promote negotiated forms of flexibility but to increase managerial prerogative and dismantle, in some cases – in line with the policy of 'internal devaluation' – national systems of collective bargaining. It is to these issues, namely the implications of the measures for the structure and character of collective bargaining, that the analysis turns in the next section.

6. The impact of the crisis-related labour market measures on the structure and character of collective bargaining

As illustrated in section 5, all EU member states included in the project proceeded to implement extensive labour market measures which directly and indirectly affected their collective bargaining systems. The measures included restricting or abolishing extension mechanisms and time-limiting the period during which agreements remain valid after expiry. Other measures involved the abolition of national, cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle and

introducing new possibilities for company agreements to derogate from higher level agreements or legislation. Finally, trade unions' prerogative to act as the main channel of worker representation was weakened (Marginson 2015).

In this context, the implementation of such wide-ranging measures had the potential to lead to radical rather than incremental forms of innovation (Streeck and Thelen 2005). However, the degree of policy mismatch between higher formal levels and lower informal ones has been a longstanding feature of a number of EU member states affected by the crisis (Regini 1995). Thus, one critical issue concerns the extent to which labour market measures have actually initiated a process of systemic change in collective bargaining and what their – intended or unintended – consequences have been.⁷⁰ The analysis below will concentrate on how the labour market measures have affected the incidence, structure and character of collective bargaining during the crisis. The analysis distinguishes between collective bargaining at (i) national, central or inter-industry level, (ii) industry, branch or sectoral level and (iii) enterprise level. The analysis also assesses whether new bargaining models are emerging with clear reference points for employers and unions – albeit different in nature – or whether the developments are ad hoc, with no clear ideological or isomorphic underpinning. A typology of national systems in light of the measures implemented is then developed. In the course of this, a number of factors will be identified as influencing cross-country and cross-sectoral patterns in terms of the incidence, structure and character of bargaining, including the range of measures implemented, the pre-existing strength of the industrial relations systems and the extent of consultation with the social partners.

6.1 The state of inter-sectoral collective bargaining and social dialogue

In all EU member states, there was evidence of social dialogue at inter-sectoral level before the crisis (see section 4), albeit in different forms (for example, collective agreements, social pacts and framework or partnership agreements), and with different levels of articulation at lower levels of bargaining (sectoral and company levels). However,

70. For an analysis of the impact of the recent austerity measures on industrial relations in central public administration see, Lethbridge *et al.* (2014).

partly as a result of the economic crisis but partly directly because of the labour market measures implemented, the scope for consensual decision-making at national level has been reduced in a number of EU member states, as we shall see.

The extent of the reduction of social dialogue and bargaining at inter-sectoral level is varied. Greece, Romania, Ireland and Slovenia were among the EU member states most affected at this level. In the first two countries, the reduction was arguably the direct effect of the labour market measures. In Greece, the 2012 legal overhaul of the national collective bargaining system directly influenced the rounds for negotiations between the social actors for concluding a new agreement in mid-2012. On the basis that an agreement, under the new regulatory framework, would have no effect on the regulation of the minimum wage outside the group of workers employed by members of the contracting employers' federations, SEV refused to sign up to the agreement and called for the signing of a protocol instead. However, following social pressure and a continuing decline in consumer demand, SEV did sign up to the 2014 agreement. The 2014 national agreement provided some evidence of renewed support for the inter-sectoral social dialogue and bargaining, as it reaffirmed the intention of the social partners to support the institution of collective bargaining despite the crisis and the restrictive legal framework (Koukiadaki and Kokkinou 2016). Similarly in Romania and following the measures implemented in the Social Dialogue Act (SDA) in 2011, the collective labour agreement at national level was not renewed following its expiry in 2011 (Trif 2016), depriving all employees in companies with fewer than 20 employees of the protection afforded by the national agreement (Ciscu *et al.* 2013: 16). Furthermore, there was no evidence that the establishment of a new Tripartite Council under the SDA of 2011, whose membership is dominated by state representatives, stepped in to fill the gap left following the abolition of cross-sectoral bargaining.

Significant developments also took place in Ireland and Slovenia that destabilised the pre-existing configuration between management and labour at inter-sectoral level. In both cases, the situation was influenced by broad economic developments affecting other parts of the economy, for example, the public sector in Ireland, rather than by the labour market measures per se. In Ireland, wage setting had traditionally allowed a much larger role for central or national agreements, both in the

1970s and again between 1987 and 2009, when the central organisations negotiated eight social pacts or so-called partnership programmes. When during the crisis (in late 2009) the negotiations on a severe cut in public sector pay broke down, the employers, who had called for the agreed pay increases under the last agreement to be deferred, formally ended central negotiations. But in March 2010 IBEC and ICTU agreed a voluntary protocol ‘for the orderly conduct of industrial relations and local bargaining in the private sector’. This did not set any pay norms, but provided that both sides would encourage their members ‘to abide by established collective agreements’ and ensure that ‘local negotiations ... take place on the expiry of existing agreements’. The protocol was initially valid only during 2010 but was extended in February 2011 and again in October 2013 (Hickland and Dundon 2016). Similarly, in Slovenia coordination at national level was traditionally maintained before the crisis through social pacts at first and then through consensually accepted income policies. In this context, there were some attempts in 2009 to revive the institution of social pacts during the crisis, albeit with no success, due mainly to employers’ resistance (Stanojević and Kanjuo Mrčela 2016).

The three countries from southern Europe – Italy, Portugal and Spain – had each experimented in the past with (bipartite and tripartite) central bargaining (Visser 2013: 31). Building on these traditions, there was evidence of a willingness among the parties to maintain such structures at inter-sectoral level, albeit with varying levels of success. In Spain, there was traditionally a role for national framework agreements that established guidelines and norms for industry, provincial and company bargaining, linking pay rises to forecast inflation and productivity gains (Visser 2013: 32; Fernández Rodríguez *et al.* 2016). However, the negotiations on a new framework agreement that would set guidelines for bargaining broke down in 2009. Bipartite social dialogue was resumed and in January 2010 the peak organisations signed the 2010 bipartite Inter-confederal Agreement for Employment and Collective Bargaining 2010–2012, which dealt, among other things, with guidelines for wage developments (2010: 1 per cent; 2011: 1–2 per cent; 2012: 1.5–2.5 per cent), the use of opt-out clauses and the beginning of negotiations on measures concerning collective bargaining. The most recent agreement, concluded in February 2012 and lasting until 2014, reaffirmed the existing industry-based bargaining model but at the same time provided more scope for company bargaining on issues other than wages (Molina

and Miguélez 2013: 23). But it has to be stressed that the 2012 labour market measures actually bypassed the agreement on a number of issues between the two sides and introduced important modifications to certain areas covered by collective bargaining. The case of Spain provides a useful comparison with that of Portugal. As discussed in sections 4 and 5, two agreements were concluded at inter-sectoral level between some of the social partners in Portugal. But in contrast to the case of Spain, the agreements between the Portuguese social partners provided the basis for the majority of the measures taken (Távora and Gonzalez 2016).

Finally, Italy represents the clearest example of a continuing willingness of the parties to renew the pre-existing agreement at national level. The interest of the parties in maintaining social dialogue and good collective bargaining practices at the inter-sectoral level not only impacted upon the inter-sectoral level of dialogue per se but it also provided a framework for the conduct of bargaining at lower levels, with potential repercussions from the application of the labour market measures introduced by the Italian government. First, in 2011, Confindustria, CGIL, CISL and UIL signed an inter-sectoral agreement on representativeness and the criteria for making company-level bargaining binding on all organisations belonging to the signatory parties. On decentralised bargaining, the agreement provided that company-level agreements on economic and normative elements, including derogations from industry-wide agreements, would be valid for all relevant employees. Important in this respect was also the 2012 agreement on 'Guidelines to increase productivity and competitiveness in Italy'. As far as the collective bargaining structure is concerned, the agreement assigned to industry-wide collective bargaining the guarantee of homogeneous economic and normative conditions for all workers throughout the country. Second-level bargaining should operate to increase productivity through better utilisation of the factors of production and the improvement of work organisation, and by linking wage increases to such developments. The parties also recognised the need to support decentralised bargaining to introduce rules and conditions that better suit specific production contexts, including derogations from sectoral agreements. Finally, the 2014 inter-sectoral agreement was also instrumental, as it introduced rules on the minimum requirements for unions to be allowed to participate in bargaining and on the effectiveness of collective agreements reached by them, together with sanctions for negotiations and industrial action in the event that the rules were not complied with (Colombo and Regalia 2016).

6.2 The state of sectoral collective bargaining

As analysed in section 5, an important component of the labour measures implemented in a number of EU member states concerned the institutional arrangements for sectoral-level bargaining. With regard to measures restricting or abolishing extension mechanisms and time-limiting the period for which agreements remain valid after expiry, different countries before the crisis relied on different rules and practices and as such differed in terms of the significance of sectoral bargaining. In terms of the rules and practice of extension, in particular, Schulten (2012) identifies Greece, Portugal and Romania as countries that make widespread use of extension mechanisms. Italy and Spain also had functional equivalents that ultimately corresponded to widespread use of extension mechanisms. On the other hand, there was a group of countries in which extension mechanisms were available in principle, but their use in practice was uncommon or downright rare, often concentrated in a few sectors, such as in Ireland. The use of extension mechanisms was also uncommon in Slovenia, but in this case, this is because functional equivalents existed. In terms of the significance of sectoral bargaining, countries with a clear dominance of sectoral bargaining before the crisis included Greece (company bargaining accounted for 20 per cent of private sector coverage), Italy (<15 per cent), Spain (<15 per cent) and Portugal (declining from 15 per cent in 1985 to 7 per cent in 2005) (Visser 2013: 27).

Since the outbreak of the crisis and in light of the measures implemented in response, sectoral bargaining in different sectors, including manufacturing, has undergone fundamental change. The most extreme cases are Greece and Romania. In Greece, empirical evidence points to a significant decline in sectoral and occupational collective agreements overall. Overall, only 23 sectoral and occupational agreements and six local occupational agreements were registered in 2012 (in comparison with 103 sectoral and national occupational and 21 local occupational in 2010). The number of higher level agreements (sectoral and national and local occupational) was further reduced in 2013, with 14 sectoral and occupational agreements and 10 local occupational being concluded and during 2014 there were only 12 sectoral agreements, five occupational and 247 enterprise-level agreements. Developments in manufacturing reflected these broader trends in sectoral bargaining. Following the temporary suspension of sectoral agreements, the reduction of the

‘after-effect’ period and the abolition of the right to unilateral recourse to arbitration, employers’ federations in manufacturing became extremely concerned that sectoral agreements would expose their members to unfair competition from employers not covered by the agreements. As a result, bargaining stalled completely in metal manufacturing (with the exception of the agreement applying to SMEs in metal production and repair). Neither was any new agreement concluded in food and drinks manufacturing (Koukiadaki and Kokkinou 2016).

The case of Romania resembles the case of Greece in a number of ways. The replacement of economic branches by economic sectors for the purpose of bargaining, the resulting requirement for re-registration and the abolition of extension mechanisms under the Social Dialogue Act 2011 dramatically reduced the incentives for employers to participate in sectoral bargaining. Overall, while 57 union federations applied to re-register, only seven employers’ associations did the same (Trif 2016). As a result, trade union federations no longer have counterparts from the employers’ side to negotiate sectoral collective agreements. The case of the automotive industry indicated the strong disincentives of employers to be bound by sectoral agreements, which are not extended, even when the latter contain significant scope for company derogations. In addition, problems were reported regarding a lack of clarity regarding the new procedure for the extension of agreements (Trif 2016). In March 2014, there were 24 multi-employer collective agreements valid in March 2014 and out of those, seven were defined as sectoral collective agreements. Three of these agreements were in the private sector, all in manufacturing (glass and ceramic products; food, drinks, beverages and tobacco; electronics and electrical machinery). But it is important to note that all three agreements were originally negotiated under the previous regime and extended through additional acts until 2015. In contrast to the collapse of sectoral agreements, the number of collective agreements for groups of companies actually increased from four in 2008 to 16 in 2013.

Similar to the cases of Greece and Romania, statistical evidence in the case of Spain suggests that the number of higher-level collective agreements has collapsed in recent years. By 2013, the number of higher-level collective agreements across sectors had dropped to 706 (from 1,113 in 2012), with approximately 6,496,400 workers covered. In 2014, the decrease was even more pronounced and the number stood at

only 361 agreements with 3,620,000 workers covered. Arguably, much was due in some cases to delays and greater uncertainty in relation to local company agreements, but a trend of declining overall coverage was observed, especially as a result of a number of administrative and arbitration problems. The developments with regard to the favourability principle were interesting here. The 2011 law inverted the favourability principle between sector or provincial agreements and company agreements, according priority to the latter for negotiations on basic wages and wage supplements. However, employers and trade unions had the option of re-establishing the favourability principle under the relevant sectoral or provincial agreement, if they so wished. This possibility was removed by the subsequent 2012 law introduced by the incoming government, thereby also invalidating the intention of the 2012 cross-sectoral agreement. But employers and trade unions in some sectors, including chemicals, subsequently concluded agreements that reverted to the favourability principle (Marginson and Welz 2014).

Although the measures implemented in Slovenia did not resemble – with regard to their scope – those adopted in southern European countries, there was evidence of pressure on sectoral agreements, which had traditionally played a significant role in regulating terms and conditions of employment before the crisis. First of all, the change in status of the Chamber of Commerce and Industry (in 2006) and the Chamber of Craft and Small Businesses (in 2013) from obligatory to voluntary membership affected the membership rates of employers and led to a change in the direction of policy proposals towards greater flexibility in company-level bargaining. While the intensity of bargaining increased, the length of and scope for sectoral agreements was reduced. On top of this, certain agreements, including in the chemical and rubber industry, were terminated on the initiative of the employers (Stanojević and Kanjuo Mrčela 2016). In contrast to Slovenia, sectoral bargaining was not traditionally of much significance in the pre-crisis period in Ireland. There were few industry-level agreements, the most important being in construction. Since 2011, only three REAs, covering the construction industry, overhead power line contractors and contract cleaning, have been revised.⁷¹ However, there was evidence at the same time of an emergent sectoral strategy focussing on the coordinated activity of multiple and separate localised level bargaining units in key

71. In total, there are 75 REAs, although in the majority of cases the pay rates have not been updated.

parts of manufacturing (Hickland and Dundon 2016) (see section 7 for an analysis of the impact of this on company-level agreements).

Portugal, arguably, is situated somewhere mid-spectrum in terms of the impact of the measures implemented in response to the crisis on sectoral bargaining. Before the crisis, collective bargaining was dominated by sectoral bargaining but with low levels of articulation. The 2009 measures built on and expanded the scope of those taken in 2003 with regard to the expiry of agreements and in turn provided greater scope for flexibility in bargaining at sectoral level. Empirical evidence suggests that the blockages in most manufacturing sub-sectors were of fairly long standing and where agreements were reached these were concluded with UGT on the union side. The only exception was textiles and footwear, in which the blockages were attributed to the suspension in 2011 and subsequent re-introduction of representativeness rules for the extension of collective agreements. Overall, the number of industry agreements declined consistently and fell drastically in 2012, when only 36 agreements were published, in contrast with the 173 collective agreements reached in 2008. However, Távora and Gonzalez (2016) stress that, as not many agreements expired, the proportion of workers affected in terms of coverage may be overestimated. Interestingly, the declining trend of sectoral agreements was reversed in 2014 and the latest data suggest a degree of resilience on the part of sectoral bargaining. The data have to be read against the changes in the legislative framework, namely the lifting of the suspension of extension mechanisms and the introduction of new criteria for representativeness.

In contrast to the cases of collapse and corrosion discussed above, Italy's was an example of a bargaining system in continuity. Despite the acceleration in the pre-existing trend towards decentralisation from industry-wide bargaining and the increase in tensions between the sectoral social partners, the sectoral agreements in manufacturing still constituted the main reference point for regulating wage levels and other terms and conditions of employment, especially for SMEs. There was, indeed, evidence of increased bargaining coverage in the case of sectoral agreements, partially driven by the introduction of the possibility of derogations by the 2009 inter-sectoral agreement. While employers favoured greater bargaining flexibility, there was a shared understanding of the need to maintain sectoral bargaining as the key regulatory framework for determining terms and conditions of employment.

Notwithstanding the exit of Fiat from industry-wide bargaining, there is no evidence of significant spill-over or copy-cat effects (Colombo and Regalia 2016; Pedersini and Regini 2013).

6.3 Company-level bargaining and decentralisation trends

For present purposes, decentralisation means ‘a downward movement of placing the locus of decision-making on wages and working hours closer to the individual enterprise’ (Visser 2013: 23). From a legal-institutional point of view, it also means less state interference in the setting of wages and conditions, and allowing more flexibility in the application of legal norms, by allowing, for instance, derogations from legal standards and the favourability principle (Visser 2013: 24).

The decentralisation trend was particularly strong in Greece. During the period 2010–2013, there was a significant increase of company-level bargaining to the detriment of sectoral bargaining, although with some signs of a slowdown since 2014. The manufacturing sector had the highest percentage of enterprise agreements in 2012 (34.3 per cent), 2013 (32.2 per cent) and 2014 (30 per cent).⁷² Despite the lack of renewals of collective agreements at sectoral level, company case study evidence suggests that managements continued tacitly to respect expired agreements in some cases. However, this was the case only with regard to existing, not newly recruited employees, thus fostering the development of a two-tier workforce. On the union side, there was evidence that some local trade unions in the metal manufacturing sector tried to implement a policy of promoting the conclusion of, in effect, the same collective agreement in different companies, albeit with varying success. Besides an increase in company-level bargaining, there was also an increase in individual negotiations between management and employees, usually involving unilateral or ‘consensual’ wage reductions and/or short-time/part-time work or temporary lay-offs. This was especially the case in very small companies, from which trade unions are usually absent and associations could not be formed, as the companies employed fewer than five employees (Koukiadaki and Kokkinou 2016).

72. Company-level agreements were an established feature of the manufacturing sector before the crisis (Koukiadaki and Kokkinou).

Despite the similarities between Greece and Romania with regard to the objective of the measures implemented to promote company-level bargaining, the incidence of collective agreements at company level was more erratic in the case of Romania. The number of collective agreements declined rapidly, from 11,729 in 2008 to 8,726 in 2013. The biggest decline took place between 2008 and 2010, when the number of agreements was reduced by approximately 3,000. However, there was then an increase in 2013 and the number of company agreements rose to 4,659, to be sure still well below the pre-crisis levels of around 12,000. In the absence of national general and national sectoral agreements, there was no reference point for the negotiations at company level, which therefore impacted on the level of protection afforded to employees (Trif 2016). Thus, while the Romanian system can no longer be characterised as relying on multiemployer bargaining, there was no evidence that the gap left by sectoral bargaining in terms of coverage was filled by company-level bargaining.

In the case of Spain, while there were mechanisms before the crisis for organised decentralisation, in practice there were long-standing issues regarding articulation with regard to provincial and sectoral agreements. While the space for sectoral bargaining was maintained during the crisis, the scope to derogate in local agreements was increased. A significant number of companies were left without agreements or suspended arrangements, following the measures implemented in response to the crisis, concerning the ‘after effect’ duration of collective agreements and the possibilities of employers to opt out from higher-level agreements. The most dramatic effect was reported in 2013, with 2,515 cases of derogations, involving 2,179 companies and affecting 159,550 workers. In 2014, there were 1,627 cases of opting out from agreements, which involved 1,474 companies and affected 53,123 workers (Fernández Rodríguez *et al.* 2016).

Nonetheless, the requirement for an agreement on opt-outs with employee representatives acted as a break on introducing opt-outs in companies affected by the crisis, although not so much in SMEs (compare this with Greece, where a number of company-level agreements are concluded by ‘associations of persons’). In cases in which agreements were concluded, those did not stipulate in some cases any limit on the ‘after-effect’ period of the agreements or at least stipulated a longer period of ‘after-effect’ than the one set out in the legislation. There was also evidence that trade

unions still relied on sectoral/provincial agreements to underpin at least the basic terms and conditions of employment (Fernández Rodríguez *et al.* 2016).

In Ireland, company bargaining used to account for 92 per cent of coverage in the private sector (Visser 2013: 26). When national partnership ended many companies agreed to abide by the pay terms of the last agreement 'Towards 2016: Ten-Year Framework Social Partnership Agreement 2006–2015' (often referred to as 'T16'). Individual company agreements often covered periods of time different from the dates of the partnership agreements. It was not unusual in 2010 and onwards for companies to have finished T16, or opted out because of an inability to pay, and for there to be no agreements on pay generally in manufacturing sector companies. Despite this, there was some evidence of reliance on an informal network of social dialogue that allowed actors to preserve bargaining in some cases (for example, the 2 per cent wage increase strategy developed by SIPTU). In total, SIPTU estimate that the '2%+ campaign' has resulted in over 220 collective agreements (between 2010 and 2014), covering upwards of 50,000 workers (for an analysis of the 2 per cent strategy, see section 7). The success of this strategy also meant the return of localised bargaining for the first time in over 25 years in Ireland and sustained durability of robust collective bargaining in different parts of manufacturing (Hickland and Dundon 2016).

In Portugal, the option for company-level derogations has hardly been used, mainly because workers' committees still require a union mandate to be allowed to conclude such agreements. There was no evidence of a greater inclination on the part of firms to conclude company agreements, especially in metal and in textiles and footwear. But even if the total number of company agreements decreased since 2003, their relative importance increased due to the decrease in the bargaining coverage of sectoral agreements. Similar to the cases of Ireland and Greece, trade unions developed local initiatives with the intention of concluding agreements with different employers on wages and other terms of employment, which were then generalised to most firms in a specific cluster or area. In Slovenia, the inclusion of derogation clauses that can be invoked by companies in economic difficulties was a feature of agreements concluded in several sectors from 2009 onwards. In this context, changes were reported with regard to the role of certain companies as rule-makers in particular sectors.

In Italy, even though the measures implemented in response to the crisis and the approach taken by employers favoured the development of company bargaining, there was evidence of a trend towards a decrease in annual collective bargaining intensity. However, it has to be noted that the decline had actually started before the start of the crisis. In the metal sector, contractual intensity decreased from almost 30 per cent of companies in 2003 to 10 per cent in 2009, while in the chemical sector intensity decreased from 43 per cent in 2003 to 17 per cent in 2009. Even in the metal sector, where the relations between the two sides were considered conflictual, there was no evidence from the case studies of any increase in company-level bargaining. Where agreements were concluded, they were defensive in character (see section 7 for details). The case of the new plant agreements at Fiat, imposed unilaterally by management in 2011, stands out here. The agreements included provisions on working time, which went beyond the standards specified in the metalworking sector agreement (Colombo and Regalia 2016).

6.4 Changes in the direction of pressure and character of bargaining

Different trends were observed at different levels in terms of the direction of pressure and character of bargaining. In terms of the former, there was a common trend in all countries from the unions to the employer. For instance, in Portugal the changes introduced from 2003 changed the balance of power in favour of employers and severely constrained the bargaining position of unions. In Spain, bargaining continued but increasingly it was coerced by employers in many cases. In countries whose industrial relations systems have traditionally relied on the legal system for adjudicating labour disputes (for example, Greece, Portugal and Spain), the relevant measures were used as a kind of threat in the negotiation process, even if they were not necessarily invoked. In this context, the legal uncertainty arising out of specific measures was also used to frame the process of negotiation to the benefit of the employer side. Aside from this, the ‘after-effect’ period of agreements was seen as another tool for applying pressure in negotiations rather than something beneficial for employers. The role of legal measures as a means of putting pressure on the workers’ side was not confined to negotiations on collective agreements, but was also instrumental in challenging

industrial action and other forms of worker mobilisation (for example, Greece and Spain).

In relation to collective action, the research project confirmed some of the findings of the recent ETUI study on strikes in times of crisis.⁷³ In terms of strike volume, there was a marked increase in strike activity at the beginning of the economic crisis, between 2008 and 2010, in all the EU member states examined in the project. In terms of the nature of the action, a shift took place towards mass political strikes, either generalised public sector strikes or general strikes in certain regions or for the whole economy, often in the public sector. Importantly, a shift was observed in both single employer and multiemployer bargaining systems (for example, Ireland and Italy, respectively).

In terms of the character of bargaining, there was wider variation between the different systems. In a number of EU member states, the character of bargaining was adversarial at higher levels – inter-sectoral and sectoral – but cooperative at lower levels, in other words, that of the company (for example, Italy, Romania and Slovenia). In Italy, even where sectoral agreements continue to provide the basis for regulating the main terms and conditions of employment, there was still evidence of conflictual relations, resulting in increases in the average renewal time of collective agreements. This was, for instance, the case in the Italian metal sector, where CGIL refused to sign the sectoral agreement (Colombo and Regalia 2016). In a small number of EU member states, a rather opposite trend was observed, i.e. some cooperation at inter-sectoral level but adversarial at sectoral level. The case of Greece illustrates this: relationships were largely adversarial at sectoral level, leading to the complete breakdown of sectoral dialogue between the social partners in manufacturing. Further, at company level the renewal of collective agreements was in many cases an outcome of industrial action. In Portugal, industrial relations became also largely adversarial at sectoral level. In Ireland, the system of bargaining went through a process of ‘structural change’ with ‘process continuity’ (Hickland and Dundon 2016). Even though structural platform for social dialogue witnessed major change, from a national corporatist model to new local and enterprise-based bargaining, the ‘process’ of collective bargaining continued to add value by achieving agreement, consensus and wider

73. ETUI Strikes in Europe Infographic, <http://www.etui.org/Topics/Trade-union-renewal-and-mobilisation/Strikes-in-Europe-infographic>

understanding for change. In this context, differences between sub-sectors of manufacturing emerged. While in some EU member states, metal manufacturing was characterised by adversarialism, there was evidence of a more cooperative ethos in the chemical sector (e.g. Italy and Spain), indicating hence the preservation of pre-crisis differences between different segments of the manufacturing sector.

Finally, consideration should be given here to measures designed to weaken trade unions' prerogative to act as the main channel of worker representation. The most extreme example is that of Greece. The largest number of these company-level agreements have been concluded by 'associations of persons' (Ioannou and Papadimitriou 2013), raising issues regarding the independence and representativeness of such forms of worker voice. Similarly, in Romania, in instances where unions are not able to meet the new criteria at company level, employers can negotiate agreements with unspecified elected employee representatives. Even in countries in which such measures have not been introduced, such as Italy, there is evidence of an increasing trend of agreements being reached between managements and ad hoc forms of (unofficial) trade unions, so-called 'pirate agreements'. However, there is also evidence to suggest that, where the use of non-union employee representation structures depends on trade union approval, this procedural safeguard is able to limit the extent to which company-level derogations are exercised (see, for instance, Portugal, where the 2009 Labour Code introduced the possibility of workers' committees concluding collective agreements, but on the basis of a mandate from the trade union). In Romania, there was strong evidence of the use of the new measures as a basis for increased anti-union activities at workplace level, aimed at reducing the role of the unions.

6.5 Critical assessment of the impact of measures on the structure of bargaining

The above analysis indicates that the impact of the labour market measures on industrial relations and social dialogue has been a crisis of social dialogue and collective bargaining at different levels, not only national but also sectoral and company (see Table 5 for an overview of the changes). When assessing the impact of the measures on the structure of sectoral bargaining, a very important issue is that of bargaining

coverage. Traxler (1998) suggested that there are two sets of conditions that lead to high bargaining coverage. The first, which is found only in northern Europe, relies on sectoral or national bargaining and a high level of unionisation. The second, which is also the most relevant for the EU member states examined in the project, is based on a combination of three institutional variables, including sectoral or national bargaining, a high level of employer organisation and frequent use of administrative extension of agreements.

With regard to the first variable – sectoral or national bargaining – the empirical evidence points to a significant contraction of bargaining in a number of EU member states. The contraction of national bargaining was particularly prevalent in Greece, Ireland, Romania and Slovenia. At sectoral level, the countries most affected were Greece and Romania, followed closely by Ireland, Portugal, Slovenia and Spain. At both national and sectoral levels, Italy represented rather an exception, as collective agreements at both levels were largely maintained. The contraction of sectoral bargaining may be particularly problematic for the employers and employees in SMEs, which in many countries rely on sectoral agreements. While SMEs and firms operating in the domestic market and employing low-skilled employees still preferred sector or even national bargaining (for example, Greece), there was no clear indication that firms in export sectors employing high-skilled employees were more favourable to company bargaining (see, for instance, the cases of Italy, Spain and Portugal). In terms of the second variable – a high level of employer organisation – employers in a number of EU member states mentioned the lack of incentives for being members of their respective associations. Perhaps not surprisingly, this was the case where extension mechanisms were abolished or suspended. For instance, in Romania, a number of employers' organisations did not reapply to acquire representativeness status for the purposes of bargaining, while in Greece, employers' associations were concerned that members would exit the organisations if sectoral agreements were concluded. Slovenia was also affected significantly in this area, following the abolition of compulsory membership in professional chambers. In contrast, while there were concerns in the case of Italy that the exit of Fiat from Confindustria would weaken the associational capacity of employers, these concerns did not materialise.

In relation to the use of administrative extension of agreements, extension mechanisms have traditionally been seen as a means of supporting the collective bargaining system without interfering in the autonomous decision-making of the contracting parties (Schulten 2012). In this way, the state can increase its own powers of guidance without – as in the case of legal minimum wages (Schulten 2012) – having to take responsibility for the substantive content of the settlements. As Marginson (2015: 98) has also pointed out, ‘multi-employer bargaining arrangements bring benefits for the state, as well as advantages for the bargaining parties (Sisson 1987), delegating the regulation of key terms and conditions of employment to private actors and the maintenance of social peace’. In the majority of European countries, the most important variable explaining the high agreement coverage before the crisis was the existence of state provisions supporting the collective bargaining system (Traxler *et al.* 2001: 194). However, as analysed in section 5, a number of countries removed extension mechanisms.

On top of the implications for bargaining coverage, in all EU member states the measures taken accelerated the longer-term trend towards decentralisation. However, there were significant differences in terms of the type of decentralisation taking place. Traxler (1995) distinguished between organised decentralisation (increased company-level bargaining but within the framework of rules and standards set by sectoral agreements) and disorganised decentralisation (that is, the replacement of higher level bargaining by company bargaining). The country case studies here suggest that some member states have experienced a form of disorganised decentralisation (for example, Greece, Ireland, Romania and Spain). In some of these cases, the increase in collective bargaining at company level filled the vacuum arising out of the absence of cross-sectoral and sectoral agreements (for example, Greece and Ireland). But important questions arose concerning the capacity of the actors to negotiate successfully and implement agreements at company level effectively in the absence of experience and training, especially when non-union forms of employee representation were used (for example, Greece). In other countries, the degree of disorganised decentralisation was not as pronounced. In Portugal, disorganisation went less far, for instance, than in Spain: bargaining could only be delegated to works councils (and only in larger workplaces) with trade union agreement, the restrictions on extension were less severe than in Greece and Romania,

as were the restrictions on ‘after effects’, and while the favourability principle was suspended, this was time limited and did not extend to the relationship between different levels of collective agreements. Quite a lot depends on how one interprets the freeze in bargaining activity – that is, whether it is temporary or will prove to be more permanent – and hence the current sharp drop in coverage.⁷⁴ In conjunction with increased company bargaining, there was also, in some cases, a reduction in the substantive content of higher-level agreements, which were thus limited in many cases to establishing only a core of terms and conditions of employment (for example, Greece, Slovenia and Spain).

Based on these trends, we may suggest that three types of bargaining system emerged following the crisis and the labour market measures implemented in response: (i) systems in a process of collapse, (ii) systems in a process of erosion and (iii) systems in a process of continuity, though with elements of reconfiguration (see also Marginson 2015). These are not clear-cut types, but represent points in a spectrum ranging from systems in a state of continuity at one extreme and systems in a state of collapse at the other. On this basis, the most prominent examples of systems that are close to collapse are Romania and Greece. While other national bargaining systems are not affected to the same extent, they still face significant obstacles in terms of disorganised decentralisation and withdrawal of state support and thus experience erosion (Ireland, Portugal, Slovenia and Spain). Finally, the Italian bargaining system could be seen as being closer to a state of continuity but also reconfiguration, with changes in the logic, content and quality of bargaining.

What factors account for the different trajectories of bargaining systems following the crisis and the measures implemented in response to it? A first factor accounting for the similarities and differences in terms of impact was the extent of the economic crisis and, more importantly, the different nature and extent of the measures adopted in light of the crisis. While, as explained in section 5, most measures targeted both employment protection legislation and bargaining systems, how far-reaching and wide-ranging they were differed. To illustrate this, the amendments in the regulatory framework for bargaining in Greece and Romania were very different in terms of scope and extent, for example, from those in

74. The authors would like to thank Paul Marginson for his insightful comments regarding Portugal.

Ireland and Italy. The European Commission in fact recognised recently that ‘Greece was at the top of the countries in adopting measures that decreased the stringency of labour market regulations’ (European Commission 2014: 49). While decentralisation was promoted in the case of Italy and Portugal, the introduction of procedural safeguards – in the form of restrictions and controls if local agreements did not respect the favourability principle – meant that decentralisation was not completely disorganised. Ireland also faced enormous challenges due to the economic crisis, but the measures adopted were arguably not as wide-ranging as those in Greece and Romania. While the extent of the measures implemented in Slovenia was not extensive either, the changes in the cornerstone of sectoral bargaining – employers’ compulsory membership of chambers of commerce – contributed significantly to the erosion of the system.

A second explanatory factor was the pre-existing strength of bargaining systems. As Marginson recently suggested, before the crisis there were important differences in terms of articulation and coordination between different EU member states (Marginson 2015). With regard to articulation – that is, coordination at vertical level – well-articulated mechanisms were in operation in Italy and Slovenia but not in the rest of the southern European member states (Marginson 2015: 98). In terms of coordination by the peak organisations of employers and trade unions, again differences existed before the crisis between different EU member states in terms of the ‘capacity of higher-level employer and trade union organisations to act strategically and deliver comprehensive regulation of wages and conditions’ (Marginson 2015: 98). When faced with the economic crisis and measures directly concerned with patterns of articulation, the systems that were better articulated before the crisis fared better.

The case of Italy illustrates the importance of articulation in the collective bargaining system. In this case, the Italian social partners were able to manage decentralisation by providing safeguards at sectoral level. When Italy is contrasted with Greece and Romania (the systems most affected by the crisis), a related factor that emerged – and which could further explain the differences in impact – concerned the different extents of trade union reliance on the state for institutional support. In systems in which unions had taken for granted a certain level of institutional support

that, while desirable for an enabling bargaining environment, could be withdrawn at the government's will – for example, Greece and Romania – trade union attempts at union renewal and mobilisation were weaker. When state support in the form of extension mechanisms and the favourability principle were withdrawn, unions were not able to draw on other resources to rebalance the structure of bargaining.

Finally, the third explanatory variable was the extent to which measures were introduced on the basis of dialogue and agreement between the two sides of industry and the government or on the basis of coordinated attempts by employers and union to contain the impact of measures adopted unilaterally by the government. There was evidence to suggest that where measures were introduced – or their intended outcomes contained – on the basis of an agreement between the social partners, the effects were less destabilising rather than where measures were introduced unilaterally and no attempt was made by the partners at 'damage limitation' (for example, contrast Italy with Greece and Romania). By participating in the adoption of measures or attempting to contain their potential impact, social actors were able to limit how radical such measures were (Streeck and Thelen 2005).

In cases in which measures were rather incremental – Italy being one instance of this – the strengthening of decentralised bargaining was generally considered necessary to make the regulatory framework more adaptable to local conditions, in such a way that it could contribute to mutual gains and economic growth (Pedersini and Regini 2013: 22). As a result of the incremental nature of the changes, the risk of conflicts leading to a breakdown was minimised. Instead, in cases in which measures were not subject to consultation or where there was no attempt by the actors to coordinate a strategy to contain the impact of the measures by subsequent agreements – for example, Greece and Romania – the measures were radical, which increased the risk of breakdowns in bargaining.

Table 5 The state of collective bargaining following labour market measures

Country	Inter-sectoral level	Sectoral level	Company level
Greece	<ul style="list-style-type: none"> Limited cross-sectoral bargaining: withdrawal of SEV in 2013 No minimum employment standards across sectors 	<ul style="list-style-type: none"> Significantly reduced number of sectoral collective agreements (across different sectors) Reduction of length of collective agreements Arbitration mechanisms falling into disuse 	<ul style="list-style-type: none"> Rapid increase of company-level bargaining (especially in the first period) Increased use of 'associations of persons' Increase in individual negotiations
Ireland	<ul style="list-style-type: none"> Breakdown of negotiations at national level Later conclusion of a voluntary protocol 'for the orderly conduct of industrial relations and local bargaining in the private sector' 	<ul style="list-style-type: none"> No update of pay rates in majority of cases Only three agreements have been revised since 2011 	<ul style="list-style-type: none"> Clear decentralisation trends in manufacturing More direct process (no use of third parties)
Italy	<ul style="list-style-type: none"> Inter-sectoral agreements setting out the framework for bargaining, union representation criteria and limitations on derogations 	<ul style="list-style-type: none"> Renewal of most sectoral agreements No defection of employers from associations (with the exception of Fiat) 	<ul style="list-style-type: none"> Decrease of company agreements No increase in coverage Conclusion of 'pirate' agreements by non-representative employee bodies
Portugal	<ul style="list-style-type: none"> Tripartite agreements in 2011 and 2012 (with the exception of CGTP) 	<ul style="list-style-type: none"> Blockages to bargaining and reduced number of new Company agreements instead Reduced coverage of new agreements 	<ul style="list-style-type: none"> No evidence that firm agreements are replacing sectoral agreements No evidence of new agreements concluded by worker committees
Romania	<ul style="list-style-type: none"> Termination of cross-sectoral bargaining following the abolition of inter-sectoral bargaining by the 2011 Social Dialogue Act 	<ul style="list-style-type: none"> Employers opting out/threatening to opt out of associations Only five (out of 13) employers' associations were representative in 2013 Collapse of sectoral agreements Increase in multi-employer agreements 	<ul style="list-style-type: none"> 25% reduction of company agreements between 2008 and 2013 Lack of expertise of elected representatives, where union is not present
Slovenia	<ul style="list-style-type: none"> Attempts to conclude a new social pact but employers reacted strongly against social pact and agreement was not reached 	<ul style="list-style-type: none"> Termination of collective agreements in the chemical and rubber industries on the employers' initiative Reduction of scope of collective agreements Intensification of bargaining rounds 	<ul style="list-style-type: none"> Divergent views between different employers Replacement of old rule-makers with new Signs of cooperation between the two sides
Spain	<ul style="list-style-type: none"> Inter-confederal agreements between the social partners but overtaken by legislation providing great scope for derogations 	<ul style="list-style-type: none"> Steep decline in the use of sectoral agreements and bargaining coverage Conclusion in some cases of sectoral agreements (for example, chemicals) reverting to the favourability principle 	<ul style="list-style-type: none"> Adoption of more 'realistic positions' by the parties Use of after-effect measures to rush the revision of agreements without much dialogue

7. The impact of measures on the content and outcomes of collective bargaining

When the economic downturn hit the manufacturing sector in 2008, faced with the reality of mass redundancies, the prospect of increasing unemployment and company closures, trade unions became increasingly concerned with minimising job losses. While these circumstances led to downward pressure on wages in the seven countries dealt with in the research, the trade unions' bargaining position and their ability to protect the terms and conditions of workers vis-à-vis employers' responses to the crisis varied significantly from country to country and were inextricably linked to the specific labour market measures implemented during the crisis. In this section we first analyse how the measures led to developments in wages and working time and other employment outcomes in manufacturing and the extent to which these developments were subject to collective bargaining processes. In the second subsection, we consider the implications for trade unions, employers and the state in their roles with regard to employment regulation and wage setting. We finish with an analysis of the significance and implications of these developments.

7.1 Emerging patterns of collective bargaining in wages and working time

The responses of employers to the crisis in all the seven countries included restructuring and redundancies to different degrees as well as working time adjustments. However, while industry employment decreased in all the seven countries during the crisis (as shown in figure 7.1 below) the extent of job losses varied from country to country, with these being more pronounced in Ireland, Greece and Spain than in Italy, Portugal Romania and Slovenia.

While all the countries reformed their labour market regulations and wage setting mechanisms during the crisis, the severity and impact of the changes varied. Overall, real wages fell in all seven countries but nominal wages also fell, especially in Greece and Ireland, as a result of either wage cuts or working time adjustments (OECD 2014). In manufacturing, nominal wages fell in Greece, Ireland and Romania (Figure 2).

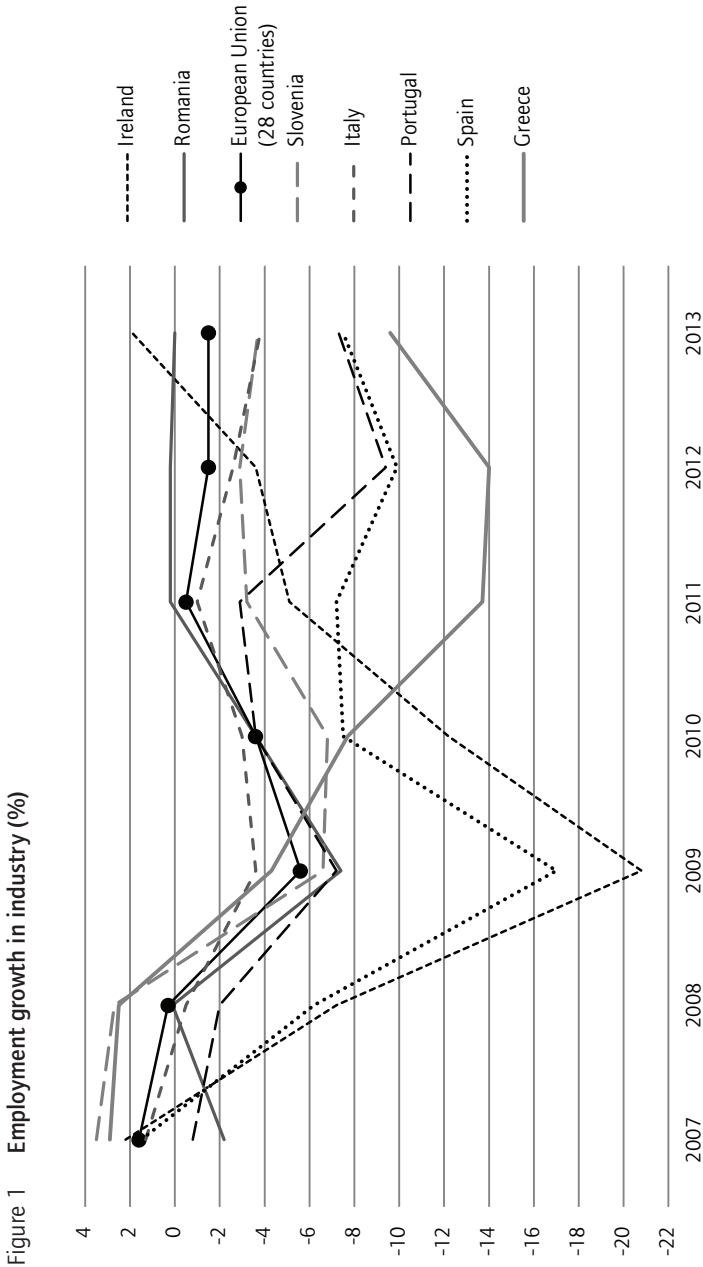


Figure 1 Employment growth in industry (%)

Source: Eurostat Labour Force Survey; Eurostat online database: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database (data accessed on 05 November 2014)

The impact on wages appeared milder in Italy and Slovenia than in the other five countries, where the changes have to varying degrees undermined joint regulation at national, inter-sectoral and/or sectoral levels and have led to a process of disorganised decentralisation (as discussed in the previous section). This process led to a decline in collective bargaining coverage, with detrimental effects for the wages and working conditions of those not covered. In turn, the measures also had a negative effect on the ability of trade unions to protect wages and working conditions through collective bargaining at the sectoral and firm levels (see also Broughton and Welz 2013). Indeed, data gathered by Eurofound also indicate a decline in bargained real wages for the total economy in 2011 and 2012 in a number of the European countries for which data are available, including Italy, Portugal and Spain (data for Greece, Romania and Slovenia not available) (Aumayr-Pintar and Fric 2013). Nevertheless, in manufacturing, at least in the case of the chemical and metalwork industries, an analysis by Schulten and Müller (2014) suggests that the impact of the crisis was less severe on real bargained wages than real actual wages.

To start with the less dramatic cases, while the initiative to introduce changes to labour law in Italy came from a unilateral move by the government, the social partners reacted with bargained responses, setting their own rules that limited the impact of the legal measures (Colombo and Regalia 2016). Case-based evidence from manufacturing in Italy suggests that firms refrained from taking advantage of the measures to evade the wage standards set in the sectoral agreement, although derogations were activated to enable greater flexibility in the management of labour, especially with regard to working time (Colombo and Regalia 2016). Nevertheless, even in Italy, where the overall capacity of collective bargaining to regulate employment and wages has been mostly maintained, trade unions found very difficult to negotiate improvements on wages and productivity rewards at the firm level (Colombo and Regalia 2016).

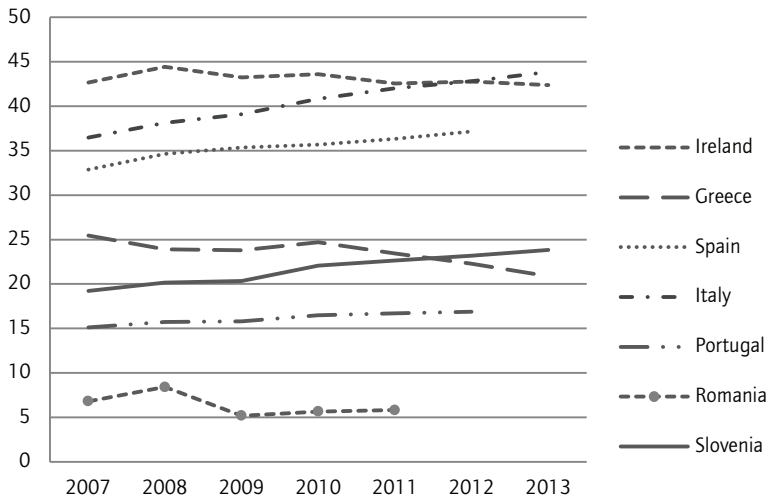
The national report for Slovenia indicates that, similar to what has happened in Italy, the impact on wages has been limited by employers' apparent tendency to respect statutory and jointly agreed wage standards, with the use of derogations confined mainly to working time flexibility (Stanojević and Kanjuro Mrčela 2016). However, employers' unilateral termination of sectoral agreements – in chemicals, as discussed in

section 5 – and reported cases of informal firm agreements temporarily reducing pay in order to save jobs may signal a lesser degree of resilience of sectoral bargaining in this case. However, the effect on workers of the vulnerabilities of collective bargaining in Slovenia may have been cushioned by developments in the statutory national minimum wage, which was increased by 18.6 per cent between August 2009 and March 2010 and continued to be subject to more modest increases throughout the crisis (Stanojević and Kanjuo Mrčela 2016). This extraordinary increase – which came about in response to workers’ discontent and a rise in industrial action in 2009 and met with significant employer dissent – had an influence on bargained wages as it legitimised union demands for sectoral wages to be set above the statutory minimum. This effect is well illustrated by the steel and electronics industries, in which after a strike called by the sectoral union in 2013, the pay for all job grades in the sector was set above the minimum wage. Nevertheless, the number of employees receiving the minimum wage increased from 20,000 before the crisis to 50,000 in 2013 (Stanojević and Kanjuo Mrčela 2016), indicating that the national minimum wage has also had a direct effect on wages during the crisis, or that collective bargaining has lost some of its capacity for setting floors for wages above the statutory minimum. While employers’ calls and government attempts to constrain the impact of the minimum wage on firms through opt-outs have so far been successfully resisted by unions, they also reveal the pressures facing this mechanism for protecting workers from low pay.

Compared with Italy and Slovenia, the effects of the measures appear more severe in the other five countries, of which the most dramatic case is Greece, particularly with regard to wages (see Figure 2). The breadth and magnitude of the measures imposed on wage setting mechanisms enabled Greek firms to make widespread use of wage cuts in response to the crisis. The wage reductions have been driven mainly by enterprise agreements, the great majority of which were concluded by the new non-union worker representation structure, ‘associations of persons’ (Koukiadaki and Kokkinou 2016). Wage reductions were also made possible by legal changes introducing the possibility of derogations from sectoral agreements at firm level and the temporary suspension of the favourability principle and of extensions of sectoral agreements. These developments in Greece were also greatly influenced by, initially, statutory wage freezes that spilled over into the negotiation of the 2010–2012 national agreement and also, in a second stage, the

extraordinary 22 per cent reduction – by government decree – of the national minimum wage, which was no longer to be jointly agreed and became statutory from 2012 (Koukiadaki and Kokkinou 2015). Research in Greece revealed that manufacturing employers took advantage of the new legal tools to introduce wage cuts unilaterally and through collective agreements with workers’ union and non-union representative structures. While firm-level agreements gained relevance during the crisis and were the main vehicle for introducing wage reductions, these have also been attempted – though unsuccessfully – at the sectoral level. As unions in metal and in food and drinks did not accept the wage cuts proposed by the sectoral employers’ federations, sectoral bargaining stalled. As sectoral agreements expired, many employers introduced, with even greater ease, wage reductions at the firm level (Koukiadaki and Kokkinou 2016).

Figure 2 Nominal wages per employee in manufacturing (‘000 euros)



Note: Nominal compensation includes employees’ wages and salaries and employers’ social contributions.

Source: Ameco, European Commission (online database), accessed 07/11/2014 at http://ec.europa.eu/economy_finance/ameco/user/serie/SelectSerie.cfm

A direct reduction in the national minimum wage also took place in Ireland, in February 2011, where wage reductions were an important part of the repertoire of manufacturing employers' strategies for dealing with the economic downturn (Hickland and Dundon 2016). While the reduction of the minimum wage in Ireland was temporary and the previous rate was reinstated only four months later, the introduction of possibilities for derogation based on employers' 'inability to pay' and the collapse of national bargaining enabled firms to cut wages. While the main approach has been to cut the variable components of pay, there was also evidence of a large minority (25 per cent) of firms cutting basic pay in 2009 (IBEC 2009, cited in Hickland and Dundon 2016). Although this was introduced in some firms with the agreement of unions in an effort to minimise job losses, the strategy of union concessions is progressively giving way to a new coordinated strategy of 'adapted bargaining'. The 2 per cent strategy, as it became known, appears to be leading to sustained wage increases in a growing number of manufacturing companies (Hickland and Dundon 2016).

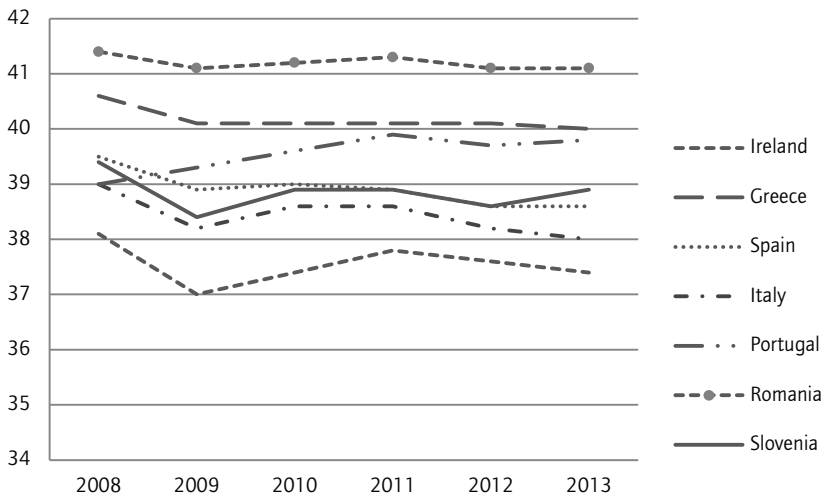
The research conducted in manufacturing in Spain revealed that wage reductions were also taking place in Spanish companies (Fernández Rodríguez *et al.* 2016), although this is not (yet) visible in comparative data on manufacturing nominal wages (Figure 2). From the beginning of the crisis the measures created a downward pressure on wages, namely by reducing the after-effect period of collective agreements, introducing possibilities for opt-outs and giving priority to firm agreements. Subsequent legislation in 2012 introduced 'wage flexibilisation', giving employers the prerogative to reduce wages unilaterally, though subject to arbitration (Fernández Rodríguez *et al.* 2016). Case study work conducted in Spain revealed that employers' organisations in the metal and chemicals sectors strategically used the new rules limiting the ultra-activity periods of agreements to extract concessions from unions, whereas at the firm level, employers are using opt-outs, company agreements and managerial prerogative to introduce wage cuts (Fernández Rodríguez *et al.* 2016). Romania has seen some of the most radical changes in its pay setting system and, after the measures (discussed in the previous section) that undermined national and sectoral bargaining, only three sectoral agreements remain valid in manufacturing, all of which were negotiated before the legal changes in 2011, but due to the suspension of extensions these only cover the employers who are members of the signatory associations (Trif 2016). The research in Romania also shows how the sectoral agreements that are still valid have

lost much of their relevance. This is illustrated by the collective agreement for food manufacturing. Although it is still valid, the pay rates set for the lowest grades have been surpassed by the minimum wage. Also, in the automotive industry, the employers' association and union negotiated an addendum to the 2010–2012 sectoral agreement providing for more flexible arrangements at the local level, but this did not prevent many firms from opting out of the association to avoid having to increase wages. In 2012 the employers' association negotiated a multi-employer agreement that applies to 40 firms (less than 10 per cent of the firms covered by the sectoral agreement in 2010). Even though specific cases of direct cuts to basic wages were not reported in the Romanian national report, aggregate data indicate a decrease even in the nominal compensation of manufacturing workers (as shown in Figure 2). Case-based evidence from Romania indicates that the labour market measures had a very negative impact on the ability of trade unions to negotiate pay increases for manufacturing wages in a country in which wages were already extremely low (Trif 2016). Under the circumstances of pronounced decentralisation and fragmentation of bargaining, the terms of employment at the firm level became contingent on three interdependent conditions: (i) industrial relations in the firm, (ii) managers' attitudes to union representation and participation and (iii) the local labour market and bargaining developments in neighbouring companies.

While the changes to collective bargaining were not as radical in Portugal as they were in Greece, Romania and Spain, they contributed to the emergence of stalemates in bargaining that prevented wage increases in manufacturing during the crisis. The non-extension of agreements affected pay in two ways: (i) it led to a reduction in bargaining coverage and (ii) it contributed to blockages due to the reluctance of employers' associations to conclude sectoral agreements in some industries, which also happened in Greece and Romania. This reluctance was, reportedly, related to concerns that non-extension might lead to unfair competition from employers who did not belong to the signatory association and might thus foster the disaffiliation of existing members, particularly in the case of low wage sectors, such as textiles, clothing and footwear in Portugal. As a result of these blockages, the majority of textile workers did not receive pay increases between 2011 and 2014 (Távora and González 2016). In addition, the restrictions on the after-effect period of collective agreements introduced in Portugal increased employers' leverage with regard to the unions, similar to what happened in Spain. As revealed by

what happened in metal and automotive manufacturing, the restrictions on after-effect periods meant that, under threat of the expiry of existing agreements, Portuguese manufacturing unions felt pressured to agree to terms that they had hitherto not considered acceptable, particularly with regard to flexibility arrangements. Even though bargained real wages decreased in metalworking in Portugal during the crisis (Schulzen and Müller 2014), the reduction of labour costs in manufacturing was, to a great extent, achieved through a statutory reduction of overtime premium pay that superseded jointly agreed higher rates and through the introduction of new systems of working time flexibility (time banks) that reduced the need for overtime work paid at premium rates (Távora and González 2016). As reported in interviews with social partners, this resulted in a significant cut in the total earnings of many manufacturing workers for whom overtime pay had become an important way of topping up their relatively low wages (Távora and González 2016). The freezing of the minimum wage between 2011 and 2014 further contributed to reduce the real wages of workers at lower grades and in manufacturing and low-paid sectors, such as food manufacturing and textiles.

Figure 3 Average number of actual weekly working hours of manufacturing employees



Source: Eurostat Labour Force Survey database, http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database (accessed on 5 November 2014).

Figure 3 shows that, except for Portugal, working time decreased in all countries, especially between 2008 and 2009, which suggests that arrangements to reduce working time, such as short-time working and temporary lay-offs, were widely used by firms in their initial response to the crisis. As such schemes are often associated with a loss of earnings, their use also helps us to understand the fall in nominal compensation presented in Figure 2 for Greece, Ireland and Romania.

The national reports confirmed that employers in manufacturing made extensive use of working time adjustments to respond to the initial fall and subsequent fluctuation in demand during the crisis. These adjustments included short-time working schemes, such as a reduced working week and temporary lay-offs, which were reported in the cases of Greece, Ireland, Portugal and Romania; increasing use of part-time workers and conversion of full-time into part-time contracts in the case of Greece (Koukiadaki and Kokkinou 2016); reducing overtime pay was a major strategy in Portugal, while in Greece this strategy was observed along with reducing overtime (Koukiadaki and Kokkinou 2016; Távora and González 2016); the use of time banks was reported as being used by some Slovenian employers and emerged as a widespread strategy in manufacturing in Portugal (Távora and González 2016). The widespread use of time banks, the variation of overtime work to respond to demand fluctuations and the reduction of the cost of overtime work may help understanding why, in contrast with the other six countries, working time did not decrease in Portugal during the crisis. While working hours were reduced as a measure to deal with the crisis, a more flexible approach to working hours and management demands for more time flexibility increased not only in Portugal but also in Spain, where, despite the overall fall in working hours, management's ability to raise them has increased. The extent to which these working time adjustments were negotiated at the sectoral or the firm level, or whether they were implemented by managers unilaterally, varied widely and was not always clear. In Italy and Portugal there was evidence of these schemes being introduced in industry agreements, although in the case of Italy they included dispositions for greater flexibility at the enterprise level. While in Portugal time banks were introduced in sectoral collective agreements from 2009, there was evidence of informal time banks in manufacturing firms even before they were regulated and of working time regimes that were not aligned with the dispositions of the applicable industry agreement (Távora and González 2016). These informal

arrangements at the firm level were also reported in the case of Slovenia (Stanojević and Kanjuo Mrčela 2016).

Even though increased working time flexibility can potentially have negative consequences for work/family reconciliation, the only cases in which these were considered came from Italy. In this country, two enterprise agreements – one in chemicals and one in metal – included work/life balance issues and, in the sectoral agreement for metalwork, greater working time flexibility to meet the employers' needs was balanced with flexible options to respond to those of employees, particularly working parents (Colombo and Regalia 2016). Though not related to working time, there have also been positive developments concerning equality and work/family reconciliation in Greece and Portugal. In Greece the national agreement of 2013 for the first time stipulated a right to paternity leave (Koukiadaki and Kokkinou 2016), whereas in Portugal a sectoral agreement concluded in 2014 in textiles extended childcare subsidies to fathers (Távora and González 2016). This development in Portugal may have been influenced by recent legal dispositions that require the prior inspection of all collective agreements by the national commission for equality in order to ensure compliance with equal opportunities legislation and to prevent discriminatory provisions. Indeed, a number of agreements were amended during the crisis due to these new legal requirements in Portugal, where equality policies appear to have been ring-fenced from austerity (Távora and González 2016). This was not the case in Slovenia, however, where parental benefits were temporarily reduced during the crisis and trade unions expressed concern about the lack of openness of employers to equal opportunities and work/family balance issues (Stanojević and Kanjuo Mrčela 2016). The Spanish report also revealed concerns that fewer resources were being devoted to equality, that the emphasis on defending core conditions was rendering trade unions unable to be proactive on equality matters and leading to an interruption of the process of extending the bargaining agenda (Fernández Rodríguez *et al.* 2016).

The crisis and the measures taken to address it also created or exacerbated other inequities and divisions in the workforce, namely between existing workers and new entrants, with the latter in some cases being excluded from certain benefits and offered lower wages than those stipulated by collective agreements for existing workers, as reported in the cases of Greece and Ireland. With regard to Greece, inequities in pay based on age

are also enabled by national policies, namely the significantly lower rate of the minimum wage for younger workers (Koukiadaki and Kokkinou 2016). Another source of inequality was increasing in Slovenia, where temporary agency workers are not covered by collective bargaining and therefore their wages and working conditions are below the collectively agreed standards (Stanojević and Kanjuo Mrčela 2016). Even though equal opportunities and work/family reconciliation policies in Portugal have been safeguarded during the crisis, the implementation of austerity and labour market measures without consideration for their potential impact on equality led to negative outcomes from a gender perspective (Távora and González 2016). In particular, the freezing of the minimum wage in the context of bargaining blockages resulted in no wage increases for many workers in the lowest paid manufacturing sectors where women are overrepresented, such as textiles and some food subsectors. This may certainly have contributed to the increase in the gender pay gap that was observed during the crisis in Portugal (Távora and González 2016). More generally, evidence from the different countries suggests that the measures have particularly weakened the protection of the most vulnerable workers, particularly the low skilled and those in low-wage sectors.

Trade unions' focus on defending jobs and wages has also led to a narrowing of the bargaining agenda. This was particularly the case in the metal industry in Slovenia, where a whole section on education was dropped from the sectoral agreement, and in Spain and Italy, where a decline in attention to skills development was also reported (Stanojević and Kanjuo Mrčela 2016; Fernández Rodríguez *et al.* 2016).

Collective bargaining at the firm level during the crisis focused to a great extent on company responses to the crisis, including restructuring and flexible adjustments to prevent relocations and company closures. Where these proved unavoidable, the negotiations focused on the terms of these processes, which affected large numbers of workers (Stanojević and Kanjuo Mrčela 2016). The national reports provided some examples of collective bargaining contributing to identify solutions that avoided relocations and minimised job losses. In Italy, solidarity contracts have been a way of supporting flexibility in firms while at the same time preventing or minimising job losses. In one case, industrial action and collective bargaining helped to prevent a white goods manufacturer from relocating, even though the process of bargaining was supported by local and national government mediators (Colombo and Regalia 2016). In

Ireland, social dialogue over an 18-month period at a drinks manufacturer avoided job losses and, although fringe benefits were abolished, there were no wage cuts and the union had moved its bargaining agenda towards the 2 per cent strategy (Hickland and Dundon 2016). In another Irish manufacturing company producing medical devices, collective bargaining managed to find cost savings and minimised – though it did not prevent – wage cuts; it also improved the redundancy compensation of the 200 workers that were let go (Hickland and Dundon 2016).

In Slovenia, while in many cases collective bargaining and the involvement of unions did not prevent job losses, these processes improved the terms of redundancies (Stanojević and Kanjuo Mrčela 2016). In Portugal in one of the case studies, a large automotive multinational, the workers' committee was actively involved in designing the company response to the crisis, which avoided job losses and instead included working time flexibility, temporary posting of employees to the parent company in Germany and skill development (Távora and González 2016). In Greece, in one of the company case studies in food and drinks manufacturing, collective bargaining also managed to find joint solutions that minimised job losses and avoided compulsory redundancies (Koukiadaki and Kokkinou 2016). However, case-based evidence from Greece and Ireland shows that agreeing to wage reductions was not always sufficient to prevent job losses. Of the seven Greek companies studied that introduced wage reductions, four also dismissed a number of employees, particularly the smaller firms. Nevertheless, some of these cases illustrate that social dialogue can help to provide improved solutions that are acceptable to both parties. In particular, Irish employer interviewees emphasised the pivotal role of collective bargaining in the success of firms' responses to the crisis (Hickland and Dundon 2016). As noted by Marginson *et al.* (2014), employers can benefit from collectively agreed solutions because even when these involve negative outcomes for workers, their involvement in the design of the solutions can help prevent the decrease of trust, morale and commitment that unilateral decisions by management can generate.

Table 6 summarises the key bargaining outcomes in terms of wages, working time, skills development and equality and work/life balance related to the labour market measures implemented during the crisis in the different countries studied.

Table 6 Summary of bargaining outcomes in manufacturing related to labour market measures

Country	Wage reductions	Working time and other forms of flexibility	Skills and training	Equality and WLB
Ireland	Yes, including basic wages	Short-time working and temporary lay-offs		
Greece	Yes, including basic wages	Short-time working and temporary lay-offs Reduced use of overtime Increased use of part-time work Greater flexibility in contracts with lower security for workers		Extension of parental leave to fathers in national agreement
Spain	Yes, including basic wages	Cases of longer hours with the same pay and in some cases option of time banking	Less training	Fewer resources for equality purposes
Italy	No	Different forms of working-time flexibility widely used by firms as key responses	Less training in enterprise agreements	Work-life balance and equality covered in two firm and one sectoral agreements
Portugal	Mainly overtime pay	Time banks and other flexible arrangements as major responses Short-time working and temporary lay-offs in metal and automotive industries		Childcare subsidy for fathers in textile agreement but wider gender pay gap
Romania	Not specified	Different forms of working-time flexibility widely used by firms as key responses Greater flexibility in contracts with lower security for workers		
Slovenia	No	Different forms of working-time flexibility widely used by firms as key responses	Dropped from some agreements	Temporary reduction in parental leave pay Equality excluded from the bargaining agenda

7.2 Interaction between developments in the content and outcomes of bargaining and the role of the social partners and the state

In all countries the state has sought to intervene in areas that were traditionally left to the social partners to reach agreement freely. In Italy and Slovenia these attempts were confined to changing some bargaining rules to promote greater flexibility at the firm level. In the case of Italy, the government's unilateral intervention was counteracted by the reactions of the social partners, reasserting their collective bargaining roles in alignment with the voluntarist tradition of industrial relations there. However, even in the cases of Italy and Slovenia, where encompassing employer and union organisations have retained much of their influence in the regulation of employment and wage determination, individual firms increased their prerogative to set their own terms, at least with regard to the organisation of work and working time. As discussed in the previous section, the increased regulatory role for the state and the rise of managerial prerogative of individual firms to the detriment of trade unions and employers' organisations were more pronounced in the other five countries. Where unions retained a role at the sectoral level, as in Portugal, they have had to temper their demands and standards. Increased scope for managerial unilateral decision-making also led to a reduced role for unions in firms. In the context of lower institutional and legal protections for unions and lower state support for collective bargaining, the role of unions and the maintenance of their influence during the crisis to some extent depended on employers' willingness to engage with them. Therefore, the unions that were prepared to engage in concession bargaining and avoided a confrontational stance appeared in some cases more successful in retaining a role during the crisis even if, at least at first, this involved accepting wage cuts or freezes and greater flexibility, particularly with regard to working time. This is well illustrated by the case of Ireland where, after the initial shock of the crisis and the collapse of national partnership, trade unions recalibrated their stance from concession bargaining to a call for modest wage increases by approaching employers individually in a low-profile, non-confrontational but well-coordinated approach (Hickland and Dundon 2016). This '2 per cent strategy', as it came to be called, appears to be achieving success and is leading to sustained wage increases in manufacturing, enabling unions to reassert their role as 'a player in the economy' (as articulated by a union respondent cited in Hickland and Dundon 2016).

Another example of a successful non-confrontational union approach is provided by the metal industry in Portugal, where a more collaborative union structure gained ground in relation to another one that was more representative, but confrontational. The former thereby became the most prominent union actor in sectoral bargaining in this industry, despite having to agree to terms that had hitherto been considered unacceptable. However, this process also intensified the resentment between the two union factions in Portugal. Indeed, except for Ireland and Italy, there was little evidence that the crisis and the associated threats to the labour movement contributed to a greater cohesiveness within trade unions. While in Portugal the aggravation of fragmentation was expressed mainly by the continued competition and resentment between the two ideologically divided union structures, in Romania this was manifested mainly by increasing tensions between local and central union structures (Trif 2016). In the absence of a sectoral agreement that provided a framework and a basis to negotiate from, Romanian local unions enhanced their status within the union structure and started claiming and actually retaining a higher proportion of membership fees. In turn, this led to financial difficulties in federations and strained relations between union structures at the different levels of the union hierarchy. The case studies in Romania also provided two examples of company unions that disaffiliated from the union federation and created a regional structure to better coordinate bargaining at the local level (Trif 2016).

While cooperative approaches emerged as relatively successful in some instances of sectoral bargaining in Portugal and in a context of union coordination such as in Ireland, in Slovenia militant trade unions at the national level were able to protect and improve on workers' minimum standards. However, there was evidence of Slovenian trade unions losing some ground at the sectoral level because they were unable to prevent employers from denouncing agreements, while at the firm level union structures lost much of their capacity to protect members and were adopting flexible and cooperative approaches in relation to management responses to the crisis. Nevertheless, in general, union strategies at firm level varied widely and the extent to which these led to positive outcomes when defending wages depended on equally variable factors both within and across countries. In addition to the economic situation of the firm, two common themes were identified across countries and company case studies as important determinants of union success in defending workers and wages.

A first common theme was management attitudes to unions, although a positive management stance was normally associated with a cooperative approach on the union side, which also made the unions' gains for workers to some extent dependent on management willingness. The second common theme was, not surprisingly, the membership basis and mobilisation capacity of trade unions in firms. Examples from Italy, Portugal and Romania show how worker mobilisation and industrial action – despite legal constraints in the case of Romania – continue to be effective tools available to unions to increase their leverage in bargaining and protect workers' pay. In turn, the case of a large automotive multinational company in Portugal, which is a model of good employment relations, illustrates how a pro-union stance on the part of management and a cooperative approach from the workers' structures (both union and non-union, in this case) do not always guarantee protection of workers' pay. In this case, it did not prevent management from using the new legal provisions to unilaterally reduce overtime pay, thereby breaching the company agreement with the workers' committee.

Irrespective of the character of industrial relations, the case studies in the different countries showed that, despite the pressures put on unions by implemented measures, they were still involved in and to some extent able to influence the processes of firm restructuring. Though they were not in many cases able to prevent job losses, there were examples where their involvement prevented compulsory redundancies (Greece), reduced the number of potential redundancies (Ireland and Spain) and helped to improve on redundancy terms and packages (Slovenia and Ireland). In addition, there was evidence of successful union organizing in Italy through involvement in helping workers to make unemployment benefit applications after being laid off by crisis-hit manufacturing firms, and this appeared to be leading to membership increases.

A greater role for individual firms in setting the terms and conditions of employment was the common denominator when it comes to the implications of the measures for employers. In Italy and Slovenia this mostly meant greater flexibility in work organisation and working time and, due to the changes in employment protection legislation, also – at least to some extent – in staffing levels and contracts. In the other countries, this also involved greater managerial prerogative in pay setting, particularly in Greece, Spain and Ireland where the labour market measures enabled employers to reduce basic wages. Greater

managerial prerogative made possible more flexibility in responses to the crisis, mostly through cost savings. As reported by the employer side in the interviews in the different countries, this enabled some firms to restructure or readjust and cope with the international crisis, particularly the sudden fall in demand in 2008–2009. However, there was some evidence of opportunistic use of the new legal tools to reduce costs or implement changes in firms that were not under significant pressure. This is exemplified by the generalised adoption of the reduced overtime pay rate by Portuguese firms, which was viewed by unions and workers as a breach of the collective agreement (Távora and González 2016) and by the fact that in Slovenia some collective agreements were cancelled by employers in sectors that were in a good economic situation (Stanojević and Kanjuo Mrčela 2016).

As individual firms increased their role in setting employment rules in the workplace, employers' associations may have lost some of their status and relevance, but only in Romania was there evidence of a significant trend. In this country, with the dismantling of national and undermining of sectoral bargaining, employers' associations lost much of their ability to influence the regulation of employment at those levels and the suspension of extensions led to disaffiliation and fragmentation of employers' organisations (Trif 2016; see previous section for a more detailed discussion). Even though some of the measures, particularly the changes to the extension processes and criteria, were not favourable to employers' associations and were implemented without their involvement in Greece, Portugal, Romania and Spain, other measures clearly favour them in bargaining with trade unions, such as more limited after-effect periods of collective agreements in Portugal and Spain. In addition, many of the changes that reduced employment protection legislation and increased the scope for flexibility corresponded to long-standing demands made by employers through their associations, but these had previously been resisted by the trade unions. To the extent that the crisis provided an opportunity to introduce labour market measures that had long been desired by employers and their associations it is difficult to argue that these reduced their influence, except in Romania due to the exceptional circumstances that led to the disintegration of employers' organisational capacity.

Table 7 Significance and implications of measures implemented for the state, employers and trade unions

Country	State	Employers' associations	Individual employers	Trade unions
Ireland	Withdrew support for central collective bargaining Intervention by reducing the national minimum wage	Reduced role due to the collapse of national bargaining	Increased role Greater managerial prerogative in work organisation and pay setting.	Reduced influence but emerging coordinated 'adaptive bargaining' strategy
Greece	Increased state unilateralism and intervention in employment regulation and wage setting Withdrew support for sectoral and national bargaining	Some loss of influence due to state unilateralism and the undermining of national and sectoral bargaining	Increased role Greater managerial prerogative in work organisation, contractual arrangements and pay setting	Reduced role and influence
Spain	Increased state unilateralism and intervention in employment regulation and wage setting Questioning systematic support for sectoral and national bargaining	Continued role but greater internal differences in employer interests	Increased role Greater managerial prerogative in work organisation and pay setting	Reduced influence and challenges to regulatory influence
Italy	Increased state unilateralism and intervention in employment regulation counteracted by social partners	Continued relevant role	Increased role Greater managerial prerogative in working time but not so much in pay setting	Some loss of influence but role in manufacturing was mostly maintained. Union involvement in unemployment benefit applications leading to membership increases
Portugal	Increased intervention by reducing support for sectoral bargaining, greater regulation and freezing the national minimum wage	Continued relevant role despite pressures related to non-extension of sectoral agreements	Increased role Greater managerial prerogative in working time but not so much in pay setting except overtime pay	Loss of influence but maintained bargaining role at sectoral level
Romania	Increased state unilateralism and intervention in employment regulation and wage setting Withdrawing support for sectoral and dismantling of national bargaining	Reduced influence and non-extension of sectoral agreements leading to disaffiliation and fragmentation	Increased role Greater managerial prerogative in work organisation, contractual arrangements and working time	Loss of influence and increased fragmentation
Slovenia	Increased state unilateralism and intervention in employment regulation to some extent counteracted by trade unions	Continued relevant role	Increased role Greater managerial prerogative in working time but not so much in pay setting	Some loss of influence at firm and sectoral level but maintained capacity to protect workers at national level

Under pressure from supranational institutions, the state's increased role was expressed mainly in the implementation of legal measures concerning employment regulation, which led to profound changes in the structure of bargaining. As discussed in section 6, this enabled decentralisation and downward flexibility in wages in firms. The state also intervened more directly to reduce private sector wages – either by freezing or even reducing the national minimum wages, as in the case of Greece and Ireland, or by reducing the legal pay rates for overtime work while suspending clauses in collective agreements that set higher rates, as in Portugal.

While governments' aim of providing firms with downward flexibility in labour costs may have been achieved, disorganised decentralisation led, in a number of cases – namely Greece and Romania – to unintended negative outcomes, such as growth of the grey market and undeclared payments, which reduce state revenue from taxes and social security contributions. Indeed, the extent to which the measures helped to resolve the problems of the countries most afflicted by the sovereign debt crisis is contested and will be discussed in the next section. Table 7 summarises the key implications of the labour measures for the role of the state, employers and trade unions.

7.3 A critical analysis of the impact of the measures on the outcomes of collective bargaining

The crisis and the labour market measures, while providing tools for employers to respond to the crisis with flexible time arrangements and cost reduction strategies, led to negative developments in the wages and employment conditions of workers in manufacturing in all the seven countries included in our research. However, the severity of these negative outcomes appeared associated with a number of factors. These included, first, the breadth and magnitude of labour market measures and how they affected the structure of collective bargaining, namely the extent of decentralisation and reduction of coverage. A second factor was the pre-existing system of collective bargaining and the way the social partners responded to the measures. Thirdly, these outcomes were somewhat mediated by developments in other wage-setting institutions, such as minimum wages. In this section we discuss these effects and their consequences.

Marginson *et al.* (2014) have shown that collectively agreed responses to the crisis can help in mitigating externalities both for workers – by limiting job and income loss – and for employers, by retaining skilled employees and avoiding negative effects on commitment and morale. There are a number of firm-level examples of this in the different countries studied. However, Marginson *et al.* (2014) show that collective bargaining is better equipped to mitigate market externalities when it takes place under encompassing multi-employer arrangements, especially when these are well articulated and provide a procedural framework for firm-level adjustments. Italy can be regarded as, to some extent, representing such a bargaining system and, consistently, it was where the actors were better able to respond collectively and contain the negative impact of the crisis and the measures taken through negotiated decision-making at different bargaining levels. The main reason why Marginson *et al.* (2014) argue that sectoral agreements are better placed than those at the firm level to reduce market externalities is that they are more inclusive. Furthermore, the bargaining power of workers and employers is more balanced at this level and, if vertically articulated, can provide a procedural framework for firms' responses that avoids putting most of the burden on workers.

Consistently, in the countries in which sectoral bargaining arrangements were less robust and/or that were significantly disrupted by state intervention – particularly Greece, Romania and Spain, but also to a lesser extent in Portugal and Slovenia, despite some vertical articulation in the latter case – the responses to the crisis became increasingly decentralised and therefore more likely to produce outcomes less favourable to workers and more dependent on local imbalances. The same applies to Ireland where, especially after the collapse of the national agreement, crisis responses were designed entirely at the enterprise level. As predicted by Marginson *et al.* (2014), this left more and more workers outside the scope of collective bargaining. These included not only the unemployed, but also workers in different types of non-standard employment arrangements, as well as those in firms and sectors not covered by a collective agreement. Also Visser (2013) argues persuasively that, even in cases of relatively organised decentralisation, these processes are likely to involve a shrinking core of workers, mostly in large firms, and lead to an increasing labour market dualism due to firms increasingly opting out of agreements, the lower number of workers covered and increasing numbers of workers in non-

standard employment. Our research provides some evidence that where decentralisation is mostly disorganised, these effects are likely to be even stronger. The legal measures that reduced employment protection legislation and facilitated different atypical contractual arrangements further aggravate these dualisms.

The extent to which the changes in collective bargaining affected its outcomes – particularly pay – was also associated with developments in other wage-setting mechanisms, especially minimum wages. Minimum wages provide a floor for wages and are designed to protect workers from very low and exploitative pay, but they also influence overall wage developments and collective pay bargaining, particularly in countries with relatively weak coordination of bargaining (Grimshaw and Bosch 2013; Grimshaw and Rubery 2013). In the context of decreasing union bargaining power, increasing bargaining blockages and shrinking coverage, minimum wages become even more crucial to protecting the pay of vulnerable workers, especially the lower skilled and those employed in low-wage sectors. However, freezes or even reductions in minimum wages mean that this mechanism failed to fulfil this function during the recession and this aggravated a downward trend in both bargained and individually contracted wages, with Greece the most extreme example. Slovenia was the exception to this rule; while this country also experienced considerable pressures on collective bargaining, a significant increase in minimum wages played a protective function that limited the impact of these pressures.

An OECD analysis shows that real wages during the crisis lagged behind labour productivity, which resulted in a higher profit share for firms and a lower share for workers (OECD 2014). This is consistent with AMECO data that reveal that the wage share in manufacturing decreased during the crisis in all the countries under study except Italy.⁷⁵ Even though the OECD argues that this is typical and part of firms' recovery path after a period of labour hoarding (OECD 2014), labour's income share had been decreasing long before the crisis in most developed countries, including Ireland, Italy, Portugal, Slovenia and Spain, though not in Greece (data are not available for Romania) (OECD 2012b). These trends were explained in the OECD (2012b) analysis by technological development

75. Adjusted wage share in manufacturing industry (compensation per employee as a percentage of nominal gross value added per person employed). Accessed 24/11/2014 at http://ec.europa.eu/economy_finance/ameco/user/serie/SelectSerie.cfm

and increasing international competition, but also by the erosion of collective bargaining institutions and of trade union bargaining power. Unless there is a change in the trajectory of erosion of collective bargaining institutions, these trends are unlikely to be reversed.

Despite the high social costs and unfair distributional outcomes of the reforms, the extent to which they contributed effectively to resolving the economic troubles of the countries concerned was questioned by the social partners in our study. Their concerns echoed the analysis by Schulten and Müller (2013) that suggests that not only is the interventionist focus on reducing labour costs ineffective in correcting macroeconomic imbalances in Europe, but it even aggravates the debt and competitiveness problems of deficit countries. Their argument is based mainly on the fact that wage freezes and cuts can depress domestic demand more than they increase exports. Moreover, while austerity contributed to the increase in unemployment (Schulten and Müller 2013) wage cuts did not necessarily translate into more jobs because, while they may have helped restore the profitability of troubled firms, they did not help to overcome their lack of competitiveness in product markets (OECD 2014). For similar reasons, the ILO Global Wage Report (ILO 2012b) argues that the path to economic recovery should move away from wage cuts and instead promote a better link between wage developments and productivity that not only promotes fairness but also stimulates domestic demand. In turn, this would involve a more enabling and supportive environment for collective bargaining and the strengthening of wage-setting institutions that protect the most vulnerable workers. Additionally, the report calls for increasing efforts to raise levels of education and to develop the skills needed for a productive transformation likely to lead to labour productivity growth (ILO 2012b). Though not without challenges, raising labour productivity would be mostly beneficial for the different parties: the employers, because it would lead to increased output and profit; the workers, because it would improve firms' ability to raise their wages; and the government, because it would increase tax revenues and social contributions from firms and workers. Therefore, productivity growth is a theme likely to unite rather than divide the social partners. Moreover, evidence from our study indicates that employers— and not only trade unions — support collective bargaining and understand its role in obtaining workers' cooperation for implementing change. A policy shift towards productivity-based growth coupled with the re-establishment or reinforcement of national

social dialogue and of a supportive environment for collective bargaining would furnish a better alternative path out of the crisis. Employers and trade unions are well placed to contribute to the design of such a strategy at national, sectoral and firm level and their involvement in an issue likely to benefit both sides would in turn contribute to industrial peace and social cohesion.

8. Employers, trade unions and the state in the new panorama of labour relations: responses and perspectives

The response of trade unions and employers to the changing landscape of collective bargaining reveals a range of issues and tensions in terms of the decentralisation and other aspects of collective bargaining. The responses illustrate that there has been no clear paradigm shift in the manner in which collective bargaining change is being engaged with. Instead, what we are seeing is a process of change and fragmentation that is uneven and ambivalent in terms of its outcomes and which will be discussed in this section.

In terms of their responses, one could argue that employers and the state have been the main protagonists and that trade unions have found themselves isolated, engaging in either minimal concession bargaining or a broader strategy of political mobilisation (or both) to reverse the measures implemented with regard to labour market regulation. However, on closer inspection, our research reveals greater uncertainty and ambivalence among many social and regulatory actors, not just trade unions.

The measures implemented with regard to collective bargaining in the seven countries can be characterised as a substantial attempt to transform the panorama of labour rights as they have existed since the mid-to late twentieth century. They form the basis for a major re-landscaping of employment regulations, systematically undermining the voice of trade unions and the reach of collective bargaining as a joint form of regulation. Many see these developments as an extension of the neoliberal project of the New Right in the United Kingdom and the United States which, since the early 1980s, has limited the voice of trade unions and removed much of the legislative support for collective

bargaining (Howell 2005). Critics of these labour relations measures see them as driven by a range of transnational regulatory actors who are using the crisis to impose more labour market ‘flexibility’ and mobility, but on the employers’ terms. The current climate of anti-trade unionism, which is apparent in such countries as Greece, Romania and Spain for example, is seen to be a direct result of the efforts of right-wing political networks and the neoliberal-oriented elites of those countries with their interest in privatisation and ‘free markets’.

However, we need to draw on our research to fully understand this broad ‘project’ in the seven countries and to fathom the extent of these changes and the nature of the shifts taking place. What we have encountered are more complex readings and interpretations from all sides – especially trade unions and employers – and a growing concern about the failure to understand and defend the importance of social dialogue.

8.1 Employers and collective bargaining change

In terms of employers and their organisations, we have seen in all the national cases a desire to exploit crisis measures for the purpose of reducing labour costs and the supposed burden they impose on corporate innovation and development. The decentralisation of bargaining and the ability to opt out of agreed procedures and outcomes is seen as a way of reducing wages. In all the countries we have seen significant wage erosion brought by the indirect use of unemployment and draconian social policy, but also through more direct reductions in labour costs in the form of new types of collective bargaining agreements based on what many see as more coercive employment legislation. Employers have not been slow to use the legislation to – in the words of one Spanish employer – ‘correct’ the balance between labour and capital, allowing for pay to be linked to the ‘reality’ of the firm and the economy and not some ‘political criteria’ (Fernández Rodríguez *et al.* 2016). The notion of exceptional economic circumstances allows employers to by-pass agreements and to directly lower or change some of the key aspects of collective agreements. The notion of automatic increases through links with inflation, automatic adjustments to pay and the extension of agreements across time and across groups of workers is being challenged. The question in many cases – such as Spain and Portugal – is whether some employers see this as an interim measure, a short-term

corrective to the ‘imbalance’ against them that they consider emerged in the previous years. The other question is whether, after a period of time, this will give way to a resumption of organised labour relations and the return to more negotiated bargaining arrangements. As things stand it is unclear what the longer term engagement with such practices will be: in Greece, for example, it is not clear whether such suspensions of extension mechanisms will be long-term.

In terms of substantive worker rights, we have also seen legislation in countries such as Greece and Spain being used to reduce the amount of compensation a worker receives when dismissed for ‘economic reasons’. This has emerged from the pressure exerted by supranational institutions that view the labour market in Spain as ‘rigid’ and unable to correct itself efficiently. In the Italian labour market the cost of labour market exit has been an ongoing target for the liberal market politics of the OECD, as pointed out by Colombo and Regalia (2016). Many current national measures appear to indicate that there is a push to less ‘costly’ forms of labour market exit for employers: the question of whether they are easier, however, will be discussed later due to the fact that the legal dimension of the state increasingly plays a central role in overseeing redundancies and dismissals and attempting to ensure some degree of consistency.

These employer strategies have sometimes involved a more critical attitude towards the trade union movement as a whole, using legislation to undermine worker representation and voice. This can be clearly seen in Romania, where the representative basis for trade union recognition has been changed: the thresholds are much more onerous for trade unions seeking to play a role in collective bargaining. This is also the case for employers’ organisations, which also have to represent a larger constituency for the purpose of collective bargaining. In Greece we have seen the development of ‘associations of persons’ as an alternative to trade unions, which breaks with broader forms of worker representation. In Spain, draconian legislation has been re-invoked to curtail certain forms of strike action, as already mentioned. In some of the cases studied in Spain, this dormant legislation on picketing and collective action, from the Franco dictatorship, has been used to curtail and arrest trade union activists during disputes, one of which was the subject of an interview conducted by the Spanish research team. The extent, nature and environment of union activity is thus being challenged in one way or another.

We are seeing not just a reduction in labour standards but a calling into question of the nature and form of the labour movement. In this respect we see that employers have not been slow to exploit the changing measures and laws on labour relations. The cases of Greece, Romania and Spain are clear examples in this respect, while in Ireland the employers have pointed to a new strategy – ‘a future way’ – that sees non-unionism as a preferred feature of any future strategies (see Hickland and Dundon 2016), although the extent to which it is taken up will depend on the labour relations traditions of different firms. The employers’ response has been to engage with legislation to substantially weaken trade unionism and social dialogue.

However, this is only part of a more complex spectrum of employer strategies. One could argue that Romania lies at one extreme, followed by Greece and Spain, with Ireland coming next, although this is in part due to the voluntarist legacy of regulation derived from the colonial British past, which allows for non-unionism to be more prevalent, as is clearly the case in some parts of the economy. In fact, in Ireland there have been various critiques of the previous form of social partnership, according to which it was closer to micro-level concession bargaining than a robust Nordic system of regulation. Hence there is ample scope, presumably, for more ‘accommodating’ labour relations strategies and that much has been learned about social dialogue and economic efficiency since the 1990s.

While trade union decline has been at its most extreme in Slovenia in the past ten years, trade unions have not been straightforwardly subjected to targeted measures, unlike those in the other countries. In some respects, there appears to be a legacy and living culture of social dialogue in various aspects of the local labour relations systems. Turning to Italy and Portugal, the state and employers’ critique of trade union rights has been less profound. The role of trade unions at the level of the state in both these countries appears to have been greater and the social consensus in the past twenty years more significant. The labour market measures have brought change to the process of collective bargaining, but not quite the direct political challenge seen in other cases. This may be due to the way trade unions have engaged with the state and social dialogue. This is important for our study because it reveals that no systematic liberal market project is being developed and much depends on the extent of the crisis, the correlation of political forces and the culture of negotiation

and coordination within and between trade unions. The strategic and occasional bypassing of trade unions through labour market measures does not always mean a systematic political and ideological undermining of them. This was the case in national contexts with a more embedded tradition of social dialogue in terms of collective bargaining and a different national consensus on the role of organised labour. It was also the case where ‘Anglo-Saxonisation’ and neoliberal practices were less common.

This diversity of responses allows us to reveal more complex developments in terms of employer responses. On close inspection the national case studies reveal some inconsistencies in the use of legislation and policy measures. Many cases have not simply undermined or removed the trade unions, even when they have attempted to bypass them in terms of pay agreements. In many cases we found that social dialogue and collective bargaining processes had been sustained despite the politicised and changing regulatory environment. Even in Romania and Slovenia there remains a commitment in the larger firms to social dialogue, albeit with provisos concerning the need to change certain types of working conditions in terms of hours and wages. There has been no systematic shift away from the format of bargaining as both sides worked on the basis of the need to keep some channels of communication on a formal and informal basis. In one leading metal firm in Spain a social dialogue-oriented human resource manager did acknowledge that it was more the threat of using legislation to bypass the unions and lower wages that created an element of compliance, not actual use of such legislation and other basic labour relations measures.

There appeared to be a *quid pro quo* running through larger Spanish firms – and even in organisations dealing with smaller firms – that changes to substantive terms and conditions of work could be made provided the basic elements and structures of collective bargaining were sustained and not wholly bypassed. To this extent it was often clear that while various firms did not automatically implement sectoral agreements they did use the measures implemented and the potential to do so as an instrument in their negotiating armoury. In Greece, the use of ‘associations of persons’ in small – but sometimes also large – firms enabled management to reduce wage levels substantially, while use was also made of new forms of legislation promoting functional and numerical ‘flexibility’. In Ireland there were cases in which the changes

were used and the economic circumstances referenced to enforce quite systematic forms of restructuring, but this was not generalised and the collective bargaining structures remained to some extent. The real irony was that in Italy, Portugal and Spain, for example, there was a real demand among the employers' organisations in the metal sector and other sectors, such as chemicals, to preserve sectoral bargaining and its remit. This was seen as essential for various reasons.

First, it was felt that the agreements had been underpinned by robust dialogue and that the forums in and around bargaining processes did not just result in better agreements but helped to smooth the differences between the social partners. Strategic issues could be developed and discussed and problems confronted informally, too. In many respects it allowed for a shared history of problem-solving between different players. It formed the basis of more intense relations that could sustain most challenges to the firm and which had been reforming labour market structures sometimes ahead of government policies.

Second, there was a sense in which any change to existing agreements and any further decentralisation would risk shifting the burden of regulation and negotiation to smaller firms. For the larger multinationals this was not a problem. Many of the larger companies in metal and chemicals were clear they would be able to sustain the more complex bargaining changes and could forge a way ahead in terms of how they worked with trade unions. In some cases their systems of social dialogue were robust enough to ignore the legislation and the political resources it offered the firm. This applied in Greece, Portugal and Spain, for example, where discussions about works councils and other established forums continued, and where the health and safety committees, for example, still operated. However, for smaller firms there was a risk that going beyond implementation pacts and actually bargaining directly with the workforce could upset workplace relations. The argument was clear: decentralisation could politicise labour relations further and create a new era of instability, which had to some extent been overcome during the past twenty years (this echoes the debate in Fairbrother 1994). There was a sense in which the memory of social dialogue and the manner in which agreements had been made would be lost. This reflects a growing tension in employers' organisations. In Slovenia it was apparent that there were growing signs of a lack of consistency among employers in their relations to social dialogue: there were competing points of view

and no shared ‘neoliberal’ consensus about change. In Portugal and Romania legal changes to employer representativeness criteria led to real concerns about how employers were meant to organise and represent the broader and longer term interests of their constituencies. Indeed, some employers had joined in mobilisation against laws and proposals on this matter.

We must therefore be cautious of assuming that there is a simple neoliberal path to a post-labour relations agenda and context as employers begin to realise the risks of the measures implemented for representation and the safeguarding of social consensus within industry. In many respects there were clear signs that in manufacturing there was a gap between the employers’ organisations and the new market-leaning think tanks and consultancies that were emerging and propagating further change. In Spain this was explicit in many forums and may reflect the emergence of a new business school-led management culture, crowding out previous traditions.

8.2 Trade unions and their responses

Turning to the trade unions, the responses also reveal the complexity of the measures implemented, which in all seven countries have presented the most serious challenge to the DNA of employment regulation since the mid to late twentieth century. Trade unions have also found themselves in a broader crisis of legitimacy arising because a large part of the workforce is outside the regulatory reach of collective bargaining and trade union representation. The differences in the workforce in terms of generational and gender factors have meant that in Greece, Italy and Spain nearly half the younger workforce is unemployed. Trade unions have thus found themselves in a difficult position in seeking to balance the defence of their core representatives and the structures of joint regulation, on one hand, and the need to create some kind of bridgehead for the more excluded workforce outside those structures. The governments of Italy and Spain, for example, have made no bones about their belief that reduced labour dismissal costs would provide younger people with increased opportunities as employers are induced to hire more staff. The argument is that removing the barriers to employment dismissal on the grounds of cost will foster employment. This has created a new set of tensions which both the right – and the new

left that is not linked to the mainstream labour movement – have not been slow to exploit. The way trade unions are seen to defend ‘insiders’ has compromised their ability to generalise opposition to collective bargaining measures.

In the period 2008–2012, in the seven countries we looked at – especially Greece, Italy, Portugal and Spain – there were mass mobilisations in response to the labour market measures and deep cuts in state expenditure. Collective bargaining was an issue in this context, but only part of an overall tapestry of trade union responses to much wider issues.

To that extent, the national cases show a more realistic strategy – rightly or wrongly – within the trade union movements, especially those with a social democratic and centrist heritage. The objective has been to maintain and sign agreements where possible, even when conditions have changed for the worse. There has been an objective – sometimes unwritten – to maintain bargaining and sustain the rituals and processes linked to it so that trade unions remain involved in some way in enterprise decision-making in the longer term. In Italy, Portugal and Spain, for example, this has given rise to a great deal of criticism from smaller and/or more radical trade unions, which have accused their larger confederations of complicity. At small to medium-sized firms in Spain the strategy has been to maintain the body of rights and relations at any cost so as not to lose access to firms that could easily isolate their individual representatives. This could be called process-focused concession bargaining. This has put some trade unions, which deal with bargaining, in a compromised position in relation to competitor trade unions. Over time, trade union and works council elections may lead to a further fragmentation of organised labour. The more ‘progressive’ employers are concerned about this issue because it may result in a more complex bargaining process.

While many of the legal measures require that firms justify any non-implementation of agreements or bypassing of them in economic terms – through the legal sphere of the state – this is all premised on the assumption that they will be challenged by trade unions: the reality is that this is unlikely to always happen as trade unions are increasingly stretched in terms of personnel and general resources. There has been systematic restructuring in many trade unions, which have had to scale back on legal services and field staff. Challenging decisions to bypass

or change agreements in legal terms requires a highly resourced and trained body of trade unionists.

Many sections of the trade unions dealing with local, regional and sectoral bargaining have had to focus more on monitoring and data gathering to ensure they understand where it is that employers are abusing the new measures or simply avoiding trade unions: once more, however, their lack of resources undermines this strategy in many cases. The ongoing political critique of the support given to trade unions to enforce workers' rights has added to this challenge. In the case of Greece, the development of 'associations of persons' represents a direct attempt to rethink the presence of organised labour within such firms.

Smaller firms have been using the services of consultancies and legal firms to draw up new templates for agreements that include more flexible working time, a greater degree of temporal flexibility and constraints on or reductions in wage increases. These firms, for example in Spain and Ireland, have also been using the services of such other actors to undermine labour representation. The anti-union lobby has grown in international terms and has become a more important player in what were once regulated labour relations contexts (Dundon and Gall 2013). Trade union displacement strategies have become more sophisticated.

In the case of Slovenia, while some of the terms and conditions may still be partially regulated by trade unions through social dialogue there is the problem of 'self-exploitation' (Stanojevic and Kanjuo Mrčela 2016). This builds on the studies of labour relations which point to the myriad of practices management have developed that have intensified work and employment relations through quality management, direct surveillance, and outsourcing (Stewart et al, 2008). That is to say workers are working more hours and more intensely to keep their jobs, and in such a way that their work is nominally regulated but in fact much of what they do undermines those regulations. This becomes a problem as the trade unions try to sustain the core and the visible aspects of regulation as part of a defensive strategy and response to the crisis and the subsequent measures, but fail to control the actual workplace and working activities of the workforce (partly due to the weaker presence of trade unions but also the more difficult challenge of negotiating these types of new working practices). What workers are doing to sustain employment and within more authoritarian workplaces will be breaching many collective

agreements in relation to wages and working time. The trade union movement will be in a more vulnerable position in terms of being able to enforce agreements and monitor them.

One risk for the trade unions is that they may lose not just the physical and resource-based capacity to control and regulate the labour market and work through bargaining systems, but also the necessary knowledge and relationships required to sustain a strategy of regulation (see Martínez Lucio *et al.* 2013). This issue of organisational memory is fundamental for any understanding of collective bargaining processes and the manner in which firms operate.

This leaves trade unions increasingly policing the terms and conditions of workers in established large workplaces, where they already have a presence. In countries such as Italy and Spain there is a real sense of uncertainty concerning how to work in the new framework. The pressure is on training as a vehicle to prepare trade unionists for the new complexities of joint regulation and more antagonistic employers.

However, responses are emerging. Alliance building with more 'progressive' employers and employers' associations in many cases may occur only in the more organised and already stable sectors, but it is already visible in some contexts. In Ireland, the trade unions are positioning themselves around national political and bargaining campaigns to raise workers' income levels, the focus on the '2%' campaign (see Hickland and Dundon 2016). There is a growing awareness of workers' falling real living standards and the unfair way the crisis has fallen on and hit the salaried and waged classes. The need to use concerted mobilisations and focused demands around bargaining issues extends an existing strategy (an 'organising' strategy, as in Ireland). In countries such as Ireland these strategies, prior to 2008, were focused mainly on reaching difficult and hard to organise workplaces, which employed migrants and vulnerable workers. More recently, such strategies have been deployed among wider groups of workers. The development of previously targeted strategies to encompass the wider population shows how unions are drawing on what they have learned from organising vulnerable workers before 2008. In Spain, the highly acclaimed focus on information centres for migrants in the CCOO and UGT trade unions is now being broadened to include all workers, such that we can now see how, since the 1990s, organisational learning with regard to minority workers has become a template for

broader trade union renewal strategies. There are also internal reflections concerning how trade unions need to maintain a balance between social dialogue and a broader social role. That is to say, how they maintain a broader set of roles that underpin their independence and legitimacy.

8.3 The question of the state

It is tempting to see the state as a simple transmission mechanism for the supranational interests that have been driving national measures. In many respects, the role of the state is changing and we need to focus on the role it has played hitherto. However, to appreciate this we need understand that the state plays many roles and that these do not form a consistent whole or unity. Jessop (1982) points to the state as an institutional ensemble of forms of representation and intervention. The state at the national level of the seven countries we looked at has, due to the nature of the economic crisis and financial context, undermined its resource base to the point at which it has seen its autonomy from dominant socio-economic interests (relative or otherwise) fundamentally compromised. The window of opportunity for intervention has been shrunk, as we pointed out earlier. In the context of Greece and Romania there have been significant interventions to halt any autonomous social and labour market policy of a progressive nature: the governments have been transmission mechanisms for supranational interests. Some of these interests were shaped by and reflected the interests and prerogatives of domestic actors, such as the American Chamber of Commerce in Romania and certain large companies in Greece.

However, before we endeavour to understand the role of the state in the new labour relations terrain we need to remind ourselves that various – though not all – agendas concerning the measures discussed in this report have, to different degrees, been contemplated by various factions of the political elites in the seven member states. In the case of Romania and Spain, there is clearly a legacy that considers labour relations to be problematic in their more organised and centralised forms, while in Ireland the social partnership agenda and moment never deepened into a broader politics of industrial democracy. One could argue there is a more embedded social democratic consensus but the right has been steadily shifting in terms of its horizons in other countries, such as Romania, Slovenia and Spain.

In substantive terms measures implemented in response to the crisis have been developed by national governments in close cooperation with external supranational forces and linked to monetary and financial support for the nation-state. They have managed to push the more liberalising technocrats to the forefront of policy-making. The question of economic development has focused on labour costs and a quantitative understanding of productivity. Inward investment has become an even more important feature of policy in Ireland and Portugal as a form of economic progress. However, this has had the effect of undermining the more proactive features of the state in terms of infrastructural development and labour supply policies, such as training programmes. In Greece, Portugal and Spain there have been ongoing concerns that the internal programmes for development in terms of the pre-2008 period have not always focused on research and development, or on indigenous capital growth. Since 2008 this has become an even bigger problem as innovation and qualitative state policies have been further subsumed by a logic of labour-cost containment. Thus the agenda of states has moved from the demand side from the 1950s to the 1980s to the supply side from the 1980s to around 2008, and subsequently to a cost reduction paradigm in the current period. This means that the politics of labour market regulation are fixated with short-term labour market policy and the emergence of a new set of technocrats and IMF-leaning individuals who are increasingly reconfiguring the language of labour relations. In Romania, this has become a prevalent problem.

This means that the state is focusing much less on propagating social dialogue and consensus generating processes. The role of the state is not just to represent and intervene in quantitative or legal terms but to also establish benchmarks of good practice (Martínez Lucio and Stuart 2011). The emergence of the 'benchmark' or 'organisational learning' state is important to the generation and extension of social dialogue, yet within all seven cases this kind of activity has become almost non-existent. Conciliation services focus mainly on resolving problems and not on engaging proactively with changes and new ways to bargain. Training budgets for collective bargaining, labour law and consensus-generating activities have been reduced to the extent that there is little public investment in longer term social dialogue issues. This means that the measures implemented are very much in the hands and ideological frameworks of the social actors. The state has withdrawn from a consulting role and in effect has not guided such measures with

any proactive ideas. This will contribute to even greater fragmentation within regulatory processes, and SMEs will increasingly rely on external organisations, including consultancies. This may politicise relations and tensions even more. The reduction of public sector budgets means that public employees are under enormous pressure simply in trying to perform basic state functions, never mind more strategic ones. It is likely that we will see a more neoliberal management mind set emerge with a declining appreciation of regulation.

This problem is clearly also relevant in terms of the enforcement of labour standards. All seven countries have seen a significant decline in how the state monitors the implementation of collective agreements and how it deals with non-implementation. This has imposed a further burden on trade unions, who in some cases – such as Italy and Spain – have worked closely with the labour inspectorate in the past, even in areas such as housing (Martínez Lucio *et al.* 2013). The emergence of a more inclusive and social partner-based approach to labour inspection in the face of a fundamental shift in the nature of work in major sectors due to the use of undocumented workers and harsh employment measures is being undermined. In manufacturing, smaller firms are being inspected less, and health and safety issues appear to be increasingly ignored. This brings a new set of challenges as monitoring the nature and implementation of collective agreements declines, giving rise to unregulated spaces within the workplace and the labour market in which workers are routinely exploited to an increasing degree.

Furthermore, in most of the seven national cases we are seeing the erosion of resources for the state's judicial and legal apparatus. There is an increasing crisis in how labour cases are dealt with in terms of time and quality of decision-making. This is ironic in that the labour courts are more active and there is greater reference to labour inspection. The perversity of the political push away from joint regulation is that it leads to more individual conflict and direct state intervention through the labour courts. This engenders a low-trust environment and a more direct role for the state. The state is thus drawn into labour relations in a more systematic yet primary (cruder) manner.

The question of how the state responds cannot be understood unless we view it as an ensemble of institutions. Such an ensemble does not respond in a coherent manner to what are elite-driven labour measures.

Instead, the onus will fall on different features of the state to resolve and respond to issues as they emerge. What we are seeing is that the longer term strategic dimensions of the state are declining in significance as its shorter term and more immediate aspects are drawn directly into employment relations. In fact the increasing use of the police and coercive strategies have become an important feature of the state's repertoire of action in collective disputes (which are also creating serious employment issues within these structures), as in Greece, Portugal and Spain. In Portugal, for example, this has begun to worry the police trade unions with regard to the effects on their terms and conditions of service. Constitutional labour rights have become a major area of contention and concern, a curious outcome of the 'liberal' nature of the measures.

8.4 Summary

The measures implemented in response to the crisis are being used in many labour relations contexts to undermine and change the role of joint regulation. There is a growing pattern of employer strategies that are premised on bypassing the roles of collective worker voice. There is also a state role that has facilitated this at various levels. To a great extent the seven national cases have seen some of the most serious challenges to their traditions of social dialogue. There is to some extent a discourse which is questioning the role of collective regulation and independent worker voice itself.

However, the extent of these changes varies. There are signs that in some cases there is greater caution in undermining the legacies of social dialogue and proactive collective bargaining cultures and the roles they have played. We saw how Italy and Portugal are examples of this even if there are also very serious national issues. It does not always follow and mirror the extent of sovereign debt either and seems to have an element of path dependency and regulatory tradition. In cases such as Greece and Romania, at the other extreme, there has been a fundamental rethinking of the nature of voice. Hence we need to be cautious. In Ireland we can see dual developments depending on existing labour relations traditions. Thus the manner in which dialogue – albeit truncated and limited – sustains itself varies.

There are also visible signs of unease from many employers. There is concern about the risk of greater fragmentation in collective bargaining and the ability of personnel managers to cope with these issues. There is also the risk of growing politicisation and change, especially the undermining of unions with a proclivity towards social dialogue and 'realistic' bargaining. As for trade unions they have been increasingly constrained in their ability to regulate and reach policy agreements. The culture of bargaining has changed and there is less legitimacy for written texts and negotiated conditions. However, trade unions have begun to formulate strategies for sustaining their role in core sectors, raising awareness about low pay and sustaining a combination of mobilisation and negotiation strategies. However, the real problem is the growing dysfunctional features of the state and the failure of the state to work in tandem with social partners on questions of implementation of workers' rights. This lack of synergy between the social actors may ultimately be the major challenge as the labour relations field fragments further.

9. Conclusion

The role of social dialogue and bargaining has been fundamental in the economic and political development of the EU member states but also that of the EU. It has been essential in creating a relatively democratic dialogue and stability in societies characterised by high levels of class conflict and in ensuring some degree of common interest. It has also created a common set of labour standards, meaning that competition was directed to longer term forms of investment and organisational considerations. So-called labour market 'rigidities' in terms of the cost of making workers redundant – or the processes used to restructure firms – continued to exist precisely because they enabled such social dialogue to operate.

More specifically, and first, when the system of labour relations was emerging, social actors – including state agencies – did not deem it wise to overload the transitional agenda by putting too many rights (or their removal) on the table for discussion. Hence, these political imperatives are important for understanding why industrial relations developed as they did. Second, many of these rights in countries such as Portugal and Spain were hard-won victories or concessions in the previous authoritarian contexts, as noted earlier. This historical act seems to

be widely ignored in the political sphere. Third, these employment protections have been maintained in order to compensate for the lack of a systematic and inclusive welfare protection in the seven countries studied in the project. Hence, ‘rigidities’ in terms of labour market rights can be understood only in their historical context. The absence of Nordic or German-style welfare arrangements means that workers’ rights in labour relations are needed to balance some of the gaps.

However, in these national cases, we saw that prior to 2008 some further changes took place in terms of the content of collective bargaining. The notion that they were static, as argued by the proponents of labour market ‘deregulation’, is thus questionable. In the case of Spain, the adoption of equality legislation under the Zapatero government (2003–2011) meant that firms had to develop equality plans within their collective bargaining frameworks. In many of the national cases studied, colleagues found examples of training and development entering the content of collective agreements in terms of rights to training and time off for training, as in Portugal. What we therefore see is a relative degree of articulation and coordination in these seven countries, sustained by an element of renewal and change. The notion of a static system of collective bargaining prior to 2008 is an unfortunate and – in our view – incorrect stereotype.

When assessing the emerging political and strategic challenges to labour market regulation and collective bargaining before the crisis, there were indeed fissures in this system. In the first instance, critics pointed to the slow changes in labour market rights, for example, with regard to dismissal costs. There was a sense in which such labour rights were only partially open to negotiation. In this context, the sectoral level of bargaining was seen by the critics as a cover for the absence of a deeper discussion and reflective approach on the role of social dialogue in relation to efficiencies. There was also growing concern that the space of the medium to large firm was not being fully developed in terms of robust discussion of growing problems, for example, the competitive and productivity gaps with non-European competitors, such as China. The question of collective bargaining agendas appeared to be truncated and unable – or unwilling – to tackle deeper issues of workforce time and functional flexibility. Furthermore, the ability to radically adjust wage rates and levels in the face of economic shocks was seen by some as unachievable.

Critical voices on the right of the political spectrum began – even prior to the 2008 crisis – to undermine the partial social partnership consensus that had developed on the European Union’s ‘periphery’. This was a concern emanating from various political quarters on the centre and the right, which argued that the focus on the sectoral level was also a sign of growing weakness and lack of regulatory reach in real and effective terms. Finally – and unfortunately in the eyes of the authors – much of this critique has been led by the Anglo-Saxon press in the form of *The Economist* and *The Financial Times*, which have increasingly depicted so-called ‘inflexibility’ in such countries in terms of national, even racist stereotypes. Much of this discussion came at quite an early stage in the crisis and even before it in some instances. In the case of Spain the labour market ‘rigidities’ are seen as related to Spanish ‘laziness’ and ‘immobility’, a link to a darker Spain that plays on the notion of the ‘black legend’ (see Fernández Rodríguez and Martínez Lucio 2013 for a discussion).

When the economic crisis emerged, the response at European and national levels was multi-faceted. At European level, measures aimed directly at the EU member states most affected by the crisis were developed, mainly in the form of economic adjustment programmes. These were supplemented by a new set of rules on enhanced EU economic governance, including the European Semester, the Six-Pack and the 2011 Fiscal Compact. As illustrated in the analysis, all instruments were informed by the objective of promoting a series of structural measures in labour and product markets. From a procedural point of view, the project findings illustrated both the limited scope for dialogue with the social partners in promoting such responses at EU level, as well as limited impact evaluation exercises or follow-up mechanisms in order to assess and correct any possible problems arising from the measures promoted by the EU institutions (see also Eurofound 2014). From a substantive point of view, the promotion of structural labour market measures became associated with a radical shift in collective bargaining policy, from support during the 1990s and even later (in Central and Eastern Europe) to dismantling long-established collective bargaining structures. As a result, there has been a reorientation of the normative goals of European social policy with regard to industrial relations, moving away from the pre-crisis European Social Model to a neoliberal logic, which requires labour market ‘flexibility’ to compensate for ‘rigidities’ elsewhere, including, in this case, the effects of a strict monetary policy

(Deakin and Koukiadaki, 2013). In doing this, the process of European integration has actually accelerated, as there has been first an ad hoc expansion of the nature of social policy issues dealt with at EU level, as well as an increase in harder forms of intervention. Moreover, the focus of economic renewal has been crude concepts of economic and labour costs without really understanding and engaging with a more qualitative agenda that critically assesses the impact of the measures on living and working conditions.

At the national level, the role of the social actors in the adoption of measures was complex. In some cases they have been reluctant to engage and even when they have focused on specific types of measures of a piecemeal nature with very few concessions in terms of worker rights or social support. In some cases, some of the questions were discussed through various tripartite arrangements, but these were short-lived. The manner in which the measures took place, in such a compressed and short period of time, meant that establishing a more comprehensive approach to gains and concessions was structurally limited due to this panic-driven process. Political and social pressure on the trade union movement emerged from various sources and not just the Troika or national governments forcing measures through. As time went by the effects of measures and the trade unions' ongoing inability to effectively respond to them politically and in practice meant that their legitimacy was called into question.

When examining national labour market measures, it becomes apparent that they were consistent with the commitments undertaken by the governments in the context of financial assistance programmes or other instruments of coordination at EU level, most notably the European Semester. These provisions were indeed very intrusive, albeit to varying degrees (compare Greece and Romania with Italy and Slovenia), in national labour law and industrial relations. Looking specifically at wage determination and bargaining, the measures concerned all aspects of institutional arrangements, including restricting/abolishing extension mechanisms and time limiting the period agreements remain valid after expiry. Second, measures were implemented concerning the abolition of national cross-sectoral agreements, according precedence to agreements concluded at company level and/or suspending the operation of the favourability principle, and introducing new possibilities for company agreements to derogate from higher level agreements or legislation; and,

finally, weakening trade unions' prerogative to act as the main channel of worker representation (Marginson 2015: 104). In doing this, the measures had the potential to shift the regulatory boundaries between state regulation, joint negotiation and unilateral decision-making by management, with significant implications for the role of industrial relations actors. They could also generate greater uncertainty with firms and with the economy concerning regulatory responsibility and purpose.

In this context, the impact of the measures on industrial relations and social dialogue has consisted of a crisis of collective bargaining at different levels, including not only national but also sectoral and company levels. However, the degree to which different EU member states have been affected at different levels is not the same. The research findings from the project suggest that three types of collective bargaining systems have emerged in the wake of the crisis and the implementation of labour market measures: (i) systems in a process of collapse, (ii) systems in a process of erosion and (iii) systems in a process of continuity but also reconfiguration (see also Marginson 2015). Rather than these being clear-cut types, they represent points in a spectrum, ranging from systems in a state of continuity at the one extreme and systems in a state of collapse at the other. On the basis of this, the most prominent examples of systems that are close to collapse are Romania and Greece. While other national bargaining systems are not affected to the same extent as Romania and Greece, they still face significant obstacles in terms of disorganised decentralisation, withdrawal of state support and erosion of experience (Ireland, Portugal, Slovenia and Spain). Finally, the Italian collective bargaining system could be seen as being closer to a process of continuity but also reconfiguration, with changes in the logic, content and quality of bargaining.

Three key factors may explain the differences and similarities in terms of the impact of the measures on bargaining systems. The first factor accounting for the similarities and differences in terms of impact is the extent of the economic crisis and in particular of the measures adopted in light of the crisis. While the measures targeted both employment protection legislation and bargaining systems, the extent to which they were far-reaching and wide-ranging differed (compare Greece and Romania with Italy and Portugal). The second explanatory factor is the extent to which the measures were introduced on the basis of dialogue and agreement between the two sides of industry and the government.

Where the measures were introduced on the basis of consultation with the social partners and were less influenced by the Troika, the effects were less destabilising than where the measures were introduced unilaterally (compare Italy and Portugal with Greece and Romania, where the approach has been much more impositional). As Meardi also stresses, the differences in this respect between some of the southern EU member states challenge stereotypical visions of an undifferentiated 'Mediterranean model: 'associational governance is still much stronger in Italy, while state influence and government power are more powerful in Spain' (Meardi 2012: 75). Hence, we see a variety of approaches to the question of regulatory change, even if this is all contained in a relatively negative scenario. The third and equally important factor is the pre-existing strength of the bargaining systems, including how well articulated and coordinated they were before the crisis (compare Italy with Spain, Greece and Romania). In this context, the corrosive/destabilising effects of the measures were greater in cases in which unions had not failed to address issues of membership, inclusiveness and renewal (compare Greece and Romania with Italy).

In terms of the impact of the measures implemented in response to the crisis on the content and outcomes of bargaining, evidence from the project suggests that the crisis and the labour market measures have been associated with negative developments in wages and employment conditions in all the seven countries. They have also resulted not only in a fall in real wages in all the countries (and in nominal wages in Greece, Ireland and Romania) but also in increasing dualism, divisions and inequities in the workforce, such as differences in pay and working conditions between existing and new employees, along gender and age lines and between those on permanent contracts and those in atypical employment. These effects were stronger in countries where existing national and sectoral bargaining arrangements were most disrupted by state intervention, especially Greece, Ireland, Romania and Spain as crisis responses became more decentralised and dependent on local imbalances (see also Marginson *et al.* 2014). The negative impact of measures was less pronounced in Italy where encompassing institutions counteracted state intervention and vertically articulated bargaining helped to contain adverse effects, such as shifting most of the burden onto workers. Minimum wages also emerged as an important wage-setting institution. However, while supposed to protect workers from low pay, freezes or even reductions, they failed to fulfil this function during

the recession and aggravated a downward trend in both bargained and individually contracted wages, with Greece being the most extreme example. Slovenia was the exception; a significant increase in minimum wages played a protective function that limited the impact of the crisis and of collective bargaining measures.

Overall, the measures were used to undermine and change the role of joint regulation. From the employers' point of view, there was a growing pattern of strategies premised on bypassing collective worker voice. The role of the state in facilitating and supporting such patterns at various levels was significant. However, as our research suggests, the extent of these changes varied. There were signs that in some cases there was greater caution in undermining the legacies of social dialogue and the roles they have played. There were also visible signs of unease from many employers. There was concern about the risk of greater fragmentation in collective bargaining and the ability of personnel managers to work through these issues. There was also a risk of growing politicisation and change, especially the undermining of unions with a proclivity towards social dialogue and 'realistic' bargaining. The trade unions were increasingly constrained in their ability to regulate and policy agreements. The culture of bargaining changed and there was less legitimacy for written texts and negotiated conditions. However, trade unions began to formulate strategies of sustaining their role in core sectors, raising awareness about low pay and sustaining a combination of mobilisation and negotiation strategies. But, the real problem was the growing dysfunctionality of the state and its failure to work in tandem with social partners on implementing workers' rights. The state was unable to directly manage and intervene and there was no tradition of mediation and arbitration to support many of these measures. This lack of synergy between the social actors may ultimately be the major challenge as the labour relations field fragments further. There are serious risks and dysfunctional qualities emerging in these new regulatory frameworks.

In light of these developments, it is necessary to reconsider policy objectives in the area of industrial relations and collective bargaining at both European and national levels. First, our country case studies support the idea that the measures implemented in response to the crisis have helped to improve firms' adaptability, mostly by upgrading their ability to adjust working time and employee numbers and, above all, to reduce labour costs quickly and drastically. In this sense, governments' objective

of greater wage flexibility at the firm level has been achieved. However, the extent to which they have helped to resolve the competitiveness problems of the countries most afflicted by the crisis is contested. This is, first, because the path of crisis exit focused on internal devaluation and downward wage flexibility rather than productivity gains. In relation to this, there are concerns that this is not leading to long-term competitiveness and sustainable economic growth (for example, Schulten and Müller 2013; ILO 2012b; OECD 2014). Instead, significant externalities emerged, ranging from increasing social divisions and inequalities, lower tax revenues due to high unemployment, growth of the grey market and undeclared payments to increasing discontent, social unrest and the rise of extremist political movements. From a labour process point of view, the measures also contrast with core features of production systems in all the EU member states studied in the project, increasing transaction costs for SMEs and undermining the core informal resources of logic production systems that relied on informal trust (Meardi 2012: 77).

As the first signs of exit from the global crisis have begun to emerge (or so it currently appears) and a number of EU member states have exited – or hope to exit soon – from the assistance programmes, it is crucial that better links should be developed between wage and productivity growth, promoting fairness and boosting domestic demand. This in turn would involve a more supportive environment for collective bargaining and the strengthening of wage-setting institutions that protect the most vulnerable workers. Hence, the role played here by multi-employer collective bargaining is crucial in acting as a mechanism of ‘beneficial constraint’ (Streeck 1997) minimising the externalities of market and policy-driven adjustments. At European level, there needs to be a move away from the current promotion of ‘regulated austerity’ under the current institutional conditions of the ‘Six Pack’ and the Treaty on Stability, Coordination and Governance, which comes at the cost of depressed growth in EU member states. Instead, measures for promoting an alternative approach to European ‘solidaristic’ wage policy (Deakin and Koukiadaki 2013; Schulten and Müller 2014), which is based on strong collective bargaining institutions and equitable wage developments, should be promoted by both EU institutions and EU social partners. As Marginson (2015) has argued, rather than undermining the coordination capacity of multi-employer bargaining arrangements in parts of southern Europe, European and national authorities need to recognise

the macroeconomic benefits associated with effectively coordinated bargaining, and adopt measures that promote the development of such capacity at cross-border level.

At national level, central to this should be a readjustment of public policies in the area of labour market regulation towards viewing social dialogue and collective bargaining as part of the solution, steering EU member states out of the crisis, and not as part of the problem. To that end, the evidence of continuing support for social dialogue and collective bargaining by employers in a number of EU member states is significant. This was particularly the case among sectoral employers' associations, which saw industry bargaining as a means of regulating terms and conditions of employment that would meet the specific requirements of the sector and prevent unfair competition and unfair labour practices, while promoting simultaneously social peace. On the union side, the crisis exposed the risks of taking for granted a level of institutional support that, while desirable for an enabling bargaining environment, can be withdrawn at the government's will. Therefore, efforts to improve the coordination of the unions' bargaining strategies within their respective organisations and movements could be considered (see, for instance, the unions' 2 per cent strategy in Ireland). Strategies towards re-asserting their role in national economies could also be developed. In this context, the development of new strategies for organising atypical groups of workers through, for instance, a focus on service provision – for example, managing unemployment benefit applications for workers in Italy – could be considered. The development of broader alliances in defence of bargaining (Meardi 2012) would also have a beneficial effect on the scope for deliberation and consensual agreements on terms and conditions of employment. In turn, these policies would not only counteract but also reduce any incentives for unwarranted intervention on the part of the state.

From a procedural point of view, it would be vital to consider the introduction of a requirement to establish more rigorous impact assessments, especially in the context of macroeconomic adjustment programmes and bail-outs (see also Barnard 2014). The recent European Parliament resolution that criticised the role of the Troika and pointed to its significant lack of transparency is also important as it stressed the possible negative impact of such problems on political stability in the countries concerned and the trust of citizens in democracy and the

European project. In this context, there are signs of support from the new President of the European Commission concerning the introduction of social impact assessments for support and reform programmes and replacing the Troika 'with a more democratically legitimate and more accountable structure, based around European institutions with enhanced parliamentary control both at European and at national level' (Juncker 2014: 8). In this respect, attention should be paid to the involvement of a wider set of EU actors and institutions in the design, implementation and monitoring of assistance programmes and other forms of supranational intervention (for example, through Council-Specific Recommendations) in national social policy issues. With regard to the European social partners, compliance should be sought with the explicit requirement in the TFEU for consultation (Articles 152 and 154 TFEU). The participation of social partners in the ESM advisory board would also provide a counter-balance to the pursuit of an obsessive policy of austerity that does not consider issues of living standards and long-term sustainability of national economies. With regard to the European Parliament, greater attention should be paid to monitoring measures that may contravene the EU social *acquis* and to ensuring that the Commission and the ECB act in accordance with their duties. The involvement here of other non-EU international organisations, such as the ILO and the Council of Europe, would be significant in emphasising the social dimension in issues of national and European competitiveness.

At national level, the participation of all key actors and social partners increases the likelihood of bringing about sustainable solutions, especially in times of crisis (Eurofound 2014). In particular, social dialogue provides the institutional means to manage conflicts triggered by a crisis and to facilitate consensus on programmes of measures to contain the economic and social consequences. Much also depends on the way the questions of enforcement and state involvement in defending working conditions within a framework of rights and social justice are developed. As the space outside collective bargaining increases, more attention needs to be paid to the social dimension and capacities of the social partners in overseeing a broader and more complex industrial relations space. Greater attention to detail regarding representation and organisational capacity is required in this new context.

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All links were checked on 3.12.2015.

Chapter 2

The Greek system of collective bargaining in (the) crisis

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1. The Greek system of collective bargaining before the crisis

The Greek system of labour market regulation has traditionally been characterised by a legal structure that arose from the interventionist role of the Greek state. The basic institutions of the industrial relations system – trade union freedom, the structure and internal organisation of trade unions, collective bargaining and the right to strike – have traditionally been regulated by statute (Yannakourou 2005). Because industrial growth had a delayed start in Greece, labour legislation started taking shape only at the beginning of the twentieth century and accelerated following the Second World War (Koukiadis 2009). The modernisation of the Greek labour market and collective autonomy started in the 1970s with the aim of accommodating conflict-based industrial relations and social movements (Ioannou 2012b: 204). The 1975 Constitution democratised labour relations and extended and enlarged the existing list of fundamental rights and Law 1264/1982² later established a number of trade union freedoms. These developments were followed by changes made mainly through Law 1876/1990, which created the legal conditions for the development and expansion of collective bargaining in Greece based on the clear precedence that it gave to collective agreements *vis-à-vis* legislative intervention.

Law 1876/1990 introduced five types of collective agreement: national general, sectoral, enterprise, national occupational and local occupa-

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1. We are extremely grateful to all our interviewees for the time and effort provided for the conduct of the research.
 2. Law 1264/1982 Government Gazette (FEK) 79A/01.07.1982.

tional, each with different applicability. Sectoral-level and occupational agreements could be extended and rendered compulsorily applicable to all employees.³ The national general collective agreement (EGSSE, Εθνική Γενική Συλλογική Σύμβαση Εργασίας) stipulated the minimum terms of employment for all persons, irrespective of whether they are trade union members or not.⁴ As a result, the national general collective agreement constituted the point of reference for negotiations at lower levels; in this sense, all employers were ‘followers’ of the national agreement (SEV, interview notes). It is estimated that the various collective agreements covered 85 per cent of workers (Kousta 2014). Traditionally, employers and employees could improve the level of protection at the sectoral and occupational levels of collective organisation, depending on specific capabilities and needs. Crucially, the main axis of these different levels of regulatory mechanisms was the principle of ‘implementation of the more favourable provision’.⁵ If bargaining between the parties to conclude a collective agreement failed, interested parties had the right of appeal to the Organisation for Mediation and Arbitration (OMED, Οργανισμός Μεσολάβησης και Διαιτησίας). In the period 1975–1992, the national general collective agreement was the result of collective negotiations in 61.1 per cent of cases and of arbitration decisions in 39.9 per cent of cases. Following the introduction of Law 1876/1990, it was concluded only following negotiations between the two sides of industry and not on the basis of arbitration (OMED 2012).

While a series of legislative reforms were aimed at strengthening collective autonomy, the role of state institutions was also promoted, especially during the 1980s. The participation of institutions such as the

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3. The Minister of Labour and Social Security may extend and declare as binding on all the employees in a sector or profession a collective agreement that is already binding on employers employing 51 per cent of the sector’s or profession’s employees.
 4. The contracting parties, until recently, included the Hellenic Federation of Enterprises (SEV, Σύνδεσμος Επιχειρήσεων και Βιομηχανιών), the Greek General Confederation of Labour (GSEE, Γενική Συνομοσπονδία Εργατών Ελλάδας), the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE, Γενική Συνομοσπονδία Επαγγελματιών Βιοτεχνών Εμπόρων Ελλάδας) and the National Confederation of Hellenic Commerce (ESEE, Ελληνική Συνομοσπονδία Εμπορίου και Επιχειρηματικότητας). Since 2012, the Association of Greek Tourism Enterprises (SETE, Σύνδεσμος Ελληνικών Τουριστικών Επιχειρήσεων) has also been a party to the agreement.
 5. This meant that if different collective agreements were in conflict, the principle of implementing the provisions most favourable to the workers applied (Art. 7, para 2 of Law 1876/1990 (Law 1876/1990 Government Gazette (FEK) 27A/08.03.1990) and Art. 680 of the Civil Code). In parallel, Art. 3(2) of Law 1876/90 placed limits on sectoral, enterprise and occupational collective agreements so that no worse terms and conditions than the national agreement could be introduced.

Office of Employment (OAED, Οργανισμός Απασχολήσεως Εργατικού Δυναμικού) and the Labour Inspectorate (SEPE, Σώμα Επιθεώρησης Εργασίας) was aimed at supporting the development of tripartism. But these efforts were piecemeal and failed to promote the establishment of tripartism as a general principle guiding collective action (Koukiadis 1999). Since the early 1980s, a combination of factors related to Greece's membership of the European Union (as it is now) has influenced the development of Greek labour law significantly. As a result of EU law and policy initiatives in the area of labour market regulation, the procedure of lawmaking changed and permanent institutions, such as the Economic and Social Committee, were created that provided greater space for the development of social dialogue and a partnership approach at national level. During the early 2000s, the National Council of Competitiveness was established to provide a forum for tripartite dialogue on the competitiveness of the Greek economy. A report was published identifying a range of challenges that was signed by both sides of industry. This was seen as a welcome attempt by the Hellenic Federation of Enterprises (SEV, Σύνδεσμος Επιχειρήσεων και Βιομηχανιών) to open up scope for dialogue with unions beyond the issue of wages, to include, for instance, labour productivity and employment (SEV, interview notes). Overall, however, the primary role of the statutory regulation was not reversed in practice and attempts to conclude social pacts failed on a number of occasions.⁶ According to SEV, this was due to the significant internal opposition inside the General Confederation of Greek Workers (GSEE, Γενική Συνομοσπονδία Εργατών Ελλάδας) and the favourable economic climate, which did not provide an impetus for extending dialogue beyond wage issues (SEV, interview notes).⁷

In terms of the approach of the social partners, the strategy adopted by the employers, especially during the 1980s, was one of 'autocratic modernisation', resisting 'policies of economic reconstruction by engaging in an effective investment strike' (Kritsantonis 1998). In the field of industrial relations, there were tentative attempts by some employers' associations to break from collective bargaining, especially in the banking sector, but there was formal support for the national general collective agreement. The trade unions were also experiencing challenges,

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6. See, for instance, the process for amendments in working time legislation, as well as the reform of the social security system at the beginning of the 2000s (Zambarloukou 2006).
 7. The 2008 national collective agreement provided the scope for another forum of a similar nature, but again this did not operate in practice.

especially related to fragmentation, and these were reflected in the low level of trade union density.⁸ However, the control of GSEE by ‘realists’ encouraged a logic of ‘modernisation’ that emphasised ‘social dialogue’ and ‘responsible participation’ at national level (Kritsantonis 1998: 519–20). In general, collective bargaining was relatively stable. During the period 1990–2008, the structure of collective agreements included (on top of the national general collective agreement) around 100 sectoral agreements, 90 occupational level agreements and 150 enterprise level agreements, on average. The number of sectoral agreements in particular remained stable throughout the period, providing some evidence that the sectoral agreements were at the centre of the collective bargaining structure.⁹ However, the absence of a sufficient number of enterprise level unions complicated not only the task of inspecting the implementation of sectoral collective agreements, but also the conclusion of enterprise level collective agreements, which usually contained more favourable provisions for the employees (Tikos 2010).

With regard to the situation in manufacturing, the sector had the highest number of sectoral, occupational and enterprise collective agreements overall: the agreements were predominantly sectoral, although enterprise level collective agreements were also well established (Ioannou and Papadimitriou 2013). The agreements were concluded at sectoral level – for example, metal manufacturing, processed food, dairy products by second-level unions – that is, federations – which represent the relevant first-level unions at sectoral level and are nationwide. Owing to the operation of the extension mechanism, the majority of employees in manufacturing were covered by the relevant multi-employer sectoral agreement. In terms of wage levels, manufacturing had one of the highest increases in real unit labour costs during the period 2000–2008 in Greece (13 per cent increase in the period 2000–2007 compared with

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8. The ICTWSS database (2013) of union membership put union density in Greece in 2011 at 25.4 per cent. Trade unions in Greece operate at three levels: company (occupational, regional or craft unions); secondary level federations and local labour centres; and tertiary level confederations (GSEE and the Supreme Administration of Unions of Civil Servants ADEDY, *Ανώτατη Διοίκηση Ενώσεων Δημοσίων Υπαλλήλων*).
 9. The typical sectoral agreement concerned one main category of employees (and their relevant classification) within a certain sector and not all employees in the sector. The typical occupational agreement concerned a specific occupation in a specific sector and not across sectors. As such, both agreements have common starting points for the determination of their scope of application, which is the classification or occupation. In the sectoral agreements, the occupation/classification is linked to the sector where it is exercised. In the occupational agreements, the classification and especially the occupation is usually cross sectoral and is linked to the system for the determination of occupational rights (Ioannou 2011).

a decrease of 1 per cent in the EU27). In the period 2009–2010, there was a marginal increase of 1 per cent (Ventouris *et al.* 2012).

2. The economic context in the period leading up to the crisis

Greece has traditionally been presented as a ‘mixed market economy’ within the framework of the Varieties of Capitalism approach (Koukiadaki and Kretsos, 2012). Key characteristics of the model include, among other things, the highly influential role of the state as a regulator and producer of goods; a lack of efficient coordination in collective bargaining; numerous domestic veto points that can potentially oppose domestic reform; strong employment protection; and a welfare system that is weak, fragmented, unevenly developed and subject to politicisation and clientelism (Molina and Rhodes 2007). With regard to the Greek system of labour law and industrial relations, it was considered to be predominantly protective of workers. This was a view especially promulgated by international agencies, including the Organisation for Economic Cooperation and Development (OECD), the European Commission and the International Monetary Fund (IMF) (Koukiadaki and Kretsos 2012). Such recommendations by international organisations were on occasion in line with the views of employers at domestic level, and especially that of the largest employers’ association, SEV (Dedousopoulos 2012; Kouzis 2010). In particular, there were two areas in which, according to SEV, the industrial relations framework was challenging: arbitration, where the balance of power had progressively tilted in favour of the employee side, and the ‘domino effect’ that lower level collective agreements had on wage levels, leading in practice to bigger wage increases than those stipulated in the national general collective agreement (SEV, interview notes). This view was shared by the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE, Γενική Συνομοσπονδία Επαγγελματιών Βιοτεχνών Εμπόρων Ελλάδας), as it was deemed that it allowed for inflationary wage increases well beyond the increases stipulated in the national general collective agreement. The GSEVEE representative explained:

For example, the national general agreement stipulated 6 per cent. On that basis, the trade union side was then demanding a 7, 8, 9 per cent increase in the negotiations for the sectoral agreement. When

the employers disagreed, the issue went to mediation and when this failed, an arbitration decision was issued that stipulated an 8 per cent, for instance, wage increase at sectoral level, thus increasing the gap between the wage levels agreed at national general level and those at sectoral level. (GSEVEE, interview notes)

Despite these arguments, it was accepted that the level of labour costs was rather a 'symptom of the increase of available income in the economy in general' than the primary cause of the crisis, and as such any wage reduction would only have a short-term effect on the economy (SEV, interview notes). In relation to the 'domino effect', a former Minister of Labour noted:

Some employers took advantage of the entry of the country in the Eurozone and considered that they could increase their prices, which then led to large increases in a range of products and services and therefore forced unions to demand higher increases in earnings. This took place without any improvements in productivity, however [...] Overall, I do not think that the regulatory framework of industrial relations that existed in the period before the crisis was problematic. But by the time the crisis came and there was a need for internal devaluation to restore our international competitiveness, it became necessary to proceed to reforms. (Former Minister of Labour, interview notes)

Between 2001 and 2007, the Greek economy, after the Irish, was the fastest growing euro-zone economy with an average GDP growth of 3.6 per cent during the period 1994–2008 (IMF 2011). Nonetheless, throughout these years of growth, the country's endemic macroeconomic imbalances and structural flaws were exacerbated by weaknesses in the political and economic systems, including clientelist relationships, high levels of undeclared work and widespread tax evasion (Koukiadaki and Kretsos 2012). Greece's net national saving rate declined steeply between 1974 and 2009 by about 32 percentage points, fuelling the current account deficit and the build-up of a chronically high foreign debt (Katsimi and Moutos 2010). The country was initially not affected by the 2008 crisis, but went into recession in 2009 with its economy vulnerable to the pressure of financial markets. At the onset of the sovereign debt crisis, Greece's budget deficit stood at 13.6 per cent and its external debt at 127 per cent of GDP following upward revisions by

Eurostat for 2006–2009, with significant effects on estimates used in the 2010 and 2011 budgets (Eurostat 2011). Following the lowering of its credit rating and the subsequent rapid increase of credit default swap spreads on Greek sovereign debt in 2010, the Greek government was unable to access international bond markets.

In order to avert a default on its sovereign debts, the Greek government agreed a loan, to be advanced jointly by euro-zone states and the IMF. The loan agreement stipulated the provision of 80 billion euros on the part of the euro-zone states and 30 billion euros on the part of the IMF. In return for this support, it was agreed that the European Commission, the ECB and the IMF – the so-called ‘Troika’ – would prepare and oversee a programme of austerity coupled with liberalisation of the Greek economy. The Greek Ministry of Finance prepared, with the participation of the Troika, a programme for 2010–2013, which was set out in a ‘Memorandum of Economic and Financial Policies’ (MEFP, Ministry of Finance 2010a) and a ‘Memorandum on Specific Economic Policy Conditionality’ (MSEPC, Ministry of Finance 2010b) (the Memoranda). The MEFP outlined the fiscal reforms and structural and income policies that had to be undertaken by Greece. The Memoranda were annexed to Law 3845/2010 on ‘Measures for the Implementation of the support mechanism for the Greek economy by the Eurozone member states and the International Monetary Fund’ and enacted into law by the Greek Parliament on 6 May 2010. On the basis of the measures outlined in the MEFP, the MSEPC set out specific time-limited commitments on a quarterly basis. With regard to the labour market, the reforms outlined in the Memoranda were aimed at lowering public expenditure and creating a more attractive environment for business by cutting public investment and public sector wages, reforming the pension system, downsizing the public sector and privatizing a large section of public sector enterprises and utilities, as well as reducing labour costs in the private sector and reforming the collective bargaining system. Because Greece’s membership of the euro zone precludes currency devaluation, the underlying rationale for introducing the reforms was the need to initiate a process of ‘internal devaluation’ to restore competitiveness.

Despite the adoption of extensive measures in the context of the first loan agreement, problems associated with the worsening of the Greek public finances, a loss of political momentum on the part of the PASOK-led government and the deepening of the crisis in other parts of the euro

zone led to further changes in the reform programme. Following four Troika reviews of the implementation of the programme (September and November 2010, March and June 2011), the Memoranda were revised and updated versions were published by the Greek government. The most important revision of the programme took place on 1 July 2011, when the Parliament adopted Law 3986 on Urgent Measures for the Implementation of the Mid-term Fiscal Strategy Framework.¹⁰ This Mid-term Fiscal Strategy (Ministry of Finance 2011a) introduced new austerity measures with a revised implementation plan and a new time horizon of 2012–2015. Following a further deterioration of Greek public finances, the euro-zone meeting in June 2011 concluded an agreement in principle for a second loan agreement.

In the context of the need to implement the second loan agreement and to ensure the payment of the sixth instalment of the loan, the Memorandum of Understanding (MoU) stated, with regard to the labour market situation: ‘During Q4 2011, the government will launch a dialogue with social partners to examine all labour market parameters that affect the competitiveness of companies and the economy as a whole. The goal is to conclude a national tripartite agreement which addresses the macroeconomic challenges facing Greece, in particular the need to support stronger labour market flexibility, competitiveness, growth, and employment’ (Ministry of Finance 2011b: 17). On the basis that the outcome of the social dialogue (see Section 3) to promote employment and competitiveness ‘fell short of expectations’, the 2012 Memorandum of Understanding on Specific Economic Policy Conditionality (Ministry of Finance 2012a: 25) stated that the ‘government will take measures to foster a rapid adjustment of labour costs to fight unemployment and restore cost competitiveness, ensure the effectiveness of recent labour market reforms, align labour conditions in former state-owned enterprises to those in the rest of the private sector and make working hours more flexible’. To that end, Law 4046/2012¹¹ aimed at accelerating the adoption and implementation of far reaching structural reforms on the basis of a number of commitments undertaken by the Greek government for the disbursement of the second loan.

10. Law 3986/2011 Government Gazette (FEK) 152A/01.07.2011.

11. Law 4046/2012 included as annexes the MEFP, the Memorandum of Understanding on Specific Economic Policy Conditionality and the Technical Memorandum of Understanding (Government Gazette (FEK) 28A/14.02.2012). See also Act 6 of 28 February 2012 of the Ministerial Council (Government Gazette (FEK) 38A/28.02.2012) and the 2012 Guidance by the Ministry of Labour and Social Security 4601/304.

3. Social dialogue and the process for the adoption of the labour market measures

The European Commission's May 2010 programme had called on the Greek government to launch a social pact to 'forge consensus' on a range of issues.¹² But there was no consultation with the social partners over the measures associated with the first loan agreement (Ghellab and Papadakis 2011). The Greek government justified the absence of consultation on the basis that 'it was not possible to accommodate participatory methods when Greece was about to default on its loans' (ILO 2011).¹³ The increasing pressure of the Troika, especially the IMF, for immediate reforms without consultation with the social partners constrained any efforts to reach an agreement with the social partners (former Minister of Labour, interview notes). The absence of dialogue was due to the fact that the Troika considered the social partners part of the problem in Greece but domestically it also reflected the lack of established structures for tripartite social dialogue in the period before the crisis, which hindered the sharing of responsibility between the actors (SEV, interview notes). Some attempts were made later to develop social dialogue and a consensus between the social partners, but the latter were seen by the government as being unprepared to face the challenges arising from the crisis and agree to necessary changes (former Minister of Labour, interview notes).

On the one hand, trade unions did not want to be seen as legitimising government measures that would be unpopular. On the other hand, some employers' associations did not have a particular interest in applying pressure for the introduction of such measures in the labour market

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12. Para 31 of the Economic Adjustment Programme for Greece (European Commission 2010) stated: 'Given the sensitivity of labour market and wage reforms, it was decided to follow a two-step approach after consultation with the authorities (in particular with the Ministry of Labour) and the social partners. Firstly, the government will launch a social pact with social partners to forge consensus on decentralization of wage bargaining (to allow the local level to opt out from the wage increases agreed at the sectoral level), the introduction of sub minima wages for the young and long-term unemployed, the revision of important aspects of firing rules and cost, and the revision of part-time wage setting mechanisms and labour market institutions'. See IMF (2009) where it was suggested that labour market reforms were key to achieve lower unit labour costs and that the government should promote a tripartite social contract between employers, unions and the public sector aiming at 'more cooperative bargaining to favour employment growth over income growth at this time, requiring understandings on wage moderation in return for investment and employment promotion.'
13. It is interesting to add here that the then Prime Minister stopped conducting individual meetings with the heads of the social partners prior to the International Fair of Thessaloniki, a practice upheld until 2011 (GSEVEE, interview notes).

(SEV, interview notes). But there was a split between different employers' associations. SEV has been portrayed as being broadly in favour of the government reforms. The SEV representative noted:

It is true that many of the changes were put down as suggestions by SEV and others many years ago. Most of the changes were included as proposals in a document published by SEV during 1993–1994 and because of this, it is considered that we forced the changes. But this is not true, because if we could have implemented the changes, we would have done it in 1994 and not in 2014. (SEV, interview notes)

The National Confederation of Hellenic Commerce (ESEE, *Ελληνική Συνομοσπονδία Εμπορίου και Επιχειρηματικότητας*) and GSEVEE, which represented the majority of Greek companies (mostly SMEs) were openly critical of the measures. As Ghellab and Papadakis (2011: 88) suggest, the reason may be that 'while the austerity measures appear to benefit large export-led enterprises, SMEs are likely to suffer as direct and indirect taxes increase, consumption goes down and the market in "hot money" dries up' (SEV representative, interview notes).

However, aside from these differences, there was evidence to suggest that certain individual employers, especially large enterprises that were members of SEV, were able to access the Troika directly and lobby for the adoption of specific measures:

Some employers' organisations and predominantly their members had contact with the Troika outside the institutional channels, as they saw the crisis as an opportunity to demolish every rule in the market. We came across this a number of times, especially with members of SEV; in other words there were certain issues that were raised to us but also to the Troika by employers' federations but they in reality were views of certain companies. (former Minister of Labour, interview notes)

On the basis that a return to the social dialogue would improve the chances of buy-in, the Greek government was in favour of a social partners' agreement on the issues identified by the Troika when discussing the measures associated with the second loan agreement. The adoption of measures was a prerequisite for the continuation of negotiations with the Troika and the disbursement of the sixth installment of the first

loan. However, in the case of failure to reach agreement, the government was prepared to introduce the changes via the legislative route. In anticipation of the return of the Troika to Greece at the beginning of 2012, the implementation of the Private Sector Involvement Plan and the conclusion of a second loan agreement, the Greek government held discussions with the employers' associations and trade unions in January 2012 on the range of issues identified in the fifth review. Significant pressure was exerted by the Troika with regard to the freezing of wage increments provided for in the existing national collective labour agreement, the reduction of the minimum wage, especially for unskilled workers, the abolition of the thirteenth and fourteenth salary (that is, payment of an extra month's or two months' salary), and the ending of the 'after-effect' period of collective agreements. A reduction of minimum wage levels to those stipulated in other EU member states facing similar problems – for example, Portugal, where the minimum wage is set at a lower level than that of Greece – was also considered by the Troika as a prerequisite for strengthening the competitiveness of the Greek economy. These arguments were developed in the letter sent to the Greek government, requesting the opening of discussions between the social partners on these topics.

During the discussions, the employers' associations opposed the reduction of minimum wages, as defined by the national general collective agreement, but were in favour of a three-year freeze in wage and maturity increases and the reduction of social insurance contributions. On the other hand, GSEE rejected any change in relation to wage costs and stated that the discussion should focus only on non-wage costs, with the proviso that fiscal equivalents would be found in order to minimise the financial losses of the funds. In February 2012, the social partners came to an agreement and in a letter sent to domestic political actors and EU institutional actors, they outlined their consensus on preserving the thirteenth and fourteenth month wages and minimum wage levels, as stipulated by the national general collective labour agreement, and the maintenance of the 'after-effect' of collective agreements.¹⁴ However, the agreement by the social partners was considered superficial by the government, as it was only a framework agreement and there was

14. Letter from the three employers' organisations and the GSEE to Prime Minister Loukas Papademos (Tvxs.gr 2012). With regard to non-wage costs, the social partners invited the government to negotiate on finding a way to reduce social insurance contributions that could be put on a mandatory, statutory basis. In respect of wage issues, GSEE did not agree to the employers' proposal to freeze pay increases for 2012 and 2013.

a failure to agree subsequently on detailed reforms, including a wage reduction (former Minister of Labour, interview notes). To that end, the statement in the Memorandum (Ministry of Finance 2012a: 25) accompanying the second support mechanism is illustrative:

Given that the outcome of the social dialogue to promote employment and competitiveness fell short of expectations, the Government will take measures to foster a rapid adjustment of labour costs to fight unemployment and restore cost competitiveness, ensure the effectiveness of recent labour market reforms, align labour conditions in former state-owned enterprises to those in the rest of the private sector and make working hours arrangements more flexible.

In this context, the measures included in the second set of Memoranda were introduced, which included – controversially – the reduction via statute of the national minimum wage, leading to the abandonment of the efforts of the social partners to agree domestically on the range of reforms needed (SEV, interview notes). Following these developments, a National Committee for Social Dialogue was set up in September 2012. The Committee, which was tripartite, would provide a forum for the discussion of issues around unemployment measures, the national minimum wage and undeclared labour. However, according to SEV, this attempt failed as GSEE refused to consider the then proposed amendments to the statutory determination of the national minimum wage and not by the national general collective agreement (SEV, interview notes).

In light of the near absence of any form of social dialogue and the fact that the labour market measures have been led predominantly by supranational institutions, trade unions and other civil society associations have developed a ‘legal mobilisation’ strategy at national and supranational level, with mixed results so far. At domestic level, applications for judicial review have been lodged before the Council of State against government decisions that provided for wage and pension cuts. The first case was rejected by the Council of State on the basis, among other things, that reasons of overriding public interest necessitated the loan agreement. Further cases were submitted, the latest one against the measures associated with the second loan agreement.¹⁵ With the exception of the changes in arbitration (see analysis below) and the cuts

15. Decision 668/2012.

in pensions (not examined here), the Council of State has found that most changes are compatible with the Greek Constitution.¹⁶

At international level, the ILO Committee on Freedom of Association in 2012 dealt with a complaint submitted by GSEE, the Supreme Administration of Unions of Civil Servants (ADEDY, Ανώτατη Διοίκηση Ενώσεων Δημοσίων Υπαλλήλων), the General Federation of Employees of the National Electric Power Corporation (GENOP DEI, Γενική Ομοσπονδία Προσωπικού Δημόσιας Επιχείρησης Ηλεκτρισμού), the Greek Federation of Private Employees (OIYE, Ομοσπονδία Ιδιωτικών Υπαλλήλων Ελλάδας) and supported by the International Trade Union Confederation (ITUC), concerning the austerity measures. The Committee found that there were a number of repeated and extensive interventions in free and voluntary collective bargaining and a substantial lack of social dialogue and thus highlighted the need to promote and strengthen the institutional framework for these key fundamental rights.¹⁷ Besides the developments at ILO level, a number of applications have been submitted by Greek trade unions to the European Committee of Social Rights (ECSR). At the end of 2012, the ECSR found that the difference in labour and social protection between older and younger workers, including the introduction of a subminimum wage below the poverty line, and the absence of any dismissal protection during the first year of employment, constitute a violation of the Social Charter. In April 2013, the ECSR also found in favour of trade unions in five more cases, this time concerning restrictions on the benefits available in the national security system. Finally, cases were submitted to the European Court of Human Rights (ECtHR)¹⁸ and the General Court of the European Union (CJEU)¹⁹ but the actions were dismissed.

16. Decision 2307/2014.

17. An ILO High Level Mission (ILO 2011) was also sent to Greece, had extensive meetings with all relevant labour market actors in September 2011 and produced a very interesting report.

18. The Court considered the issue of the reduction of the salaries and pensions of civil servants, which took place with Laws 3833/2010 (Government Gazette (FEK) A 40/15-03-2010), 3845/2010 (Government Gazette (FEK) 65A/06.05.2010) and 3847/2010 (Government Gazette (FEK) A 67/11.5.2010), but dismissed one application as inadmissible (ADEDY) and the other was declared manifestly unfounded. See Koufaki and ADEDY v Greece (No. 57665/12, Decision/Décision 7.5.2013, no. 57657/12, Decision/Décision 7.5.2013). For an analysis of the legal issues, see Koukiadaki (2014).

19. Two applications were submitted by the public sector union in Greece (ADEDY) on the basis that the Council Decisions addressed to Greece violated, among other things, the principle of conferral. The actions were dismissed by the General Court for reasons of lack of standing of the applicants (Case T-541/10, ADEDY and Others v Council, OJ C 26/45, 26.1.2013; Case T-215/11, ADEDY and Others v Council, OJ C 26/45, 26.1.2013).

4. The content of the labour market measures²⁰

4.1 Employment Protection Legislation (EPL)

As indicated above, the labour market measures introduced in compliance with the Memoranda encompassed areas of both individual and collective labour law. In order to promote a competitive climate by increasing labour market flexibility, youth employment and creating new forms of work, Act 3845/2010 outlined the direction of changes in basic areas of individual labour law. These included dismissal compensation, collective redundancies, overtime costs, wages for young workers and flexible forms of employment.²¹ At a first stage and as part of the objective to amend employment protection legislation, Law 3863/2010 'on the new social security system and relevant provisions' facilitated individual and collective dismissals. The amendments in the area of dismissals were in line with the long established demand by associations representing large enterprises for the deregulation of employment protection legislation in Greece (Gavalas 2010: 795). Under Article 75(2) of Law 3863/2010, the notification period for individual dismissals was reduced and as a result of this the compensation for dismissal has also been reduced significantly (up to 50 per cent).²²

In addition, amendments were introduced to collective redundancies, reducing the thresholds for the application of the legislation.²³ In relation to this, further calls by the Troika to remove the right of the public authorities to prohibit collective redundancies were made in 2014. In light of the dominance of SMEs in the Greek economy, further

20. This section is an updated version of the analysis of the legislation provided in Koukiadaki and Kretsos (2012).

21. The Act authorised the Minister of Labour to regulate in these areas through Presidential Decrees. However, due to concerns that trade unions would file complaints with the Council of State against the use of Presidential Decrees, the government introduced the measures via a series laws (Ghellab and Papadakis 2011: 87).

22. Article 75(3) Law 4093/2012 introduced further changes (Law 4093/2012 Government Gazette (FEK) 222A/12.11.2012). The legislation sets a maximum amount of compensation that equals 12 months' wages (in the event of dismissal without notice). Seniority that exceeds 16 years of employment is not taken into account. The maximum period for notice of dismissal is now set at four months.

23. Collective dismissals now take place when they affect, within the period of one month, at least six employees in businesses or undertakings with between 20 and 150 employees, or 5 per cent of the workforce and up to 30 employees in businesses or undertakings with over 150 employees. Further changes were considered, including the abolition of the power of public authorities to prohibit the redundancies, in early 2014 but these were not implemented.

deregulation of the redundancies framework has been seen as masking an attempt to facilitate dismissals at banks and state-owned enterprises (GSEE, interview notes). Following disagreement in the government regarding changes in this area, a decision was issued by the Supreme Labour Council (SLC), which was signed by GSEE on the part of unions and by SEV, GSEVEE and ESEE on the part of the employers.²⁴ As the SLC is not a legislative body, the content of the existing legislation²⁵ has not been amended. As such, the Minister or Prefect still has the power to prohibit or authorise the redundancies where the parties fail to reach an agreement.²⁶ But the SLC decision has defined in clearer terms the content of the documents that the employer is to submit to the SLC for the purpose of authorising the management decision to proceed to redundancies. The agreement has been seen as an effort by the government and the social partners to block Troika attempts to make changes in the legislation on collective redundancies, but on the other hand, the new framework may give more weight to the opinion of the SLC, with the risk that the Minister's authorisation may become a formality. Besides these changes, Article 17(5) of Law 3899/2010 on 'financial and tax measures for the implementation of the programme' increased the probationary period of employment contracts without a time limit from two to 12 months, and as such introduced into the Greek labour market a new form of fixed-term employment contract of one year's duration.²⁷ Managerial prerogative was also reinforced by amendments in the regulation of flexible forms of employment. Law 3899/2010 extended the period of short-time work on the basis of a unilateral decision by the employer from six months, as stipulated in Law 3846/2010, to nine months per year.

The objective of increasing the scope for flexible forms of employment was also clear in the case of Law 3986/2011 on 'Urgent Measures for the Implementation of the Mid-term Fiscal Strategy Framework',

24. The GSEVEE representative stressed that GSEVEE is represented in the SLC by SEV and that the federation (GSEVEE) was not consulted over the changes to the framework. However, the representative expressed the view that the SLC would be more adequate than the Minister/Prefect, as it is a collective body (GSEVEE representative, interview notes).

25. Law 1387/1983 Government Gazette (FEK) 110A/01.08.1983.

26. Under Article 5(3) of Law 1387/1983, if the parties fail to agree and the issue goes to the Prefect or the Minister, they can ask for the opinion of the Labour Ministry Commission, which operates in every prefecture, or the opinion of the SLC, respectively. These bodies, as well as the Minister or the Prefect, can invite the parties to discussions and listen to the views of their representatives, as well as any experts.

27. Law 3899/2010 Government Gazette (FEK) 212 A/17.12.2010.

accompanying Law 3985/2011, which outlined a revised fiscal strategy with a new timeframe (2012–2015). First, amendments were made with regard to the regulation of fixed-term work, including extending the duration of successive fixed-term employment contracts, allowing for successive renewals and expanding the scope of objective reasons for using successive fixed-term contracts. Second, the scope for concluding agreements between employers and unions on working time arrangements at company level was extended. Building on the provisions of Law 3846/2010, ‘associations of persons’ acquired the right, under Article 42(6) of Law 3986/2011, to negotiate working time arrangements. In addition, the Act stipulated new possibilities for determining working time arrangements, including extension of the time period for calculating working time from four to six months and the provision of compensatory time off instead of pecuniary payment for overtime.²⁸ A number of changes were later introduced in the organisation of working time and in payment for excess overtime, including reducing the minimum daily rest period²⁹ and abolishing the employer’s obligation to justify recourse to overtime.³⁰ In terms of working days, Law 4093/2012 provides that a collective agreement may establish a six-day working week for employees of commercial shops. With the objective of promoting youth employment, significant reductions were also introduced in the minimum wage levels of young people aged 15–24. Finally, Law 4093/2012 partly amended the rules regulating temporary agency employment, facilitating the establishment of temporary agencies.

4.2 Wage-setting and collective bargaining

In addition to the changes made to individual labour law, part of the commitment to structural reforms undertaken by the Greek government in response to the first series of Memoranda included legal reforms in the area of wage bargaining, especially at sectoral level, including changes to laws governing asymmetry in arbitration and the automatic extension of sectoral agreements to those not represented in the negotiations (Ministry of Finance 2010c). The call for reforms in this area was based on the Troika’s view that wage setting in Greece over the past decade had not reflected the country’s competitiveness and productivity levels. In

28. Article 42 of Law 3986/2011.

29. Article IA 14 of Law 4093/2012.

30. This type of overtime work may not exceed 2 hours per day and 120 hours per calendar year.

order to ensure wage moderation, legislation was introduced in 2010³¹ providing that arbitration awards issued by OMED would be of no legal effect in so far as they provided for wage increases for 2010 and the first semester of 2011.³² The effects of the three-year wage freeze laid down – as part of incomes policy – in Law 3845/2010 spilled over into the laws governing negotiations on the 2010–2012 national collective agreement, which provided that no increase should be granted for the first 18 months of the three-year period, and stipulated a ‘symbolic’ increase for the following 18 months based on the average euro-zone inflation rate. The increase would be in the order of 1.6 per cent as of July 2012. The agreement received the Troika’s informal approval because at that time it was not considered that wage levels should be reduced but rather frozen (SEV, interview notes).³³

More importantly, extending such legal interventions in wage bargaining via a radical restructuring of the collective bargaining system was identified from the start of the programme as an overriding objective. The priority was ‘to improve productivity and ensure that remuneration was aligned to it. In order to achieve this, Greece was faced with two choices: reduced salaries in the private sector by law or creating a more flexible bargaining system’. The latter option was chosen, a fact which, according to the ILO, showed ‘confidence in collective bargaining’ (ILO 2011: 26).³⁴ With the objective of moving wage setting closer to the company level, Article 2(7) of Law 3845/2010 stipulated that the terms of occupational and enterprise agreements could derogate *in pejus* from the terms of sectoral agreements and even the national general collective agreement; in a similar vein, sectoral agreements could derogate from the national collective agreement. However, following reactions from the social partners, it was agreed to observe the floor of rights laid down by the national general collective agreement; any reductions of wage levels should take place through the introduction of the so-called ‘special

31. Article 51 of Law 3871/2010 on ‘Financial Management and Responsibility’ (Law 3871/2010 Government Gazette (FEK) 152A/01.07.2010).

32. In addition, it was provided that awards for the period 1 July 2011 to 31 December 2012 should limit any wage increases to those stipulated in the general national collective agreement, that is, a percentage increase equal to the average euro-zone inflation rate.

33. But as we shall see, later developments in the context of the loan agreement led to a completely different approach and a nominal reduction of the minimum wage by 22 per cent was introduced by Act of Cabinet.

34. But even this preference for collective bargaining was later abandoned when the Greek government negotiated the conditions for a second loan agreement (see below).

firm-level collective agreements'.³⁵ Such agreements could be signed by an employer who employed fewer than 50 employees and the relevant firm-level trade union or, if there was no such union, by the relevant sectoral trade union or confederation.

In light of the other changes in employment protection legislation, it was anticipated that special firm-level collective agreements would be used as a means to lower wages in exchange for job security.³⁶ The risk of deteriorating labour standards would increase, however, due to the employees' lack of bargaining power at firm level (Katroutgalos 2011). But there were indications that the legislation did not promote such agreements and only 14 were registered with the competent authorities by the summer of 2011.³⁷ Instead, wage reductions and other changes in the terms and conditions of employment were most often the result of agreements with employees on an individual basis, confirming Kazakos's (2010) prediction that if employers could not reach agreement with the employees' representatives, individual negotiations would take place, further increasing the risk of pay insecurity for workers and limiting, in practice, the right to collective bargaining. The Troika, which attributed the lack of take-up of special firm-level collective agreements to the limited number of company-level trade unions in Greece, continued to exert significant pressure for further amendments (European Commission 2011a: 39–40). Following this, Article 37(1) of Law 4024/2011 gave to all firms – including those employing fewer than 50 persons) the capacity to conclude firm-level collective agreements, provided that three-fifths of the employees formed an 'association of persons'.

In addition to these measures, Article 3(5) temporarily suspended – during the application of the Mid-term Fiscal Strategy Framework (that is, until 2015) – the application of the favourability principle in the case of the concurrent implementation of sectoral and firm-level collective agreements. Finally, Article 37(6) temporarily suspended, for the same

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35. A prohibition on extending collective agreements was also considered but as a result of an agreement reached between the employers' associations and the trade unions it was not introduced (see Kazakos 2010). But such a prohibition was later introduced on a temporary basis (see the analysis below).
 36. The GSEE guidance (2011) stressed that even though there is no provision in the legislation concerning the prohibition of dismissals during the application of the agreement, a trade union should require the employer to ensure the maintenance of all jobs during the duration of the agreement.
 37. See the Greek government's response (case document no 5) to collective complaint 65/2011 by GENOP DEI and ADEDY to the European Committee of Social Rights.

period, the extension of sectoral and occupational collective agreements. The priority that is given to firm-level agreements over those concluded at sectoral level, in conjunction with the prohibition on extending agreements, points to significant deregulatory trends in the collective bargaining system, with negative implications not only for workers, but also for employers who are members of the signatory organisations of the sectoral collective agreements, who now face being undercut.³⁸ The representativeness of the ‘association of persons’ in negotiating such agreements is particularly problematic, especially in the context of SMEs, which make up the majority of Greek companies.³⁹ This point was stressed by the ILO High Level Mission report (2011: 59), which stated that:

The High Level Mission understands that associations of persons are not trade unions, nor are they regulated by any of the guarantees necessary for their independence. The High Level Mission is deeply concerned that the conclusion of ‘collective agreements’ in such conditions would have a detrimental impact on collective bargaining and the capacity of the trade union movement to respond to the concerns of its members at all levels, on existing employers’ organisations, and for that matter on any firm basis on which social dialogue may take place in the country in the future.

The changes made to collective labour law were not confined to issues of collective bargaining, but were extended to the adjudication of disputes via mediation and arbitration. These reforms were designed to address the problem of ‘asymmetry’ that was identified by the Troika and involved the unilateral right of trade unions to have recourse to arbitration where they had accepted a proposal from the mediator, which was rejected by the employer.⁴⁰ In this context, Law 3863/2010 made

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- 38.** The position of the Greek government is that ‘the above amendments in the system of ranking of the binding effect of collective agreements do not violate the freedom of collective bargaining, since in any case only the legal representatives of workers at enterprise level have the right to conclude firm-level labour collective agreements’ (Government’s response (case document no 5) to the collective complaint by GENOP DEI and ADEDY to the European Committee of Social Rights: 9)
- 39.** It is important to note here that there is no requirement, under the legislation, for a review of the objectives of ‘associations of persons’.
- 40.** Article 16 of Law 1876/1990. The lack of recourse to arbitration by the latter was introduced as a means of redressing the inequality of bargaining power and guaranteeing the effective functioning of collective bargaining (Kazakos 1998). According to case law, the unilateral right of trade unions is consistent with the provisions of the Greek Constitution and of relevant ILO Conventions, with the proviso that resort to arbitration only take place following the exhaustion of all efforts for a conciliatory resolution of the dispute (Supreme Court decision 25/2004; Council of State 3204/1998; Council of State 4555/1996).

provision for reforming the mediation and arbitration procedure.⁴¹ To that end, Law 3899/2010 amended certain provisions of Law 1876/1990 and redefined the role of OMED. Recourse to arbitration could now take place either through agreement of the parties or unilaterally, under the following conditions:⁴² either party could have resort to arbitration if the other party had refused mediation; and either party could have resort to arbitration immediately after the decision of the mediator was issued. The latter provision extended to both parties a facility that had been available only to workers under the previous law. In addition, the exercise of the right to strike was to be suspended for a 10-day period, starting from the day on which either party resorted to arbitration. In contrast to the previous regime, under which the arbitrator could regulate any aspect of the collective agreement, arbitration was now limited to determining the basic wage and/or the basic salary. Other terms and conditions of employment, such as working time, leave arrangements and compensation, could no longer be regulated on the basis of arbitration awards.

Continuing with the radical restructuring of the collective bargaining system that started in the context of the first loan agreement, the second loan agreement also demanded substantial changes. The changes concerned the length of collective agreements and their ‘after-effect’ or ‘grace’ period. At present, collective agreements can be concluded only for a maximum of three years.⁴³ More importantly, collective agreements that have expired will remain in force for a maximum of three months.⁴⁴ In addition, if a new agreement is not reached, after this period remuneration will revert back to the basic wage stipulated in the expired collective agreement, plus specific allowances (based on seniority, number of children, education and exposure to workplace hazards, but no longer on marriage status) until replaced by a new collective agreement or new or amended individual contracts. Apart from hindering the succession of collective agreements, these amendments further promote individual negotiations between employers and employees. Furthermore, the

41. Articles 73 and 74.

42. Article 16.

43. Article 2(1) of Act 6 of 28.2.2012 of the Ministerial Council.

44. Article 2(3) of Act 6 of 28.2.2012 of the Ministerial Council. The previous regime (Article 9 of Law 1876/1990) stipulated a period of six months and was applicable to newly recruited employees during the six-month period. Concerning the position of newly recruited employees, the guidance from the Ministry of Labour and Social Security (No 4601/304) states that the terms of the collective agreement are applicable only if the conditions of Article 8(2) of Law 1876/1990 are satisfied.

maturity coefficients leading to automatic salary increases based on length of service and tenure that were incorporated in almost all collective agreements (Ioannou 2012b: 213) were frozen until such time as unemployment falls below 10 per cent.⁴⁵

In addition, a radical adjustment of wage floors was required on the ground that this would 'help ensure that as the economy adjusts, and collective bargaining agreements respond, firms and employees do not find themselves bound at a lower limit (and a limit which is very high in international comparison) [...] these measures will permit a decline in the gap in the level of the minimum wage relative to peers (Portugal and Central and South–East Europe)' (Ministry of Finance 2012b: 22). Accordingly, an immediate realignment of the minimum wage level, as determined by the national general collective agreement, was introduced by an Act of Legislative Content, resulting in a 22 per cent cut at all levels, based on seniority, marital status and whether wages were paid daily or monthly.⁴⁶ This became the object of harsh criticism from a variety of social partners, as it directly challenged the parties' freedom to conclude collective agreements and further reduced employees' purchasing power.⁴⁷ The criticisms came predominantly from trade unions and some employers' associations, mainly GSEVEE and ESEE, but not SEV (GSEVEE, interview notes). A freeze in minimum wage levels was also prescribed until the end of the programme period. In addition, legislative intervention in wage levels, in the form of clauses in the law and in collective agreements that provide for automatic wage increases dependent on time – including those based on seniority – were suspended, until such time as unemployment falls below 10 per cent. It has been suggested by both sides that the legislative reduction of minimum wage levels, which were stipulated by the existing national general collective labour agreement, contravenes the constitutionally recognised principle of collective autonomy, that is, the legal capacity of trade unions and employers' associations to determine general working conditions by free negotiation. Consideration was also given to abolishing

45. Act 4046/2012, Article 1(6) and in Ministerial Council Decree 6/2012 Article 4.

46. A further 10 per cent decline for young people, which applies generally without any restrictive conditions (under the age of 25) was stipulated as well, and with respect to apprentices the minimum wage now stands at 68 per cent of the level determined by the national agreement.

47. According to GSEVEE, labour costs before the crisis constituted the eighth or ninth in the competitiveness list of the Greek economy (GSEVEE, interview notes).

the thirteenth and fourteenth wage – provided as an allowance – as in the public sector, but no such change has yet been made.⁴⁸

In order to ‘bring Greece’s minimum wage framework into line with that of comparator countries and allow it to fulfil its basic function of ensuring a uniform safety net for all employees’ (Ministry of Finance 2012b: 22), it was also intended that the government, together with social partners, would prepare a timetable by the end of July 2012 for overhauling the national general collective agreement. The proposal was to replace wage rates set in the national general collective agreement with a statutory minimum wage rate legislated by the government in consultation with social partners. Law 4093/2012,⁴⁹ which was adopted at the end of 2012, provides that a process for fixing statutory minimum wages and salaries for workers employed under private law would be introduced by an Act of the Cabinet by 1 April 2013. Guidelines for determining the minimum wage include: the situation and prospects of the Greek economy, the labour market (rates of unemployment and employment) and the outcome of consultations with representatives of the social partners, as well as specialised scientific bodies. Despite this provision, Law 4093/2012 proceeded to establish minimum salaries and wages, substantially at the same level as Article 1 of Act of Cabinet 6/28.2.2012, which stipulated a decrease of the minimum wage by 22 per cent (and by 32 per cent for those under 25 years of wage).⁵⁰

It is also provided that the minimum wage rates stipulated in Law 4046/2012 should be applicable from the publication of the legislation (12.11.2012) until the ‘expiry of the period of economic adjustment prescribed by the Memoranda of Understanding, which are annexed to

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48. In the past, discussions were held between the two sides to divide the allowances into twelve parts to be distributed each month. However, there was no agreement on this, as employers were concerned about the impact of such monthly wage allowances on social insurance and overtime costs and trade unions were concerned that it would be easier to proceed to wage cuts as the allowances would no longer constitute institutional terms (GSEE, interview notes).
49. Ratification of Mid-term Fiscal Strategy 2013-2016, Urgent Regulations relating to the Implementation of Law 4046/2012 and the Mid-term Fiscal Strategy 2013–2016.
50. The minimum wage currently in force is: (a) 586.08 euros/month for employees over 25 years of age or 26.18 euros/day for workers over 25 years of age; (b) 510.95 euros/month for employees under 25 years of age or 22.83 euros/day for workers under 25 years of age. The above minimum wage is increased with a seniority allowance. This allowance concerns only service until 14 February 2012 and varies according to a person’s status (that is, employee or worker) and age (above or below 25 years of age). Service after 14 February 2012 will not be taken into consideration in calculating seniority allowance. This provision shall remain in force until the unemployment rate in Greece falls below 10 per cent.

Law 4046/2012 and their subsequent amendments'; in other words, the period 2013–2016. The national collective labour agreement continues to regulate non-wage issues, which apply directly to all workers. However, if the agreement also stipulates wage levels, then these are valid only for workers employed by members of the signatory employers' federations. The reforms constitute an unprecedented overhaul of the system of wage determination. The national general collective labour agreement has traditionally been of particular economic and institutional significance, as it has provided a floor of labour rights for employees, while indirectly influencing the terms and conditions of employment specified in sectoral and company-level agreements (GSEE, interview notes). The replacement of collective negotiations with a statutory minimum wage may not only lead to wage cuts, but also further reduce the role of the trade unions in Greek industrial relations (GSEE 2011).

On top of these changes in collective agreements and wage determination, the 2012 reforms abolished the unilateral recourse to arbitration and instead allow requests for arbitration only if both parties consent.⁵¹ Furthermore, arbitration is to be confined solely to determining the basic wage/salary and does not include the introduction of any provisions on bonuses, allowances or other benefits. When considering a request, OMED must take into account economic and financial considerations alongside legal ones.⁵² The elimination of unilateral recourse to arbitration was consistent with SEV's argument that compulsory arbitration should be abolished in order to allow negotiations to be 'better aligned with reality' (ILO 2011: 37). It has to be stressed here that arbitration decisions were the basis for a quarter of occupational and sectoral agreements and for a twentieth of enterprise collective agreements between 1992 and 2008 (Ioannou 2012a: 897).

The changes in the system of collective agreements, described above, and the prerequisite of an agreement between the parties for there to be recourse to arbitration, provide an incentive for employers to object to the conclusion of a collective agreement and to the use of arbitration so as to proceed freely instead to negotiations with individual employees

51. Article 3(1) of Act 6 of 28.2.2012 of the Ministerial Council. It must be noted here that arbitration was very important for the maintenance of sectoral and occupational agreements, as in the period 1995–1990 a quarter of them were settled by means of arbitration (Ioannou 2011).

52. This may be partly due to concerns expressed regarding certain ambiguities regarding Law 3899/2010 (see ILO 2011: 51).

(GSEE 2011). On the part of trade unions, they have two options. The first option is to agree wage reductions or increases ‘freely’ in line with the national general collective agreement in order to maintain the function of the collective agreement as a regulatory instrument. The second option is to have recourse to OMED, in the case of which, although the level of wage increases would be similar to those under a collective agreement, there would be no safeguarding of non-wage provisions (Kapsalis and Triantafyllou 2012: 19).

Preliminary evidence suggests that the first option has been adopted by a number of unions and this has been supported by some employers’ federations (Koukiadaki and Kretsos 2012). For instance, the recent collective agreement in commerce was driven by the National Confederation of Hellenic Commerce’s wish to protect the collective bargaining system, but this was conditional upon significant wage cuts. But with regard to the arbitration system, in a recent decision the Council of State found that the abolition of the right to have unilateral recourse to arbitration and the limitations on the subject matter of the arbitration decision infringed Article 22(2) of the Greek Constitution, which recognises a complementary role for arbitration where collective negotiations fail.⁵³ The decision has already been used by trade unions in order to apply pressure for renewed negotiations for the conclusion of collective agreements at sectoral level.⁵⁴ There is evidence to suggest that the government will amend the legislation in light of the decision, but in such a way so as to strengthen the role of mediation (Salourou 2014).

Lastly, but equally importantly, significant attempts have been/are in the process of being made in order to reduce trade unions’ institutional and financial resources. In this context, the government abolished the Organisation of Labour Housing (OEE Οργανισμός Εργατικής Εστίας) (Articles 1(6) and 2(1) of Law 4046/12). The organisation was important in terms of the resources provided for the trade unions, as the contributions made to it by employers and employees were traditionally used to fund a series of social activities, ranging from social housing and childcare provision to funding of labour centres and trade unions at different levels. Following pressure from the trade unions and reaction

53. Decision 2307/2014.

54. For instance, in July 2014 the Hellenic Union of Radio Technicians (ETER Ένωση Τεχνικών Ελληνικής Ραδιοφωνίας) submitted an application to OMED concerning the conclusion of a sectoral agreement following the refusal of the employers’ federation to negotiate on a voluntary basis.

from the public, the government, which had moved part of the OEE's funds to OAED,⁵⁵ committed itself to continue to distribute the funds, albeit reduced, for trade union activities. More recently, it has been reported that discussions have opened on the renegotiation of Law 1264/1982, which established a number of fundamental trade union freedoms (Kokkalliari 2014). Due to Troika pressures, the objective is to create a new framework for the operation of trade unions, including amending the framework for union funding in order to limit their dependence on the state, merging primary and second-level unions and amending the legislation on industrial action and time off for trade union activities. While recognising the importance of Law 1264/1982, GSEE stresses that it should be implemented in its original spirit and not be misused by unions, as is reportedly the case in certain companies and state-owned enterprises (GSEE, interview notes). At the time of writing, no reforms had been introduced in this area.

4.3 The implications of the labour market measures for the Greek system of collective bargaining

As illustrated in the analysis above, the Greek system of labour law and industrial relations has undergone wide-ranging changes since the beginning of 2010. As a result of the commitments made by the Greek government in the context of the financial assistance that it has received from the IMF and the euro-zone member states, significant interventions have been made with the objective of triggering a process of 'internal devaluation'. In terms of the process for introducing the changes, there was virtually no social dialogue between the government and the social partners. While this confirmed the strong tradition of a culture of state paternalism with regard to industrial relations, it also highlighted the de facto departure from a 'political economy' approach to the crisis (in which dialogue institutions have a role) towards a 'financial-market driven' approach, in which public policy responses depend on the perceived situation in the financial market (Ghellab and Papadakis 2011). The 2011 ILO Report of the High Mission to Greece illustrates the latter point, when it states that the issue of employment was rarely discussed during the consultation between the Greek government and the Troika.

55. Out of the 375 million euros that constituted the contributions to OEE, the government provided OAED with 25 million (POEM, interview notes).

In the context of measures driven by supranational institutions – that is, the Troika – the social partners were unable to develop a joint approach to influence the nature and extent of the measures adopted to counter the crisis. But the absence of social dialogue on the introduction of the measures did not mean that employers' associations or individual members did not have their own views on the measures introduced to limit the extent of the sovereign debt crisis or that they did not influence the direction of the changes (on this, see Koukiadaki and Kretsos 2012). First of all, there was evidence to suggest that individual firms were able to convey their views on the issue of labour market regulations directly to the Troika, essentially bypassing the institutional channels for consultation and influencing the nature and extent of the changes. In terms of the institutional actors on the employers' side, SEV – which represents mostly large undertakings and had been a strong advocate of decentralisation of collective bargaining and labour market flexibility more generally in the period leading to the crisis – has argued that, even though the lack of competitiveness in the labour market was not the root cause of problems facing Greece, it was an important priority (ILO 2011).

However, other employers' associations highlighted the need to protect workers' average incomes, as domestic demand is key to economic growth and development. As a result, employers' federations, which represent SMEs, have criticised a number of changes as likely to reduce consumers' purchasing power and jeopardise the 'cooperative relationship' between their members and their employees (Koukiadaki and Kretsos 2012). For instance, the GSEVEE considered that, instead of improving the competitiveness of the Greek economy, the measures were in reality aimed at providing low wage, but high skilled employees for companies based in northern Europe (GSEVEE, interview notes). Similar views have been expressed by ESEE. In contrast, SETE has attempted to make use of its institutional role to impose changes that are resisted by other employers' organisations (GSEVEE, interview notes). In expressing these views, GSEVEE and ESEE are closer to the approach of the Greek trade unions, which have consistently argued against the measures.

The social partners' different approaches to the crisis can be illustrated by examining the negotiations on the general collective agreement (see analysis below). On the basis that any improvement in working

conditions can now be achieved only through worker mobilisation, Greek industrial relations have become more adversarial.⁵⁶

The lack of any influence of the social partners not only provides evidence for the unilateral character of the changes but also deprived policymakers of information necessary for effective policy design at a time it was most needed, and arguably hindered the chances of maintaining balance in such policies by mitigating their adverse effects on the most vulnerable groups (Ghellab and Papadakis 2011). This is evident when one examines the content of the measures. The changes are manifested in four main pillars of the employment relationship: (a) they challenge the role of full and stable employment and instead promote flexible forms of employment; (b) they promote working time flexibility that is responsive to companies' needs; (c) they mitigate employment protection against dismissal; and (d) they dismantle the system of collective agreements and wage determination. In introducing these changes in the first three pillars, the measures have substantially increased the scope for unilateral decision making on the part of the employer and have undermined support for joint regulation of the terms and conditions of employment, as illustrated by the conversion of contracts from full-time to atypical employment on the basis of unilateral management decision. While the measures in the first three pillars indirectly affect collective bargaining and wage determination, the changes in the fourth pillar have directly altered the landscape of Greek industrial relations. In providing for new forms of representation, suspending the extension mechanisms and suspending the favourability principle, as well as the unilateral recourse to arbitration, it has been suggested that the measures have shifted the balance from joint regulation to state unilateralism (GSEE, interview notes).

Overall, despite the fact that the programme has a fixed duration, the measures seem to be permanent in nature (Koukiadaki and Kretsos 2012). Even in the case of the temporary suspension of the extension of collective agreements until 2015, it is difficult to envisage how there can be a return to the extension mechanism in the future. In terms of their nature, most of the measures are paradigmatic as they lead to changes in the functions of key labour market institutions and practices. The strong state interventionism that permeates all new regulations

56. A study by Katsoridas and Lampousaki (2012) reported that only in 2011, there were in total 445 strikes and work stoppages.

affects the key parameters of collective autonomy and there is evidence to suggest that the scope for labour market deregulation has increased (Koukiadaki and Kretsos 2012). Apart from affecting the scope for joint regulation, the measures imply a fundamental reorientation of the Greek industrial relations system. In contrast to the declared intentions of the Troika and the Greek government, the role of the state has been expanded, to the detriment of collective autonomy, and as a result now occupies an even more central role in regulating employment relations. Hand in hand with the increased prominence of the state's role, the scope for managerial prerogative at workplace level has increased, with significant implications for determination of the terms and conditions of employment.

5. Research methodology of the study

Having outlined the process and substance of labour market measures in the area of collective labour law and industrial relations, our analysis now turns to primary and secondary data on the impact of the measures implemented in response to the crisis on collective bargaining. We critically assess their implications for the role of the state and the social partners, as well as the prospects for continuity or change in the national industrial relations system. Our analysis draws on a number of interviews with national and sectoral interviewees representing the state, employers' associations and trade unions responsible for collective bargaining in the manufacturing sector. In addition, data are analysed from a workshop with 10 trade union representatives at company, sectoral and national level that was held in April 2014 in Athens. These are complemented by a range of case studies in the metal industry and food manufacturing (see Table 1 for details). In total, 10 case studies were conducted. Six case studies were conducted in the metal sector, comprising one large, one medium and four small companies. Four case studies were conducted in the food sector: one large, one medium and two small companies. In all cases (apart from the small companies, where only management were interviewed), interviews were carried out with both management and employee representatives. In total, 24 interviews were conducted. The primary data from the national, sectoral and company levels are complemented by information and data from national and EU surveys.

Table 1 Company case study details

Case studies	Employers' association membership	Workforce size	Trade union presence	Pre-existing industrial relations	Impact of the economic crisis	Collective agreement
Large metal manufacturer	Yes (ENEPEM) ^a	584 employees	Company trade union	Before the crisis, cooperative and formal; during the crisis, adversarial and formal (110 days of strike)	Major	2012 (2+1 years) agreement with pay freeze ^b and no redundancy clause
Medium metal manufacturer	No	155 employees	Company trade union	Initially paternalistic and adversarial (strikes and courts) but now rather cooperative and informal	Some impact in 2007–2008 but no impact since then	2010 collective agreement still informally applies (but with pay freezes)
Small metal manufacturer 1 (silversmith)	Yes (POVAKO) ^c	7 employees	No company-level union	Cooperative and informal	Major	No collective agreement applicable
Small metal manufacturer 2 (silversmith)	No	3 employees	No company-level union	Cooperative and informal	Minimal	No collective agreement applicable
Small metal manufacturer 3 (silversmith)	Yes (POVAKO)	1 employee	No company-level union	Cooperative and informal	Major	No collective agreement applicable
Small metal manufacturer 4 (car)	Yes (EOVEAMM) ^d	2 employees	No company-level union	Cooperative and informal	Major	2013 collective agreement (with pay freeze)
Large food/drinks manufacturer	Yes (SEV)	950 employees	Three site unions	Cooperative and formal	Considerable	2014 collective agreement (with minor pay increase)
Medium food/drinks manufacturer	Yes (SEV)	259 employees	8 company unions for permanent staff plus 3 for seasonal workers	Initially cooperative but now adversarial	Major	2012 collective agreement (with pay freeze)
Small food/drinks manufacturer 1	Yes (SEV)	40 employees	No company-level union	Cooperative and informal	Considerable	No collective agreement applicable
Small food/drinks manufacturer 2	Yes (Federation of Cheese Producers) ^e	10 employees	No company-level union	Adversarial and informal	Considerable	No collective agreement applicable

^a Association of Metal Production and Processing Industries of Piraeus (Ένωση Επιχειρήσεων Παραγωγής και Επεξεργασίας Μετάλλων).

^b The agreement stipulates that the sectoral collective agreement will apply to newly hired employees.

^c Panhellenic Federation of Silver and Goldsmiths, Jewellers and Watchmakers (Πανελλήνια Ομοσπονδία Βιοτεχνών, Αργυρορροχοφώνων, Κοσμηματοπωλών, Ωρολογοποιών).

^d Single Federation of Automobile, Machine and Motorcycle Repair Craftsmen (Ένωση Ομοσπονδία Βιοτεχνών Επισκευαστών Αυτοκινήτων Μηχανημάτων Μοτοσυκλετών).

^e The federation did not conclude any collective agreements before the crisis and does not do so at present either.

6. The economic and industrial relations framework in the manufacturing sector

Before proceeding to assess the impact of the measures on collective bargaining, it is useful to outline here the main characteristics of the manufacturing sector and the overall industrial relations framework in the sector before the crisis. Manufacturing in Greece is relatively small in comparison with the other European countries. In terms of gross value added production, between 2000 and 2010 annual average sectoral growth was only +0.1 per cent compared with +2.2 per cent for total domestic economic activity.⁵⁷ The production of pharmaceutical products, chemicals and basic metals had the highest average annual increase in terms of GPD in the period 2000–2010. However, in terms of contribution to production, the food, beverage and tobacco industries had the highest share, followed by manufacturing of pharmaceuticals and metals. But since 2008, the sector has registered a significant decline of around 1.7 per cent as a result of the crisis. Consequently, there was a decline in its share of GDP by 3 per cent over the period 2000–2010 and it stood at 8.7 per cent in 2010. One of the first sectors to be affected was metal manufacturing. This was because the sector traditionally has international exposure through exports, but at the same time is sensitive to changes in the domestic construction industry (Kathimerini 2009). The food and drinks sector was also significantly affected in terms of sales, gross profits and employment rates. However, it was very small companies with fewer than 10 employees that were mainly affected.⁵⁸ Similar to the rest of the Greek economy, small companies are in a considerable majority in the sector (95 per cent in food and 90 per cent in drinks; Thomaidou 2013).⁵⁹

In terms of employment, manufacturing was one of the sectors with the biggest falls in employment rates during the crisis (see Figure 1 for overall figures on unemployment). This development is part of the long process of deindustrialisation of the Greek economy that started in the 1980s and resulted in an employment share of about 10.7 per cent

57. For an analysis of the developments in the sector before and during the crisis, see Argitis and Nikolaidi (2014).

58. For evidence of this, see the periodic surveys conducted by IME GSEVEE (<http://www.imegsevee.gr/>). Also see Table 2 for a breakdown of companies according to size.

59. Despite the large number of SMEs, it has to be added here that the dominant role in the economy, including in manufacturing, is increasingly played by a small number of large, often foreign-owned enterprises.

in 2010. However, there is also evidence to suggest that the economic crisis accelerated the process of deindustrialisation. Information on company insolvencies since the start of the crisis suggests that the manufacturing sector has been particularly vulnerable: in 2013, 87.1 per cent of manufacturing firms were considered to be at high credit risk and a number of them were already in the process of insolvency (Imerisia 2013). The negative growth in the sector can be explained partly by the ‘austerity’ measures, especially increased taxes and other developments, such as wage and pension cuts. This has led to increased financial burdens and tax obligations for businesses, coupled with reduced purchasing power for consumers, challenges that large companies are in a better position to deal with than SMEs, at least in the short term. Moreover, many tax incentives and/or exemptions that SMEs used to enjoy have been abolished.

In terms of the industrial relations framework, in metal and food and drinks companies the predominant level of collective agreement before the crisis was the sector. However, the wage levels stipulated by the national general collective agreement were decisively affected by the level of wages in all sectoral agreements. In the metal manufacturing sector, a sectoral agreement was traditionally concluded between the Hellenic Federation of Metalworkers and Clerical Staff (POEM, Πανελλήνια Ομοσπονδία Εργατοϋπάλληλων Μετάλλων) and SEV in collaboration with the Association of Metal Processing Companies (ENEPEM). A different agreement was concluded between POEM, SEV and the Federation for the Manufacturing of Car Frames and Bodywork. Data from 2008 suggest that POEM had around 30,000 members (25 per cent of all employees in the sector) and ENEPEM had around 65 members.⁶⁰ During the period 2000–2011, five sectoral agreements of two years’ duration were concluded between POEM and SEV in collaboration with ENEPEM. The last agreement before the start of the crisis (2008–2009) had stipulated a pay increase of 13.76 per cent (Tikos 2010). Separate sectoral collective agreements were concluded between POEM and the employers’ federations representing SMEs in different manufacturing subsectors. In this context, GSEVEE (the cross-sectoral employers’ federation) participated and acted as signatory to the sectoral agreements alongside the sectoral employers’ associations (Panhellenic Federation of Silver and Goldsmiths, Jewellers and Watchmakers (POVAKO)

⁶⁰. At the same time, there were another 85 active companies that were not members of ENEPEM. According to anecdotal evidence, the association had around 38 members in 2014 (Tikos 2010).

and the Single Federation of Automobile, Machine and Motorcycle Repair Craftsmen (EOVEAMM) and the Panhellenic Federation of Craftsmen of Aluminium (POVAS, Πανελλήνια Ομοσπονδία Βιοτεχνών Αλουμινοσιδηροκατασκευαστών). As a result of the participation of GSEVEE in these agreements, a basis was provided for extending the agreement to regions where there was no employer representation at sectoral level (GSEVEE, interview notes). In the case of silver and goldsmiths, a sectoral agreement was concluded between GSEVEE and POVAKO on the side of the employers and POEM on the union side.⁶¹ The agreement covered personnel employed in the production, processing and repair of silver, gold, jewellery and other precious metals and watch repair throughout the country and before the crisis was considered one of the best in terms of pay, as it offered consistently higher levels of wages than the national general collective agreement (POVAKO, interview notes). A separate agreement was concluded covering skilled metal workers and clerical staff of all metal enterprises, as well as workers in the production, processing, assembly, packaging and repair departments of other companies in Greece. The agreement was concluded between GSEVEE, POVAS, EOVEAMM and POEM.

In the food and drinks sector, collective agreements were usually concluded at sectoral level (for example, bakeries, dairy products, drinks). There are a number of second-level trade unions (federations) that are organised on the basis of sub-sectors within manufacturing, resulting in a fragmentation of workers' representation (interview notes). On the part of employees, the Hellenic Federation of Milk, Food and Drinks Workers (Πανελλήνια Ομοσπονδία Εργατοτεχνιτών και Υπαλλήλων Γάλακτος Τροφίμων και Ποτών, referred to as the Federation of Milk, Food and Drinks) has traditionally organised a significant proportion of the workers in the sector; in 2013, it was estimated that around 9,000 employees were members of the federation,⁶² a figure that has risen steadily since 2004. Before the onset of the crisis, the Federation used to be party to four sectoral collective agreements: drinks, dairy products, cheese products and processed food.

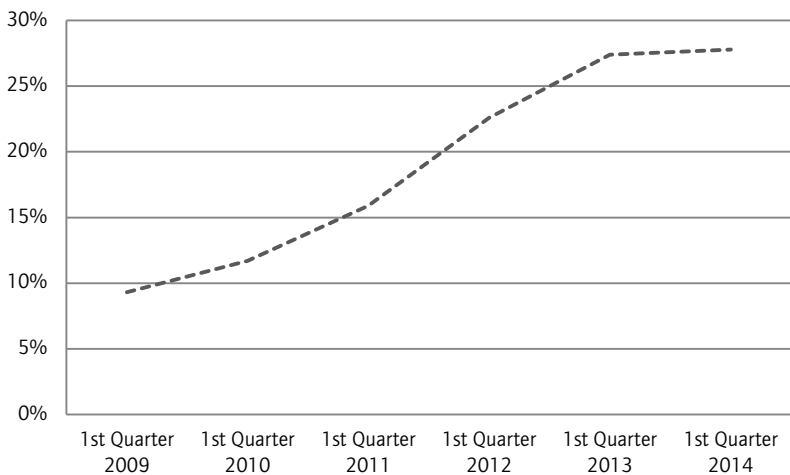
61. At the time of the research, POVAKO had around 1,200 members in Athens and around 30–40 per cent of silver and goldsmiths in Greece were members in 2014 (POVAKO, interview notes). The benefits of membership were questioned by some employers: 'We do not belong to any employers' association, we consider them irrelevant and we do not believe that they have a productive input on employment issues' (small metal 2, interview notes).

62. It covers 30 company trade unions and seven sectoral unions and its density in the food and drinks is lower than the overall density of the union (Georgiadou and Kapsalis 2013).

These agreements provided for different wage increases over the years (ranging from 8 per cent to 17.5 per cent on top of the national minimum wage, as set by the national general collective agreement); the difference was attributed to the different life span of the agreements themselves (Federation of Milk, Food and Drink, interview notes). On the part of the employers, two third-level employers' organisations were parties to the collective agreements in the sector: SEV and GSEVEE.⁶³

Despite the fact that the agreements were concluded by the main employers' federations, the stance of the latter during the negotiations predominantly reflected the interests of sectoral organisations, including the Hellenic Federation of Food Industries (SEVT, Σύνδεσμος Ελληνικών Βιομηχανιών Τροφίμων).

Figure 1 Unemployment levels



Source: ELSTAT (<http://www.statistics.gr/portal/page/portal/ESYE>), Three month surveys of labour force 2009- 2014, authors' analysis.

63. In 2013, it was estimated that GSEVEE had around 10 000 members in the food and drinks industry (Georgiadou and Kapsalis 2013).

It is important to add here that in both the metal and food and drinks industries, there was a tradition of enterprise-level collective agreements before the crisis, notably in large enterprises. Owing to the pre-existing statutory framework, the company-level agreements could not introduce worse terms and conditions of employment than those in the sectoral/occupational level agreements and, in practice, company agreements were used to improve significantly upon the salary levels stipulated in the sectoral/occupational agreements. This was confirmed in all large and medium company case studies that were examined in the project (large food and drinks, medium food and drinks, large metal, medium metal). Moreover, overtime was used before the crisis to prop up wage levels in the sector and contain demands for further wage increases in collective agreements in some large metal manufacturing companies (POEM, interview notes).

7. Implications of the measures implemented in response to the crisis for the process and character of collective bargaining at sectoral and company levels

7.1 State of the national general collective agreement during the crisis

At national level, and as described earlier, the social partners have exhibited a range of approaches to the crisis and the measures implemented in response to it. These differences were clearly illustrated in the negotiations on the national general collective labour agreement (EGSEE) for 2013. Owing to the legal changes in the system of wage determination, this was the first agreement signed by the social partners that would have no effect on the regulation of the minimum wage. After three consecutive meetings, a new agreement was signed on 14 May 2013 by all the social partners except SEV. The GSEVEE representative stressed that the abolition of the *erga omnes* effect of the agreement with regard to wage levels has effectively meant that employers' federations are no longer able to influence wage levels – through negotiations – because if there was any indication of an intention to reinstate the national minimum wage to the pre-crisis level (751 euros), they would suffer significant losses in terms of membership (GSEVEE, interview

notes).⁶⁴ As such, the 2013 agreement did not prescribe any wage levels, as had previously been the case. Despite the legal changes, the social partners, who signed the 2013 agreement, stressed that they recognised the need to maintain the national agreement as an active institution, and to restore its political, social and economic role. In contrast, SEV argued that the agreement had no legal foundation and that it offered no essential benefits for employees and instead proposed the signing of a protocol of agreement by the social partners, arguing that this would strengthen the institutional acquis and lead to a new model of a national agreement, as well as extending the scope of dialogue to include issues of competitiveness (SEV, interview notes).⁶⁵

SEV again became a party to the national general collective agreement in 2014. This change provides some evidence SEV had reconsidered its previous approach to the industrial relations framework (GSEVEE, interview notes) and of an understanding of the adverse impact of non-participation on the employers' organisation itself (GSEE, interview notes). In addition, it reportedly also reflected an understanding of the impact of the measures on the profit levels of SEV members, because the rapid and dramatic reduction of wage levels had also reduced company profits significantly (OVES Ομοσπονδία Βιομηχανικών Εργατοϋπαλληλικών Σωματείων, interview notes). According to SEV, 'the national collective agreement does not introduce anything new, but it restores the institution so that it will be available when diplomatic relations between the two parties are restored and if something changes in terms of legislation' (SEV, interview notes). Indeed, the 2014 collective agreement reaffirmed the intention of the social partners to support the institution of collective bargaining despite the crisis and the restrictive legal framework. The parties to the agreement also made a commitment to implement actions that will help to reduce unemployment and fight undeclared and uninsured work but also actions related to the issues of the 'after-effect' of collective agreements, the restoration of the *erga omnes* effect of the national collective agreement and the extension of collective agreements on the basis of the principle of equal treatment and in order to reduce unfair competition among companies. There is as yet no evidence concerning implementation and effectiveness. Aside from

64. Since the crisis started, one sectoral federation has ceased to be a member of GSEVEE (GSEVEE, interview notes).

65. Despite its abstention from the 2013 agreement, SEV advised its members to maintain the marriage allowance (SEV, interview notes).

these commitments, the national agreement maintained the institutional provisions of the 2013 agreement and for the first time stipulated fathers' right to paternity leave. The reference to the institutional provisions of the 2013 agreement has been interpreted as including the maintenance of the marriage allowance, but there are divergent opinions regarding whether it also covers maturity increases.⁶⁶ In addition, the social partners committed themselves to working together with the ILO, which has set up an office in Greece, to address issues related to the structure of tripartite social dialogue, sectoral collective bargaining, vocational education and training and prohibition of discrimination.⁶⁷

7.2 The state of sectoral collective bargaining during the crisis

At sectoral level, SEV was party to around 60 sectoral and occupational collective agreements until 2010. However, since the measures implemented in response to the crisis, the federation has not signed any collective agreement at this level (SEV, interview notes). The SEV interviewee explained:

The removal of the extension mechanism and the determination of the national minimum wage by legislation have completely changed the framework for collective bargaining; the actors are still confused about how they should behave [...] Sectoral agreements do not currently exist because there is no mandatory extension. Employers are concerned that if they come to an agreement with unions on wages, they will have a competitive disadvantage against smaller firms, which pay less and use undeclared work. Therefore, employers have stopped participating in wage bargaining. And the employee side has also stopped demanding the conclusion of sectoral agreements, because they understand pretty much that there's no way to squeeze anything out of the employers. This is the reason that, despite the gap left by the absence of sectoral agreements, there are very few strikes. And the employee side understands that the greatest threat is that if my members think that we, as SEV, are going to sign an agreement that they do not like, they will just leave the federation so as not to be

66. Although the marriage allowance has a monetary value, employers' associations seem to interpret it as being included in the institutional terms of the agreement (GSEVEE, interview notes). The marriage allowance was abolished by Law 4093/2012, which modified the wage determination system and the maturity increases are now regulated by legislation.

67. Article 1 of the national general collective agreement of 2014.

bound by the agreement. This has been done on a very small scale so far; only two companies and a sectoral associate member have ceased to be members of SEV. (SEV, interview notes)

On top of this, the measures taken with regard to the arbitration system (including the abolition of unilateral recourse) have significantly reduced the scope for concluding sectoral agreements. Even in the case of mediation, where a decision may be reached only if both sides agree, there is evidence to suggest that employers' federations are not willing to participate in the process. The GSEVEE interviewee explained: 'Unfortunately, there has been a change of culture and the logic that prevails among sectoral employers says that "now that we are on top, let's be the boss"' (GSEVEE, interview notes). On the union side, they are in defensive mode and 'seek ways to remain in existence following the measures implemented, which significantly curtail the scope for collective bargaining and collective action' (GSEE, interview notes). Where there is a risk of significant wage reductions, the issue of concluding a collective agreement is in some cases of secondary importance for employees and unions alike, as efforts are directed primarily against job losses and wage reductions (POEM, interview notes). Where this is not the case, trade unions have sought to maintain the tradition of sectoral and company-level agreements, albeit with varying success.

Developments with regard to the sectoral agreement for the metal manufacturing sector illustrate the implications of the crisis and the measures taken in response to it for the process and character of collective bargaining in Greece. In 2010, there was a wage freeze because of the lack of agreement on increases at sectoral level on the part of the employers, for both 2010 and 2011. Following failed attempts to conclude an agreement, an arbitration decision was issued for the period 2011–2012. The decision, which followed Article 51 of Law 3871/2010, stipulated a 1.6 per cent increase for the basic wages and daily rates for 2010 (equal to the percentage of annual change of the European inflation rate for 2010) and a respective increase for 2011.⁶⁸ The arbitration decision was valid until July 2013 but would be applicable, including the 'after-effect' period, until October 2013. ENEPEM filed a

68. Since 2010, it is not national inflation that is taken into account during the collective bargaining rounds and in the collective agreements, but the average euro-area inflation ('euro area inflation' is the rate of annual average change, compared with the previous year, of the Harmonized Index of Consumer Prices in the Eurozone, as announced by Eurostat).

lawsuit on 17 November 2011 before the First Instance Court of Piraeus, requesting the annulment of the award of 18/2011 OMED concerning their pay and working conditions for the years 2010, 2011 and 2012. The Court dismissed the employers' request, thus recognising the legitimacy of the arbitration award.⁶⁹ When the 'after-effect' period of the sectoral agreement in metal manufacturing expired, the parties to the agreement started negotiations on a new agreement. During the initial discussions, the employers suggested wage reductions of 22 per cent, which were rejected by the trade union and subsequently no agreement was reached. According to trade unions in the sector, SEV has advised its member federations not to conclude any sectoral collective agreements. In this context, the local trade union in the metal manufacturing sector in the Attica region has implemented a policy of promoting the conclusion of collective agreements in different companies, albeit with varying success (local trade union, interview notes).

Similar to the situation described above, there have been significant changes in collective bargaining for the conclusion of a sectoral agreement covering employees in silver and goldsmith manufacturing. Up to 2010, both sides had managed to achieve the conclusion of the sectoral agreement. However, the last (2011) sectoral agreement to be implemented was the result of an arbitration decision, which stipulated an increase of 1 per cent as of July 2011 and a further increase for 2012 on the basis of annual European inflation rate for 2011. Despite the fact that the agreement was the result of an arbitration decision, it was stressed that both sides had already reached common ground in advance of the arbitration stage (POVAKO, interview notes). However, in light of the 2012 changes in collective labour law and following pressure from its members, who were in favour of the new national minimum wage levels, POVAKO withdrew its support for the 2012 agreement. The POVAKO representative explained:

When the recession kicked in, we went to the negotiations with POEM and asked for a wage reduction of 10–15 per cent from the previous sectoral agreement. This was on the basis that similar reductions had already taken place in other sectors affected by the crisis, including commerce and hotels and catering. In response, POEM suggested a pay freeze and since we did not agree, they had recourse to OMED. But we decided not to attend the meeting, as we were concerned that

69. Court of First Instance of Peiraias, Decision 5701/2012.

any decision made would be against the interests of our members. (POVAKO, interview notes)

In contrast to these cases, a sectoral collective agreement was concluded between the employer federations representing SMEs (GSEVEE, EOVEAMM and POVAS) in metal (engaged in metal production, processing, repair, assembly and packaging in automotive, machine and motorcycle repair) and POEM. The sectoral agreement was concluded in a context of a significant decline in demand (35 per cent in 2011, 60 per cent in 2012 and 72 per cent in 2013) (EOVEAMM, interview notes).

The agreement provided that the wage levels and terms and conditions of employment that were stipulated under the 2010 agreement would continue to apply for another year, that is, until 15 May 2014, as determined on 14 February 2013 (for a comparative summary of collective agreements concluded by GSEVEE, EOVEAMM, POVAS and POEM between 2008–2014, see Table 3 below). According to the union representative in the sector, the conclusion of an agreement is explained by the fact that employers in SMEs are closely dependent on the few individuals they employ. Therefore, it made sense to maintain the collective agreement, even at the levels of 2010, especially because there are no company trade unions in SMEs and thus everything depends on whether there is a sectoral agreement or not (POEM, interview notes). This was confirmed by the EOVEAMM representative: ‘We respect the employees because we rely on them and not only on capital to do the job’ (EOVEAMM, interview notes).

In the food and drinks sector, the first agreement to be concluded during the crisis was in 2009. At that time, the signs of the crisis were still minimal and thus negotiations for the sectoral agreements were held in the summer of 2009. While the employers’ association had suggested a pay freeze on the basis of the economic slowdown, a 5.5 per cent wage increase was finally agreed, as demanded by the trade union federation. It is important to note that both sides came to an agreement following worker mobilisation on two occasions. The union representative noted: ‘We have always found that efforts to conclude a collective agreement always require conflict. We have traditionally avoided the route of mediation and arbitration, as we believe that workers need to have an awareness of how they should act’ (Federation of Milk, Food and Drink, interview notes). No collective agreement has been concluded since the

2009 round, however. According to one employers' federation, SEVT, the differences centre around wage issues but also institutional ones (SEVT, interview notes). The union representative explained:

There have been many rounds of negotiation and of worker mobilisation but the employers have been armed by the new legislation and maintain a very tough stance on the basis that the economic crisis has affected them considerably. In cases where the union movement is not strong enough, the employers are rejective from the outset. In cases in which the union movement still has power, they understand that this can cause them problems and sit down at the negotiation table, but pose significant obstacles. (Federation of Milk, Food and Drink, interview notes)

The latter state of affairs has pertained to sectoral bargaining on drinks. The employers have argued for a division of the agreement into three separate ones – for water, for soft drinks and for beer. In this context, another development that has influenced the employers' stance is competition on the basis of wage costs. The union representative explained:

Where there are company unions, they either conclude agreements that maintain the wage level or even if a new agreement is not concluded, the employment terms are still the same to some extent. But where no unions are present, employees are at the mercy of the employer. It is these companies that influence developments, because other firms (with unions) cannot reduce wages to 586 euros because of the union reaction and decide instead not to sign up to the sectoral agreement, as way to weaken the employees' resolve. (Federation of Milk, Food and Drinks, interview notes)

Table 2 Company case study details

Date of signature	Duration	Wage issues	Working time	Overtime	Productivity or other bonuses	Benefits	Other conditions	Length of agreement
24/06/2008	2 years 01/01/2008– 31/12/2009	<ul style="list-style-type: none"> – 3% increase since 1/1/2008 – 3.5% increase since 1/9/2008 – 3% increase since 1/1/2009 – 3.5% increase since 1/9/2009 – compensation issues: regulated by the EGSSE 	<ul style="list-style-type: none"> – 5 days 40 hours – Shipyards: 5 days 37.5 hours – Cast fittings 5 hours/day – Holidays: regulated by the EGSSE 	<ul style="list-style-type: none"> – Cast fittings over 5 hours: 1/5 wage +50% for travel exceeding 60 km: – Journey time from and to the company is considered overtime – overnight: 100% increase of daily wage 	<ul style="list-style-type: none"> – For extreme working conditions: ½ lit milk daily per worker – 2 work overalls annually – 1 pair of shoes for those working in damp conditions – 1 jacket for those working outside – gloves, glasses, helmets as in previous collective agreement 	<ul style="list-style-type: none"> – Three-year allowance: 6% for the first 9 years; 4% for the next 9 years (5% for welders) – 10% marriage allowance – unhealthy allowance: 10%, 12%, 15%, 20%, 25% depending on position – 5%: 10 years with the same employer allowance – 15% progression – 20% for managers and supervisors of foremen – Automatic or semi-automatic electrical welding equipment with argon-arcair: 1.6euro per day of at least 5 hours 	<ul style="list-style-type: none"> + 2 days paid leave monthly for: president, vice president, secretary + primary secondary and site trade union, board members of IKA, OAEI, TAPEM, AOEK + trade union leave according to Act 1264/82. 	19 pages
16/10/2010	3 years 01/01/2010– 31/12/2012	<ul style="list-style-type: none"> – Pay freeze until 31/08/2011 – Since 1/9/2011 0.5% increase of 2010 euro area inflation – Since 1/9/2012 0.5% increase of 2011 euro area inflation 	As above: collective agreement 2008–2009	As above: collective agreement 2008–2009	As above: collective agreement 2008–2009	<ul style="list-style-type: none"> – Three-year allowance: 6% for the first 9 years; 4% for the next 12 years (5% for welders) – All other allowances as above: collective agreement 2008–2009 		19 pages
17/06/2013	1 year 16/05/2013– 15/05/2014	<ul style="list-style-type: none"> – Pay freeze in wages as formed in 14/02/2013 	No change	No change	No change	<ul style="list-style-type: none"> – No change in allowances set in 14/02/13 (without the stipulated increases and maturities of the agreement above) 	No change	1 page

Source: Ministry of Labour and Social Security, authors' analysis.

In one large food and drinks case study, which was presented as a 'best practice' company, the management expressed support for a new enterprise agreement on the proviso that the unions were modest in their demands (large food and drinks, manager interview notes). However, evidence from our small case studies suggests that the conclusion of a collective agreement may be irrelevant for a large number of companies that are not members of the relevant employers' associations (see Tables 1 and 2).

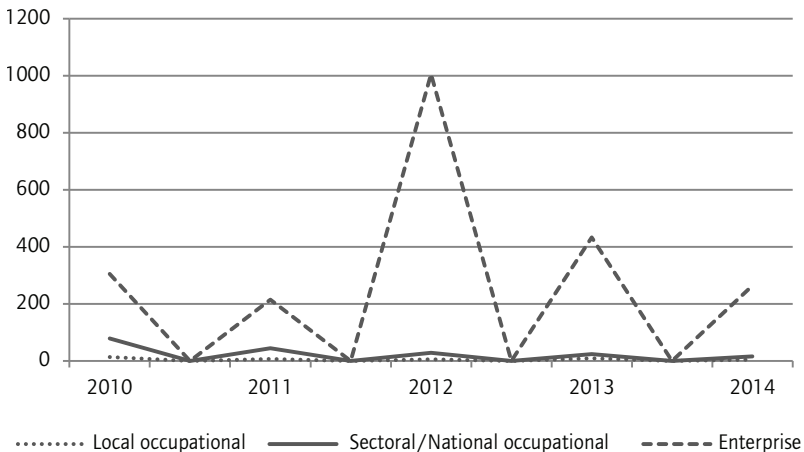
7.3 Bargaining decentralisation, individual negotiations and the use of 'associations of persons'

Empirical evidence so far suggests that there has been a rapid decentralisation of collective bargaining at enterprise level and a simultaneous decline of collective bargaining coverage on the basis of sectoral and occupational collective agreements. In the period 2010–2011, 521 collective agreements were concluded in total. Out of these, 397 were enterprise-level agreements, 103 sectoral and national occupational and 21 local occupational, with the largest number of agreements being concluded in 2010. In 2012, 976 enterprise collective agreements were submitted (in contrast to 170 in 2011 and 227 in 2010). The largest number of these agreements (72.3 per cent) were concluded by 'associations of persons', while only 17.7 per cent were concluded by company-level unions. A total of 9.9 per cent were concluded by first-level sectoral unions and one agreement (0.1 per cent) by a second-level sectoral union. In contrast, only 23 sectoral and national occupational agreements and six local occupational agreements were concluded in 2012. The number of higher level agreements (sectoral, national and local occupational) was further reduced in 2013, with 14 sectoral and occupational agreements and 10 local occupational being concluded. Instead, 409 enterprise collective agreements were submitted during the same year (2013). Finally, during 2014 there were (until 12 November 2014) only 12 sectoral agreements, five occupational and 247 enterprise-level agreements (see Figure 2 below). The manufacturing sector has the highest percentage of enterprise-level agreements throughout 2012, 2013 and 2014, with 34.3 per cent in 2012, 32.2 per cent in 2013 and 30 per cent by September 2014 (Ioannou and Papadimitriou 2014; Ministry of Labour and Social Security database, authors' analysis).

While the use of company-level agreements to respond to the crisis was considered positive by SEV, it was also noted that there were concerns

in terms of the rapid increase of such agreements in a context of limited training and cognitive resources that would enable managers – especially in small companies – to respond to the new landscape (SEV, interview notes). In this context, the representativeness of ‘associations of persons’ has been called into question by GSEE, which on the basis of their research argue that around 85–90 per cent of these groups are employer-led (GSEE, interview notes). A number of examples were reported by interviewees. In the case of metal manufacturing, trade unions reported that management, in some cases, misrepresented the number of employees so as to proceed to the formation of ‘associations of persons’ among employees that were close to management (local trade union, interview notes). A trade union representative in the food and drinks sector also reported the following case: In a well-known company, the employer forced the employees to sign a blank piece of paper. Those that refused were dismissed. After a couple of days, he presented an association of persons, which agreed to wage reductions ranging from 25 to 47 per cent. Since then, 90 per cent of the staff has been dismissed and the employees have been replaced with the ones paid at a lower rate (Federation of Milk, Food and Drinks, interview notes).

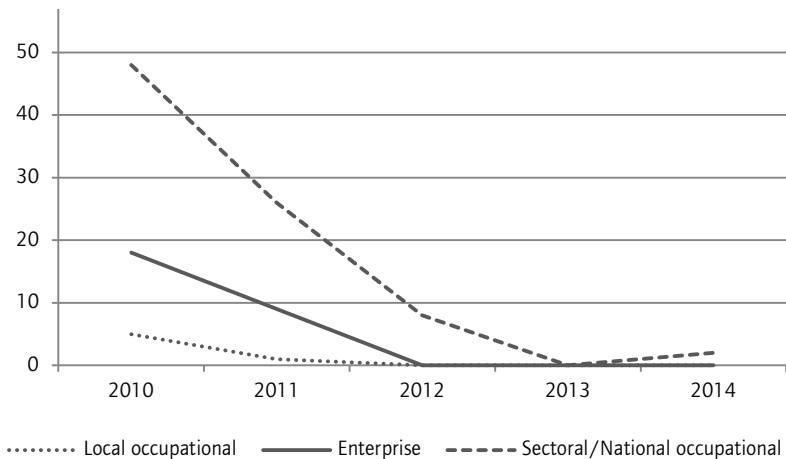
Figure 2 Collective agreements, Greece, 2010–2014



Ministry of Labour and Social Security, authors' analysis.

It was also reported that in a number of companies a widely available template for a company-level agreement with an association of persons has been used (POEM, interview notes). At the same time, there is some evidence to suggest that the economic crisis has prompted an increase in the establishment of new company and sectoral trade unions for the purpose of mobilising the workers against employers' attempts to use the crisis and legislation to reduce terms and conditions of employment (Federation of Milk, Food and Drinks, medium metal union, interviews' notes). With respect to arbitration (see figure 3), during 2010–2011, 74 applications were submitted, which subsequently led to the issuing of 74 agreements. However, the majority of these applications (48) had been submitted in 2010, with only 26 in 2011. In addition, most of the applications concerned sectoral and national occupational agreements (47 out of 74). In 2012, the number of arbitration decisions was reduced further, falling to a mere eight at national, sectoral and occupational levels, while during 2013 there was no arbitration decisions at all. In 2014 and following the decision by the Council of State concerning the constitutionality of the measures in arbitration, two arbitration decisions were reached concerning the conclusion and amendment of a single sectoral collective agreement concerning the employment of technicians at Greek Radio (Ministry of Labour and Social Security, application to the OMED by ETER on 26/6/2014).

Figure 3 Arbitration decisions, 2010–2014



Source: Ministry of Labour and Social Security, authors' analysis.

A further change that has been observed concerns the parties' negotiating approach. While in the period 1992–2008 the negotiations were driven by the employee side and were intended to maintain and improve the terms and conditions of employment, recent evidence suggests that now the employers are showing an increased willingness to accelerate the process for renouncing existing collective agreements (see also Ioannou and Papadimitriou 2013). The reasons for this include the legislative institutional changes, the approach and scope for disassociation from the existing collective agreements framework, the abolition of unilateral recourse to arbitration and the desire to reduce wages.

Despite the lack of renewal of collective agreements at sectoral level, there is company case study evidence to suggest that management continued to respect the expired agreements tacitly, though only with regard to existing and not newly recruited employees (for example, large food and drinks, medium metal, management interview notes). Evidence of trade-offs at company level was also provided in some cases. An interesting example was found in medium food and drinks, where the union relied on the suspension of two company sites in order to persuade management to sit down at the negotiation table for the 2014 company-level agreement. The move towards decentralised bargaining was welcomed by some employers in small companies (for example, small food and drink 1 and small metal 3, interviews' notes); this was on the basis that the previous framework for sectoral bargaining was extremely constraining. But evidence from the case studies suggests that even where small companies have more than five employees, they have preferred to use the individual negotiation route rather than the formation of associations of persons (small metal 1, interview notes). According to SEV, medium enterprises have also used mostly individual negotiations rather than enterprise-level agreements in order to reduce wage levels (SEV, interview notes). But for some companies, it was recognised that any use of individual negotiations would lead to 'a state of war', as both employees and employers may not be able to manage the transition well (medium food and drinks manager, interview notes). However, the scope for individual negotiations between employer and employee has brought about a shift of power to the employer. The GSEVEE interview noted:

In order to form an association of persons, you need at least five people. But in small companies, the average number of employees is 2.1–2.2. This means that you have to enter into individual negotiations. And

then it all depends on how you [the employer] see the employee, do you see him as a colleague or do you see him as someone that takes your money? (GSEVEE, interview notes).

In terms of the character of collective bargaining, there are significant differences between different levels. As the GSEE interviewee explained, the employers' associations at national level – including SEV – have adopted a cooperative/consensual approach in order to maintain their standing but also their existence; however, at sectoral and company level the character of bargaining is predominantly antagonistic and adversarial (GSEE, interview notes). To illustrate this, the trade union federation in the metal manufacturing sector had organised 23 strikes, on top of those organised at national level. However, their effectiveness was questioned by some unions due to the lack of impact on the employer (POEM, interview notes). A distinctive element of the industrial action in the metal manufacturing sector was the duration of the strikes. In one company case study, the industrial action lasted seven months and was stopped only as a result of a court decision that declared the action unlawful. In the food and drinks sector, a change in the character of bargaining was also reported at company level, with evidence of increasing pressure from the employers, even in companies with well-established bargaining structures, and of increasing work stress for employees, who are concerned about the stability of their employment (OVES and Federation of Milk, Food and Drinks, interviews' notes). Instances of trade union victimisation were also reported (local trade union in metal manufacturing, interview notes). Besides, the inability of both sides to reach agreement meant that use was made of the arbitration process (for example, medium food and drinks). Of course, this was possible only until 2012, when unilateral recourse to arbitration was abolished, but it was hoped that the amendments of the legislation following the decision of the Council of State would again equip unions with recourse to arbitration even when the employer refuses to do so (medium food and drinks, union interview notes).

The rise of adversarialism in the sector was attributed both to the emergence of the economic crisis and the introduction of labour market measures and was evident even in cases in which management and unions described their relationships as very good. For instance, in the large metal case study, the employees locked the management board in the company buildings in order to put pressure on them regarding the delays in wage

payments. But there was no instance of complete breakdown of dialogue between the two sides and even in cases in which industrial action or other forms of worker mobilisation were undertaken (for example, metal 1), these did not seem to damage overall relations between the parties. On the trade union side, there was evidence to suggest that trade unions in the same region and sector had regular meetings in order to exchange information on bargaining approaches and developments at company level (medium metal, manager interview notes). There was also evidence of regular communication and coordination of activities and strategies between different site unions within the same company (for example, large and medium food and drinks, interview notes). But from a resource point of view, it is important to stress here that company-level trade union representatives, as well as some representatives at federation/labour centre level, do not receive paid leave for their trade union activities,⁷⁰ which limits their scope for developing capabilities to represent their members adequately (medium metal, union interview notes).

8. Implications of the measures implemented in response to the crisis for the content and outcome of collective bargaining at sectoral and company level⁷¹

8.1 Collective bargaining and wage levels

Empirical evidence from the OMED study reveals that in manufacturing there have been some instances in which the parties failed to replace existing agreements with new ones; in cases where an agreement was reached, its content was less prescriptive than those of previous years. In terms of wage levels, significant wage reduction has been driven by the increase in enterprise agreements in 2012: 19 per cent of agreements stipulated wage reductions, 47.8 per cent adjusted wages to the level of the national agreement, 16.1 per cent maintained existing wages and only 0.7 per cent introduced wage increases. The agreements concluded by 'associations of persons' are the main mechanism for adjusting wages to the levels of the national agreement (65.4 per cent of enterprise agreements with associations of persons do this in contrast to 3.5 per cent

70. Law 1264/82, Articles 17, 18 and Law 2224/1994 (Law 2224/1994 Government Gazette (FEK) 112A/ 06.07.1994) Article 6.

71. See Tables 3 and 4 for a summary of the changes at company level.

of agreements with company unions). In the newly concluded enterprise agreements, 73.3 per cent stipulate wage reductions in contrast to 17.7 per cent of pre-existing agreements. Interestingly, there is some degree of wage stability in the manufacturing sector (36.1 per cent in contrast to 3.7 per cent in commerce and 1 per cent in hotels and catering; Ioannou and Papadimitriou 2013).

Interestingly, there has been a change in wage bargaining patterns at sectoral and occupational level since the start of the crisis. As reported in the OMED study (Ioannou and Papadimitriou 2013), in 2012 one out of two higher-level agreements stipulated wage reductions and only one out of four retained the existing wage levels. In 2013, one out of three stipulated wage cuts, one out of three retained the same wage levels and one out of ten introduced wage increases. In 2014, six out of ten retain the same wage levels and two out of ten introduced wage increases (Ioannou and Papadimitriou 2014). Similarly, changes have been reported with regard to enterprise level agreements: up to 2012, these were used primarily to drive down wages to the levels of the minimum wage set by the national general agreement but since 2013 the dominant trend has been that of wage stability. In manufacturing, the report indicates that the rate of agreements that kept wages at the same levels increased from 36.1 per cent in 2012 to 58.1 per cent in 2014. At the same time, there was a reduction of those agreements stipulating the wage levels of the national general agreement (from 33.7 per cent in 2012 to 11.3 per cent in 2014) and an increase of those stipulating the statutory minimum wage (from 0.3 per cent in 2012 to 6.5 per cent in 2014; Ioannou and Papadimitriou 2014).

Evidence from the interviews confirmed that most agreements introduced wage cuts in an effort to reduce costs more generally, with some even reducing wages down to the level of the now statutory minimum wage (Federation of Milk, Food and Drinks, interview notes). On the part of the unions, they have declined to conclude enterprise level agreements stipulating wage cuts, as these would then constitute a contractual basis for further wage cuts (union representative in metal, interview notes).

There has been a differentiation between large, medium and small companies. In large enterprises, the cuts mainly affected the variable part of wages (including compensation for overtime, for instance) and certain wage components outside legislation or collective agreements

(including bonus payments and fringe benefits, such as company cars), which constituted nonetheless an important element of the remuneration package. Only 2–5 per cent of large enterprises reduced wage levels as such. The reduced rate of significant wage reductions in large (mostly multinational) companies was attributed to the better profits of such companies, as well as the strategic decisions of management to adopt a policy of ‘good practice’ for reasons of reputation and brand (medium metal, union interview notes). There has been a higher number of medium sized enterprises that have reduced wage levels and have proceeded to dismissals; in such cases, the wage reductions have taken place predominantly through individual agreements, as the practice of enterprise agreements was not widespread in such cases before the crisis (SEV, interview notes). According to SEV, the problem in the case of individual agreements is that they have been also used by small enterprises to lower nominal wages and make up the difference without declaring it to the tax authorities. This then creates distortions in the market because small enterprises can agree to wage cuts more easily, while this is not possible in the case of large enterprises (SEV, interview notes).

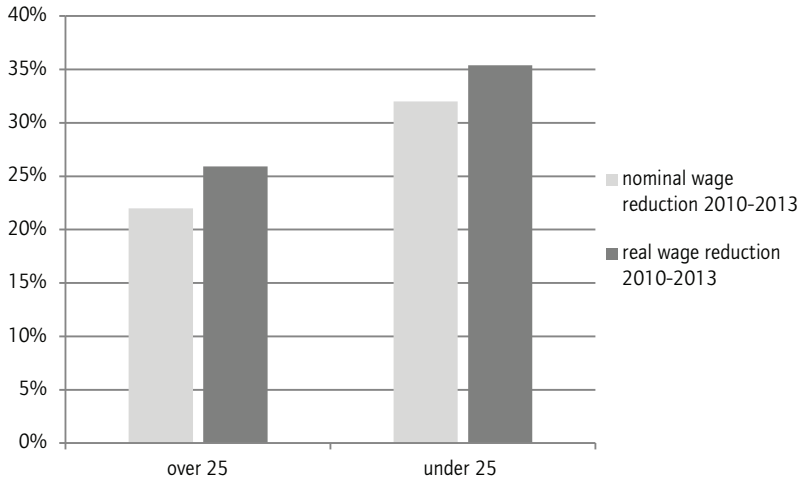
The practice of additional, undeclared payments to reduce employers’ social security contributions and employees’ tax contributions, which have increased significantly since the onset of the crisis, was confirmed by other interviewees (GSEVEE and POVAKO, interview notes) as well.⁷² The POVAKO representative explained that this was mostly the case in micro companies with one or two employees, and that in those with more employees, employers have tended to proceed to wage reductions of around 20 per cent, the use of atypical employment (part-time work especially) and the implementation of dismissals (POVAKO, interview notes). In the SMEs in metal (automotive), there have also been dismissals, prompted primarily by the inability of the owners to pay the higher social security contributions (EOVEAMM, interview notes). Further, a number of employers in small companies (5–20 employees) reportedly pay the national minimum wage into employees’ bank accounts and employees hand back to the employer part of their salary, which can be up to 100–150 euros (OVES, interview notes).

72. This evidence is in line with the findings of a recent study by Eurofound, which reported an increase in undeclared work (Broughton 2014).

The phenomenon of undeclared payments was confirmed in some of the case studies in micro but also small companies (for example, small food and drinks 1):

The Troika facilitated my business in this way: it told me that I could legally pay someone 580 euros. So, in formal terms, I declare that I pay them 580 euros and as such my tax and social security costs have decreased. But in reality, I continue paying my employees 1,000 euros [...] Most of our competitors do the same, so it would be a problem for us if we did not act similarly. (Small metal 1, interview notes)⁷³

Figure 4 Nominal and real wage reductions, 2010–2013



Source: INEGSEE (2014b) Report on the Greek economy and employment in 2014, Enimerosi, September (<http://www.inegsee.gr/wp-content/uploads/2014/10/ENHMEROSH-SEPTEMBRIOS-2014.pdf>).

Further, there is significant evidence of delays in the payment of wages (GSEVEE, interview notes). According to a report by INE GSEE concerning 2010–2013, around 850,000 employees (predominantly in services and very small companies) were unpaid for periods up to 12 months (INE GSEE 2013). The phenomenon on non-payment was described by a union representative as an ‘internal form of borrowing

73. The same practice was taking place in small metal 2.

by firms' (Federation of Milk, Food and Drinks, interview notes). In one of the case studies in the metal sector, employees had experienced two incidences of non-payment of wages: the first one lasted for eight months and the second, which took place during the research, had already being going on for four months, with the employees receiving only part of their wages (large metal, union interview notes).

In metal manufacturing, which has been affected significantly by the crisis, some companies did not implement the last wage increase provided for in the sectoral agreement following the arbitration decision and proceeded instead to wage reductions of around 15–20 per cent (for examples, see Table 3).⁷⁴ But in some of our case studies, wages remained at the levels stipulated in the last sectoral collective agreement of 2011 (for examples, see Table 4). A variety of company considerations were evident behind the rationale to freeze wage levels. In metal 1, the company agreement that was concluded in 2011 for two (plus one) years stipulated a pay freeze and a policy of no compulsory redundancies, despite the fact that the company had already experienced a significant decrease in demand. In metal 2, where wages were also frozen, the manager stressed that it would be unacceptable to reduce wages since the company was recording profits (medium metal manager, interview notes). In the large food and drinks case study, the decision to maintain the wage levels was attributed to the strategic priorities of the company (large food and drinks, manager interview notes). But, according to GSEE, the number of agreements that stipulate pay freezes are rare and are considered a success in the current economic context (trade unions, interview notes).

74. A particular situation arose in one of the case studies in the food and drinks sector (medium food and drinks). Because the company's main shareholder was a state-owned bank, the legislation applicable to terms and conditions of employment in the wider public sector became applicable. Law 3899/2011 on 'Urgent measures to implement a programme to support the Greek economy' first led to wage cuts of 10 per cent for employees earning above 1,800 euros per month. Later, Law 4024/2011 provided that the average cost of all types of remuneration, benefits and compensation should not be above 1,900 euros and should not exceed 65 per cent of the average costs of the enterprise, as determined on 31 December 2009.

Table 3 Examples of collectively agreed wage levels in metal manufacturing

Company	Management rationale (as stated in the agreement)	Collectively agreed wage levels	Employee representative body
Chalvourgia of Greece	Economic crisis in Greece, reduction of construction work (90.9% in total, 2008–2012), company losses	<ul style="list-style-type: none"> – 2012–2013: 1.8% wage reduction – Amendment 07-08/2013: 1.4% reduction on wages of 30/06/13 – Amendment 09-10/2013: 1.4% reduction on wages of 30/06/13 – Amendment 11-12/2013 & 01-02/2014: 12.5% reduction on wages of 30/06/13 – Amendment and extension 03-05/2014: 12.5% reduction on wages of 30/06/13 – Amendment and extension 06-09/2014: 12% reduction on wages of 30/06/13 – Amendment and extension 10-12/2014 & 01/2015: 12% reduction on wages of 30/06/13* 	Site-level trade union (Volos)
Sidenor	No reference	01/06/13–30/05/15: 15% wage reduction**	Site-level trade union (Thessaloniki)
Chalvourgiki	No reference	01/07/13–31/12/14: <ul style="list-style-type: none"> – Reduction of 10% on wages up to 1000 euros – Reduction of 1.5% on wages up to 1500 euros – Reduction of 1.2% on wages up to 2000 euros – Reduction of 12.5% on wages up to 2500 euros – Reduction of 1.3% on wages over 2500 euros – Abolition of Easter and Christmas allowances*** 	Site-level trade union of Eleusina (Attica)
Shipyards of Salamina/ New Greek Shipyards	No reference	30/04/12–31/12/2013: <ul style="list-style-type: none"> – Reduction of wages to the levels set by the EGSEE + 10% allowance 07/05/14–31/12/15: <ul style="list-style-type: none"> – Reduction of wages to the levels set by the EGSEE + 10% allowance 	Association of persons
Shipyards Lamda	Status of Greek economy, limited business activities, need to ensure workforce rights	24/05/13–24/05/16: <ul style="list-style-type: none"> – Reduction of wages to the levels set by the EGSEE + 10% allowance for married employees and blue-collar workers 	Association of persons

Notes: * All reductions concern gross remuneration over 1,100 euros including overtime. ** Reductions concern gross remuneration over 1,100 euros without overtime. Condition of the agreement: No dismissals during the collective agreement's period of validity. *** February 2014: 95 per cent of workforce on temporary layoff. Source: Ministry of Labour and Social Security, authors' analysis.

While wages have been frozen at the pre-crisis levels in some companies, there was also evidence of maintaining wages for existing workers and applying the lower minimum wage level – with a preference for young workers – when recruiting. This was applied even in cases in which the company was making a profit (medium metal, large food and drinks, union interviews' notes). Apart from using the national minimum wage level for determining wage levels for new workers, management in such cases has also refused to provide other allowances, such as maturity allowance, to such employees, thereby significantly increasing the wage gap between new and old employees (large food and drinks, union interview notes). The union representative stressed:

Management thinks that we [union] will not engage in a conflict with management over the new employees because we are concerned that this may lead to our terms and conditions being worsened as well. Our effort is now to incorporate these new employees in the collective agreement for existing employees. Once the employer has made some profit and the new workers learn their job, we will argue for the incorporation of these workers. By that time, we hope that supportive case law will also emerge from domestic and European courts and it will be easier to argue our case. (Medium metal, union interview notes)⁷⁵

There were also some cases in the metal industry of marginal wage increases of around 1–2 per cent. This occurred when companies experienced increased exports; in the unions' view, this proves that labour costs are not a hindrance to export activity (POEM, interview notes). Similarly, there was a case in the food and drinks sector in which marginal wage increases for low-wage employees were agreed between the company trade unions and management. In the view of the union representative, this was made possible owing to the pre-existing structure for dialogue between the two sides and the strategic use of technical expertise and legislative resources by the union (large food and drinks, union interview notes).

75. But in the absence of a provision in the collective agreement that specifies it, the employer does not have the right to apply the collective agreement to only a section of the workforce (Article 8(3) of Law 1876/1990).

Table 4 Examples of changes in terms and conditions of employment in the company case studies

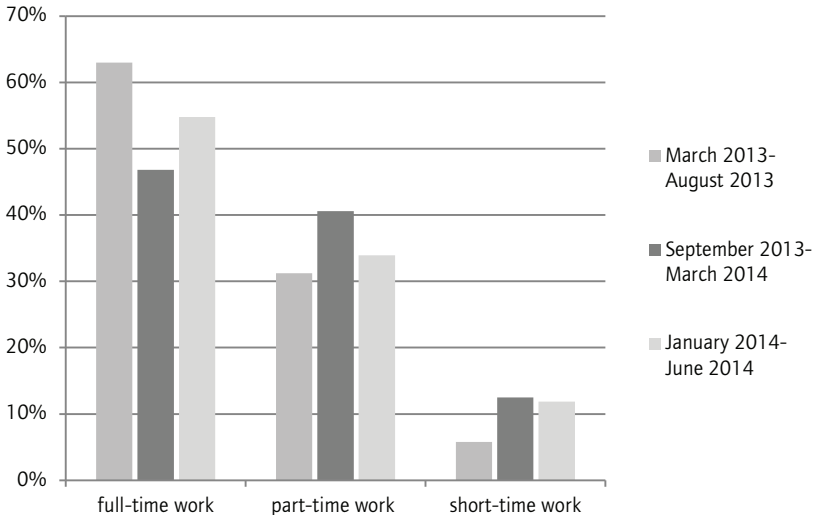
Case studies	Wage issues	Working time issues	Workforce issues	Other issues
Large metal manufacturer	<ul style="list-style-type: none"> - Delays in salary payment of 2–3 months - Reduction of salary in the case of (70) senior managers 	<ul style="list-style-type: none"> - Reduction of overtime during shift work by 30 minutes - Stricter monitoring of employment to reduce recourse to overtime 	<ul style="list-style-type: none"> - No replacement of 356 posts that became vacant due to retirement 	<ul style="list-style-type: none"> - Application to be subject to Article 99 of the pre-insolvency proceedings - Abolition of benefits related to social activities, for example, theatre tickets - Abolition of support for employees' social security contributions
Medium metal manufacturer	<ul style="list-style-type: none"> - Application of pay freezes to existing employees - Recruitment of new employees on the basis of the national minimum wage (586 euros) - Recruitment of new young employees on the basis of the national minimum wage for workers under 24 (511 euros) 	No change	<ul style="list-style-type: none"> - Outsourcing of cleaning and security services 	<ul style="list-style-type: none"> - Lack of security personnel
Small metal manufacturer 1 (silversmith)	<ul style="list-style-type: none"> - Pay freeze - Nominal decrease to the national minimum wage 	<ul style="list-style-type: none"> - Introduction of intermittent working time instead of continuous 	<ul style="list-style-type: none"> - Recruitment of two employees - Bogus dismissals instead of resignations 	
Small metal manufacturer 2 (silversmith)	<ul style="list-style-type: none"> - Pay freeze - Nominal decrease to the national minimum wage 	No change	<ul style="list-style-type: none"> - Dismissal of three employees (from 4 to 1) 	<ul style="list-style-type: none"> - Undeclared and informal employment by family members (2 pensioners)
Small metal manufacturer 3 (silversmith)	<ul style="list-style-type: none"> - Pay freeze - Nominal decrease to the national minimum wage 	No change	No change	No change

Case studies	Wage issues	Working time issues	Workforce issues	Other issues
Small metal manufacturer 4 (car repairing)	No change	No change	– Dismissal of two employees (from 3 to 1)	– Undeclared and informal employment of one pensioner on a daily basis
Large food/drinks manufacturer	– Pay freeze in the case of highly paid existing employees and small pay increase in the case of existing low-wage employees – Abolition of payment for unhealthy work – Abolition of maturity provisions – Recruitment of new employees on low wages (application of the national minimum wage)	– 90% reduction of overtime	– Personnel reduction by 30% as a result of retirement and no replacement with new staff – Outsourcing of a number of departments – Reduction in dismissal compensation	– Suspension for two years of the annual Halloween social event
Medium food/drinks manufacturer	– 30% wage reductions since 2009 – Wage reduction of seasonal workers to the national minimum wage level plus benefits	– Reduction of duration of seasonal work (from 8 to 3 months)	– Suspension of the operation of two (out of three) sites – Voluntary transfer of employees from the two sites, whose operation was suspended, to the third one in a different city	No change
Small food/drinks manufacturer 1	– Wage reduction to the national minimum wage levels	No change	– Reduction of workforce from 16 to 6 (case of animal feedstuff manufacturing)	No change
Small food/drinks manufacturer 2	– Pay freeze – Nominal decrease to the national minimum wage levels – Application of the national minimum wage in the case of seasonal workers	– four-hour working day in the case of seasonal workers	– 10 dismissals (no replacement)	No change

8.2 Collective bargaining, restructuring and working time flexibility

Preliminary evidence suggests that the employment protection legislation measures applied in conjunction with the deepening of the crisis have substantially affected the employment landscape in Greece. Data from the Hellenic Labour Inspectorate SEPE (Ministry of Labour 2012) indicate significant changes in the nature of employment contracts and consequently in wage levels (see Figure 5). In terms of new contracts, the 2012 data suggested that there had been a 18.42 per cent reduction of full-time contracts, an increase of 3.61 per cent in part-time contracts and a decrease of 3.93 per cent in short-time contracts.⁷⁶ Overall, the percentage of part-time and short-time contracts was 45 per cent of total new contracts. Importantly, there was a 53.12 per cent increase in the conversion of full-time contracts into other forms of atypical employment in 2012 (from 2011).

Figure 5 Types of employment, 2013–2014



Source: INE GSEE (2014a) Enimerosi, April–May 2014, <http://www.inegsee.gr/wp-content/uploads/2014/07/ENHMEROSH-APRILIOS-2014.pdf>

76. However, the decrease in short-time working contracts was based on 2011 figures.

There was a 12.29 per cent increase in the conversion of full-time to short-time contracts on the basis of an agreement with the employees and a 80.36 per cent increase in such conversions on the basis of unilateral management decisions.

Evidence from the interviews confirmed the use of different forms of labour market 'flexibility', including one-day employment contracts and the conclusion of an employment contract while at the same time accepting the dismissal terms outlined by the employer (OVES, interview notes). Another reported practice was temporary work agencies posting employees to other EU or non-EU countries to perform work on lower wages than those of the host-country employees (POEM, interview notes). Short-time working was also used in some of the case studies (for example, large, medium and small 1 food and drinks): this was limited mainly to seasonal staff and the wage levels were those stipulated by legislation (national minimum wage). Evidence of increased use of outsourcing during the crisis was also provided in some of the case studies (large food and drinks, large and medium metal). In large food and drinks, the manager explained: 'No company divests itself of its managerial prerogative, as provided by the legislation, and nor do we. But the way, we engaged in outsourcing through consultation and dialogue' (large food and drinks, manager interview notes). In metal manufacturing, there were union reports of management abolishing demarcation rules in order to use employees in areas outside their expertise (POEM, interview notes).

In food and drinks, the trade union federation referred to cases of large companies that imposed collective redundancies and then filled up the vacant posts with temporary agency workers and/or outsourced company functions, leading to a significant worsening of health and safety and disparities between permanent and temporary/outsourced employees (Federation of Milk, Food and Drinks, interview notes). Using individual negotiations, companies have also concluded bogus part-time/short-time working contracts, under which employees receive pro-rata payments but work full-time in practice, providing them with wages of only around 300 euros (gross). In a well-known case of a Greek food company, management introduced a four-day short-time working scheme shortly after the expiry of the collective agreement, leading to a 20 per cent wage reduction. Evidence was provided of a disproportionate impact of the crisis on temporary/seasonal workers (see Table 5). In

the medium food and drinks case study, management reduced working hours significantly, as well as the duration of fixed-term contracts (medium food and drinks, interview notes).

Table 5 Examples of two successive recruitments of seasonal workers by the medium food and drink manufacturer

Date of signature	Time	Wage
27/06/2012	27/06/2012 until the end of the year's production cycle and no more than five months	51.9 euros a day (according to the sectoral collective agreement)
15/07/2013	15/07/2013 until the end of the year's production cycle and no more than three months	40.05 euros a day (according to the national general collective agreement)

In terms of working time flexibility and, especially, the use of annualised working hours, there was no resort to the new possibilities provided by the legislation in any of the companies studied. Interestingly, no consideration at all was given to introducing such schemes by management, indicating – arguably – a management approach that does not tend to rely on such forms of firm flexibility. In terms of overtime pay, there was evidence that payments above the statutory rate – between 25 per cent and 35 per cent on top of the statutory minimum – in some cases have remained (large and medium metal, large food and drinks, union interviews' notes). In the case of the large metal company, it was attributed to the management approach that viewed good employment relations as a competitive advantage (large metal, management interview notes). However, as noted above, overtime was reduced in a number of cases due to the economic downturn.

Although there was no use of annualisation of working hours, there were changes in working time practices in some case studies. This was the case, for instance, in the large metal case study, where the start and end times of the evening shift were amended, at the management's initiative, but following an agreement with the union (large metal, management interview notes). A different example was given by a union representative at a white goods company:

Under the previous management, the workforce was subjected to short-time working and other forms of flexible working. When this was done

in consultation with the union, we used to give way because we believed that the company had real problems. But under the new management, we have developed a different approach and we request information on the company's financial situation every month and agree to changes only if we see that profits have fallen. This means that the employer cannot use the crisis to reduce terms and conditions of employment but it also means that we keep our jobs in times of economic downturn. (company union, interview notes)

Since the beginning of the crisis, a number of companies in both the metal and food and drink sectors have undergone significant restructuring, involving in most cases collective redundancies. However, the extent of union involvement has been limited. For instance, in medium food and drink, management decided to suspend the operation of two sites but no adequate time was provided to the union to respond to the management plans (medium food and drinks, manager interview notes). In this context, some companies have made use of Article 99 of the Insolvency Code (Law 3588/2007). The procedure allows companies to appeal to the courts of first instance to request protection and facilitate interaction with their creditors in order to enable restructuring efforts to try to avoid insolvency. Under the previous regime, all employee claims from the previous two years before the insolvency and dismissal compensation demands (irrespective of when they were made) were treated preferentially. Under the current regime, the preferential demands of employees are limited by a quarter, that is, one semester before the insolvency. At the same time, the interest on these demands is excluded from being treated in a preferential way and the amount that employee can request is at most half of the company's distributable equity. At the beginning of 2013, it was reported that around 550 companies had applied for Article 99 procedures during 2011 and 2012 (Eleftheros Typos 2013). Trade unions stressed that Article 99 of the Insolvency Code has been used in a number of cases by employers seeking to avoid criminal and civil liability for running large debts on their of social security and tax contributions. Among our case studies, the large metal company was the only one that had applied to be included in the pre-insolvency proceedings of Article 99. The application was prompted by long delays in payments for contracted work for the state. In June 2012, the company came to an agreement with the creditors who represented 62 per cent of the total debt of the company and this was successfully submitted for approval to the court of first instance. The agreement

included a survival plan that was premised on the outstanding payments for work for the state and private clients. But, according to management, the company did not request any 'haircut' on the employees' demands (large metal, management interview notes). This was confirmed by employee representatives, as well as the fact that they were still treated as preferential creditors (large metal, union interview notes).

It can be argued that overall the developments described above have been facilitated by the increased scope for managerial prerogative that provides the basis for amendments by unilateral employer decision. As such, the measures have resulted in a reduction in the scope for joint regulation between the social partners or even between the employer and individual employees. Apart from the implications for collective bargaining, they also have an impact on the quality of working life. One employer noted: 'On many occasions, employees are willing to water down their demands in order to keep their job in a country where unemployment is almost 30 per cent' (small food and drinks 1, interview notes). According to OVES, there are now three categories of employees:

The first is those employed by multinationals: these, who are few, are well paid and the wage reductions that have been introduced range from 10–20 per cent. The second category is those being paid around 700–800 euros, who may work at the same company for many years. The third and worst-off category is those who unfortunately are paid below the national general collective agreement. These employees are not only victims of the employers but also of the senior managers, who in order to preserve their salaries, threaten lower level employees with dismissals, if they do not agree to wage reductions. (OVES, interview notes)

9. General trends concerning the Greek collective bargaining system

Our analysis mapped the developments in Greece's collective bargaining system from the start of the crisis (2009) until 2014, paying particular attention to the process, character, content and outcomes of collective bargaining. The starting point was the labour market measures that accompanied the two loan agreements provided to Greece. As discussed above, the measures introduced wide-ranging and radical changes in

the regulation of collective bargaining. As such, they had the potential to unsettle pre-existing practices of social dialogue and bargaining and drastically affect the operation of key labour market institutions. In this context, it is important to stress that the pre-crisis landscape of collective bargaining was characterised by high bargaining coverage, average coordination levels both vertically (across different levels) and horizontally (across different sectors and regions) with sectoral bargaining being prevalent in all sectors, including in manufacturing.

Against this background, collective bargaining in Greece has undergone profound change during the crisis years. In contrast to other countries, most of the developments have not been the continuation of long-term trends that began before the economic crisis, but rather the result of the introduction of crisis-related measures aimed rather clearly at deconstructing the multi-level structure of the bargaining system. In terms of the bargaining process, one of the most obvious findings was the drop in the overall volume of bargaining at higher levels, as the parties found it difficult to agree in the absence of legal institutional incentives, which in the past persuaded them to achieve consensus. Where agreements were concluded, their length was substantially reduced, following the limitations imposed by legislation that stipulates a maximum of three years. The sharp reduction of higher-level bargaining was coupled with a strong trend towards bargaining decentralisation at company level. The process was driven primarily by the crisis-related measures and developments. These included, most notably: the suspension of the ‘favourability principle’, which opened up scope for effectively allowing lower level collective agreements to deviate *in pejus* from higher level agreements; and the use of ‘associations of persons’, which were introduced often in companies with no established company bargaining practice as a vehicle to drive down wages. Because overall these developments since 2010 have been led by the state – by intervening in the legislative framework for collective bargaining – and by employers’ associations – which have defected from multi-employer bargaining arrangements – it is accurate to describe this process as a form of ‘disorganised decentralisation’ rather than ‘organised decentralisation’. Multi-employer bargaining arrangements at (inter-) sectoral level are thus increasingly being replaced by single-employer bargaining as the dominant mode of determining wages and terms and conditions (Traxler 1995). A corollary of this is that collective bargaining coverage has also fallen significantly, i.e. from 85% in 2008 to 40% in 2013 (European Commission, 2014: 29).

In terms of material outcomes of bargaining, empirical evidence points to significant changes in wage levels. By transferring national minimum wage determination outside the sphere of collective bargaining and by reducing the regulatory capacity of sectoral agreements, the measures succeeded in limiting the ‘domino effect’ of the collective bargaining system on wage levels, an effect seen as problematic by some of the social partners (e.g. SEV). In cases in which enterprise-level collective agreements were used before the crisis to improve upon higher level collective agreements, they sometimes served during the crisis as a means to maintain a floor on terms and conditions of employment; this was, though, mostly the case where strong trade union coordination existed and relationships between management and employees were considered good. But at the same time, there was evidence of trade unions’ inability to protect newly recruited employees, thus leading to the creation of a two-tier workforce in terms of wage levels and other benefits. A number of rather extreme situations came also to light with regard to wage reductions via collective agreements, including the conclusion of six agreements modifying wage levels in less than two years in Chalyvourgia Volou (see above Table 3). On the management side, there were concerns about a knock-on effect of such measures on industrial peace and cooperation with the unions (where these were organised effectively). A further concern arose out of the growth of an informal economy in the form of undeclared payments made to employees of SMEs in particular, from which trade union structures have traditionally been absent. Besides these findings, there was evidence of workers’ choices being reduced; for instance, atypical employment – in the form of part-time, fixed-term work – has been accepted involuntarily in the context of rising unemployment.

More broadly, the crisis-related measures have significantly affected both the position of employers and unions in the industrial relations system and their relations with each other and the state. On the employer side, the differences between SEV and employers’ federations representing SMEs were stark in the study, with a number of interviewees from the latter criticising SEV for promoting changes that are detrimental to SMEs for the benefit of large companies. At the same time, there has also been divergence in trade union approaches. On the one hand, GSEE has adopted a policy of participating in social dialogue processes with a view to influencing the nature and extent of labour market policies; on the other hand, PAME (Πανεργατικό Αγωνιστικό Μέτωπο) considers

that the trade union movement should consolidate in order to promote, through conflict and not through dialogue, the demands of the working class. But overall, there was a consensus that the role of trade unions at all levels – national, sectoral and company – has been significantly discredited as a result of the measures. Additional measures that, if adopted, would test further the unions' organisational capacity were under consideration, at the time of writing, and included the removal of legal/institutional support for trade union activities and the introduction of the right of employers to lock workers out.

The implications of the crisis-related measures for the role of the state are equally significant. In the context of reduced scope for collective bargaining, the state has entrenched its central role in unilaterally determining wage levels and other terms and conditions of employment. Empirical evidence confirms that the strong state interventionism that permeates all new legislation has indeed affected the key parameters of collective autonomy; this includes, most notably, the inter-sectoral level, where the status of the agreement and implicitly the role of unions and employers' associations have been progressively reduced. As a result of these developments, the Greek industrial relations system is reverting from the 1990s model of promoting collective autonomy and free collective bargaining (which was led by the adoption of Law 1876/1990) to a state- and employer-controlled system of bargaining. However, the increased role of the state is set against a context of significantly constrained resources putting at risk the effective monitoring and enforcement of labour standards and extensive intervention by supranational institutions affecting the substance of policy decision-making at domestic level. From the perspective of the employers, it is uncertain whether the organisational and cognitive resources available to them are sufficient to deal with the changing landscape of industrial relations, especially at company level.

Overall, there is evidence to suggest that the crisis-related measures are so far leading Greece onto a different institutional trajectory, one that is closer to the model of single-employer bargaining of the UK and the majority of Central and Eastern European countries. The extent to which this will be further entrenched is dependent on the future developments at both supranational and domestic levels. The reversal of this regulatory trajectory requires first a change in the approach of the institutions involved in the economic adjustment programmes,

i.e. Troika, away from a policy of ‘regulated austerity’ (Deakin and Koukiadaki 2013) to a policy of supporting the operation of multi-level bargaining systems. At the domestic level, there is consensus by all the main industrial relations actors on the need to re-start the process of social dialogue and bargaining. At the time of writing, GSEVEE’s main thesis was that the pre-crisis system of collective bargaining should be reinstated, including the provision of adequate collective autonomy to the social partners to regulate terms and conditions of employment, but also a safeguarding of the universal extension of collective agreements and their ‘after-effect’. Importantly, this should not include, according to GSEVEE, the immediate restoration by the state of pre-crisis wage levels, which should be left to the social partners to determine through negotiations in (GSEVEE, interview notes). The re-instatement of the previous regime of bargaining is supported by both GSEE and sectoral trade unions, such as POEM. However, SEV does not seem to endorse this and has argued that the determination of wages and other terms and conditions of employment should take place primarily at company level, allowing management to adopt a tailored approach depending on economic circumstances (SEV, interview notes). In this context, the new government led by SYRIZA (Συνασπισμός Ριζοσπαστικής Αριστεράς) has announced a series of measures designed to reverse some of these trends. These include the restoration of collective bargaining, new provisions on the extension of collective agreements and the after-effect period, as well as new measures on arbitration. But two questions remain: can and will these changes be implemented against a context of resistance by supranational institutions; and if yes, how will the measures play out in a context of a collective bargaining system that is on the brink of collapse?

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All links were checked on 03/03/2015.

Chapter 3

Reform of joint regulation and labour market policy during the current crisis: the manufacturing sector in the Republic of Ireland

Eugene Hickland and Tony Dundon

1. Introduction

As recently as 2007, Ireland was seen by many people as top of the European class in terms of its economic achievements. A long period of high rates of economic growth and low unemployment had been combined with budget surpluses. The country appeared well placed to cope with any economic slowdown as it had a gross debt/GDP ratio of 25 per cent in 2007 and a sovereign wealth fund worth about 5,000 euros a head' (Whelan 2014: 1). The subsequent economic crisis and the 'Troika' assistance programme has had a profound impact on the Irish economy and on industrial relations, including the collapse of the twenty-year old 'National Social Partnership' processes of national-level collective agreements, which had become a defining feature of Irish industrial relations from the late twentieth century into the early twenty-first century. The crisis has also led the Irish government to make commitments to the Troika to reform significant dimensions of the Irish labour market. The research conducted and reported here for the Republic of Ireland was part of a wider research project funded by the European Commission into the impact of the crisis in the manufacturing sector. The data collected and reported in this chapter concern the impact of the crisis on the Irish labour market, the potential impact of the reforms agreed with the Troika and how collective bargaining was conducted in a variety of unionised manufacturing workplaces during the crisis until late 2014.

Executive summary

The main distinguishing feature of the Irish economy from 1987 until the economic crisis of 2008/09 was the dominance of national

corporatism as the platform for social dialogue. This model of national social partnership emerged in response to the recession and economic problems Ireland faced in the 1980s, and collapsed under the strain of the financial crisis of 2008/2009. Roche (2011) suggests that Ireland's social partnership model had gained an international reputation for versatility. It was viewed by some commentators as a new form of 'voluntary' regulation among social partners with economic and political governance embedded in institutions of the state (Hardiman 2010). The economic crisis of 2008/2009 had a profoundly damaging effect on these structures and on the Irish economy: increased unemployment; the collapse of the national system of social dialogue and collective bargaining; in particular youth unemployment and emigration. Trade unions were forced to engage in forms of 'concession bargaining' while maintaining a system of collective negotiation at workplace level (Teague and Roche 2014: 189).

Ireland entered an International Monetary Fund, European Union and European Central Bank (hereafter the 'Troika') bailout or 'Economic Adjustment Programme' in December 2010 with a financing package of 85 billion euros (EU 2014). This bailout package included major reform of labour market regulation, particularly the creation of new employment rights and industrial relations bodies (Regan 2012) and changes to wage setting mechanisms in key economic sectors (Barnard 2012), thereby changing the industrial relations landscape.

At the end of 2013 Ireland exited the Troika financial assistance programme and the economy witnessed some improvements during 2013 and 2014 with falling unemployment, although emigration continues on a large scale. Ireland is also still subject to a Troika post-programme surveillance scheme until at least 2031 (EU 2014).

A combination of the economic crisis and the influence of Troika-inspired labour market reform could be expected to have long-term implications for the conduct of Irish industrial relations, in particular a fundamental shift in the nature, scope and form of collective bargaining in both public and private sector organisations. In this chapter we examine the impact of these changes in Ireland since 2008, with particular emphasis on collective bargaining generally, more specifically in the manufacturing sector. This is achieved by means of interviews with national social partners and several company-level case studies.

Across all sub-sectors studied, there was an emphasis on ‘concession’ bargaining for unions, with employers expecting and demanding improved productivity, work flexibility and other changed conditions in return for negotiated pay increases or even pay freezes. The findings also point to a new industrial relations architecture characterised by both ‘structural change’ and ‘process continuity’. Major ‘structural change’ is evident in the collapse of the national platform for social dialogue in 2010. Consequently, collective bargaining has gone from a national and centralised arrangement to one conducted almost exclusively at the enterprise level. The enduring ‘process continuity’ is found in high levels of enterprise-level bargaining, especially during times of substantial restructuring and change. There were, however, substantial differences between sub-sectors within the manufacturing sector, particularly when comparing hi-tech medical and pharmaceutical sub-sectors with drink, food and metals subsectors. In the case of the former (hi-tech, medical devices and pharmaceutical), decision-making was found to be robust when achieved through negotiated settlement, and support for change much more embedded when workers have a legitimate voice. By contrast (in the sub-sectors of drinks, food and metals), unions and workers have felt the more negative impacts of the economic crisis and bargaining scope appears much narrower in terms of issues covered.

Finally, the research highlights a divergence in preference and approaches, both among the social partners but also between different employer groups, concerning the future role of national bargaining or social pact arrangements. For some unions the desire for a coordinated national social platform remains strong, although employer groups and individual employers appear to have little interest in or appetite for national or sectoral social engagement and instead view a (reduced) bargaining role as appropriate only at the most local of enterprise levels. Importantly, divergence was evident between types of employer groups. Some national employer representatives saw little value whatsoever in bargaining or consultation with unions at all, and preferred a non-union individualised HRM-type of arrangement through employee communications with clear unilateral managerial decision-making, shaped in part by practices in non-union (typically American) multinationals operating across manufacturing sub-sectors. However, many company-level managers appreciated the functional purpose of collective bargaining; for example, in providing better decision-making processes, bargaining helped to achieve employee support and

understanding about responses to the crisis in terms of the changes to re-position the firm, and bargaining offered a degree of predictability (even if negotiated agreements were at times protracted). Notwithstanding some employer diversity, a clear common trend among employer groups was the shift to localised single-employer bargaining.

The chapter is structured as follows. Section 2 includes an explanation of the research methodology to include national social partner interviews and company-level case studies. Section 3 reviews the character and nature of the Irish system of industrial relations before and during the economic crisis. An examination of reform and change to collective bargaining at national and sectoral levels (state, employer bodies and national-level union responses) since 2008 comprises Section 4, while Section 5 traces the same phenomena at workplace level via the case studies. The report reaches its conclusions in Section 6, which discusses the key themes and issues concerning labour market reform and collective bargaining in Ireland that emerged from the research.

2. Research and methodology

The fieldwork was designed to collect information on how the economic crisis affected the nature and processes of collective bargaining in the manufacturing sector in Ireland. The research design included three separate complementary levels of data collection (national, sector, workplace), and a subsequent follow-up integrated national-partner meeting held in Dublin. In total, 32 people were interviewed across the three levels. The companies involved in the research and the individuals interviewed were identified through previous contacts with the research team or as key persons for their organisations. Table 1 lists the case study workplaces, the groups of employees interviewed, some context about the products manufactured and background regarding the impact of the crisis on each workplace.

2.1 National level

The first level concentrated on national informants on the changes since the financial crisis. The main purpose of this phase of the research was to establish an outline of the main developments in collective bargaining

and legislative changes that occurred (or were planned) as a result of labour market reforms.

Seven interviews took place with key national social partners consisting of:

- Two senior officials of the Industrial Relations Section of the Department of Jobs, Enterprise and Innovation (interviewed June 2014, of which one was re-interviewed in November 2014).
- Two members of the main employers' body, the Irish Business and Employers' Confederation (IBEC) (interviewed June 2014).
- A national official of the Irish Congress of Trades Unions (ICTU) was interviewed twice, once in July and again in November 2014.

2.2 Sectoral level

The second part of the research design concerned sector-level data, with five additional respondents. Ireland does not have a coordinated or bespoke manufacturing sector bargaining arrangement or a specific employer federation for manufacturing. Interviews to capture sector-level issues and responses thus dovetailed and overlapped with national informants; in particular the two IBEC interviewees who had responsibility for manufacturing and foreign direct investment-type organisations in pharmaceuticals and medical devices (among other things). In addition, sectoral union experts from three of the main Irish trade unions involved in the manufacturing sector were interviewed from: SIPTU (twice) in June 2014, TEEU (twice) in July and August 2014, and with UNITE the Union (once) in June 2014.

2.3 Workplace level

The third level of research focussed on workplace-level data from different companies with collective bargaining arrangements across a selection of sub-sectors in manufacturing. The aim was to obtain responses from different parts (sub-sectors) of manufacturing at a local workplace level from managers and union representatives. We interviewed 22 participants in five different companies; the participants included local shop stewards, HR managers, regional and site management and full-time union officials.

The company case studies were designed to be representative of the Irish manufacturing sector (see Table 1). These included: *PharmaCoIrl* in the chemical/pharmaceutical sector, *FoodCoIrl* in food and drink sector, *MedivCoIrl* in the medical device sector and *MetalCoIrl* in the metals sector.

A final phase was the integration and coordination of data with a national meeting of social partners (November 2014). This allowed some initial feedback to respondents and social partners and an opportunity for them to offer clarification and additional information.

3. The character and processes of collective bargaining and labour market regulation before the crisis (a brief review)

The Irish state was founded in 1921 and the written constitution adopted in 1937 has been amended 33 times since. Irish industrial relations has its roots in the UK industrial relations system, thereby providing similar approaches such as trade union immunities in legislation and the general voluntaristic approach. Similar to the United Kingdom, Irish employment legislation is based on the assumption that an employer and employee agree a contractual relationship freely and voluntarily, on an equal footing, and that this sets out the terms and conditions of employment. Traditionally, the regulation of the employment relationship has taken place almost exclusively at individual contractual level. Irish employment law is therefore almost an extension of the law of contract (Bacik 2011).

Traditionally, voluntarism as practiced in Ireland up to the late 1970s was interpreted to mean trade union and employer opposition to legal intervention and that the parties largely regulated their own procedures free from state intervention (D'Art *et al.* 2013: 13). The conduct of industrial relations was left to the main actors, save for the role of the government in 'holding the ring' by providing the Labour Court for dispute resolution and by outlawing certain working practices, introducing safety net-type legislation and occupational health and safety regulations. EU membership has had a profound impact on Irish industrial relations, imposing a wide range of employment law in the past 30 years. The trend in more recent years has been for the government to provide more

individual employment rights or a basic floor of rights, some of those to transpose EU directives, resulting in a weakening of collectivism (D'Art *et al.* 2013). Teague (2009) argues that Irish industrial relations has shifted away from the notion of voluntarism as a central feature.

The creation of the Labour Court in 1946 and the general approach of Irish governments were ideologically underpinned by elements of Roman Catholic social teaching or a type of corporatism (Adshead and Millar 2003). In general there has been public policy support for the existence of trade unions and their role in society, although successive governments have stopped short of legislating for statutory trade union recognition and collective bargaining rights. The Labour Court's main role is to adjudicate on industrial disputes as an independent body consisting of representatives of employers and workers participating on an equal basis. It consists of nine full-time, members, a chair, two deputy chairs and six ordinary members, three of whom are employers' members and three workers' members. It is not a court of law. It operates as an industrial relations tribunal, hearing both sides in trade disputes and then issuing Recommendations setting out its opinion on the dispute and the terms on which it should be settled. These Recommendations are not binding on the parties concerned, who are expected to give serious consideration to the Court's Recommendation (DEJI 2012). Three other important state bodies in the industrial relations dispute resolution and compliance fields were put in place at different points over the years; the Labour Relations Commission, the National Employment Rights Authority and the Employment Appeals Tribunal.

Ireland has one peak-level trade union body the Irish Congress of Trade Unions (ICTU), which has 55 affiliated unions and a combined membership of over 800,000 and describes itself as 'the largest civil society organisation in the country' (ICTU 2014). The main employers' organisation is the Irish Business and Employers' Confederation (IBEC) which has around 7,500 employer members in small and large enterprises, which represent 70 per cent of Irish private sector employment (IBEC 2014).

Ireland is often characterised as a 'late developer' in industrialisation terms as the country was largely unaffected by the industrial revolution (Tiernan and Morley 2013). From the late 1950s economic policies were pursued on two fronts: EU membership, which was achieved in 1973, and

the encouragement of multinational companies to set up operations and bring modern industry and employment into Ireland. A large measure of Ireland's economic progress in the 1990s and early twenty-first century stems from its success in attracting inward foreign direct investment (FDI) from multinational companies. As a consequence, Ireland is one of the world's most FDI-dependent economies (Gunnigle *et al.* 2007) and support for this transcends political beliefs and has become something of a 'sacred cow' politically.

The Irish manufacturing sector employs over 200,000 people directly with a similar number indirectly in approximately 12,790 enterprises; 95 per cent of these enterprises employ fewer than 50 people (CSO 2010). The FDI sector employs over 91,000 people directly across 527 plants, including many leading firms in the chemical/pharmaceutical, ICT, optical, medical technologies and food sectors (Forfas 2012). Over 80 per cent of industrial production is from foreign-owned firms, while Irish firms contribute around 20 per cent of industrial production (CSO 2014).

The trajectory of Irish industrial relations moved significantly away from the UK voluntarist model from 1979 onwards (Gunnigle *et al.* 2002) towards more corporatist arrangements. The dominant feature of Irish industrial relations from 1987 until 2009 was the operation of seven peak-level 'National Social Partnership Agreements' starting with the Programme for National Recovery in 1987 and finishing with the Transitional Agreement in 2008. In essence, these agreements set wages through a series of nationally-negotiated pay deals every three years or so. The government, representatives of trade unions, employers' organisations, farming groups and in the latter stages, a non-governmental 'social pillar' (voluntary groups) came together to negotiate a national agreement which fixed wage increases and other payments (for example, tax and social welfare rates). The agreements also set a framework for a wide range of government policies, including: personal taxation measures; education; social housing initiatives; and national infrastructural developments. Social partnership pay agreements became national benchmarks to be followed voluntarily across the economy or sector at workplace level, with the exception of public service employment. Non-unionised employment tended to shadow national pay deals (Eurofound 2013). Employers could invoke an 'inability to pay' measure on the terms of the national pay deal and

disputes were referred to the Labour Court for adjudication; there were over 300 such referrals between 2004 and 2007 (Labour Court 2011).

There is no statutory legislation on the right to trade union recognition or right to bargain collectively in Ireland despite Article 40.6.1(iii) of the Constitution which guarantees: 'The right of citizens to form associations and unions'. Thus there is a constitutional right to join or form a trade union, but there is no legislation or legal method to compel an employer to deal with a trade union for purposes of collective bargaining. Trade unions in Ireland have been campaigning for some time for union recognition or right to bargain legislation. A partial attempt to deal with this issue was the Industrial Relations Acts 2001–2004, which introduced procedures that enabled trade unions to seek legally binding determinations on pay and terms and conditions of employment from the Labour Court in unionised and non-unionised employments. The airline Ryanair neutralised any potential union recognition right arising from this legislation with a successful legal challenge to the Irish Supreme Court in 2008 (Cullinane and Dobbins 2014). ICTU have maintained their campaign for union recognition laws and have taken some external measures; the making of a complaint in 2011 to the International Labour Organisation on the right to freedom of association in Ireland; and a formal complaint to the European Court of Human Rights in 2013 on the state's failure to uphold an effective right to collective bargaining, in breach of the European Convention on Human Rights (Hendy 2014).

In 1980 Irish trade union density stood at 61.8 per cent. By 1990 this figure had decreased to an estimated 55 per cent. In the private sector union density stands at around 28 per cent, or just over a quarter of the 1 million workers employed in the private sector, while density is over 80 per cent in the public sector. Collective bargaining coverage is estimated to be in the region of 44 per cent. There was rapid employment growth for most of the period 2001–2007, with union membership failing to keep pace in density terms. However, the most recent data indicate an increase in density from 31 per cent in 2007 to 34 per cent in 2009, alongside a decrease in absolute numbers of members from 565,000 to 535,000 (CSO 2012). ICTU contest the methodology used by the Irish Central Statistics Office in compiling union membership figures and suggest that union membership is higher than officially reported. Union membership in the broad economic sector as measured by NACE Rev. 2 indicates that the categories B–F under the general term 'industry',

which includes manufacturing, shows a decrease from 34 per cent of employees in the second quarter of 2002 to 24 per cent of employees in the second quarter of 2012.

There are a number of reasons for this drop in density. In part it derives from the decline of traditional, mass-manufacturing companies which were the trade unions' main base. Some unions suggest that the density drop results almost exclusively from their inability to build membership in the new growth sectors, such as ICT, telecommunications and financial services. The hostility to unions in the large FDI sector – in particular from US multinational companies – has been an important factor in creating the political and social legitimacy of union-free zones and has emboldened a new breed of Irish employers to follow suit (Turner and D'Art 2013).

The National Minimum Wage (NMW) Act 2000 came into effect on 1 April 2000 and introduced a national minimum wage in Ireland for the first time. Many low paid workers benefited from its introduction, particularly women, young people and part-time workers. The level of the national minimum wage is set by the Minister for Enterprise on the recommendation of the Labour Court, although previously the national minimum wage rate was the outcome of an agreement between employers groups and trade unions. The rate is 8.65 euros per hour (2014), which has not been reviewed since 2007.

Until the economic crisis and coupled with government austerity measures, workplace collective bargaining deals were in some cases protected by statutory bodies. For example, Joint Labour Committees were independent bodies that determine minimum rates of pay and conditions of work for workers in a number of low-wage sectors, such as catering, hotels, cleaning and retail groceries. Each Joint Labour Committee (JLC) is composed of representatives of workers and employers in the sector concerned and an independent chair. The pay and conditions agreed by the employer and employee representatives on the JLC became Registered Employment Agreements (REA) and were given force of law through Employment Regulation Orders, which are made by the Labour Court on the basis of proposals made to the Court by the JLC. In essence, the JLC agreements deal with pay and working conditions and are a form of de facto collective bargaining

The following sectors were covered by JLC up to July 2011: agricultural workers; catering (Dublin and Dun Laoghaire); catering (other); contract cleaning; hairdressing; hotels (other excluding Cork); retail, grocery, and allied trades; and the security industry

From 2014 the following sectors have been covered by revised JLC: contract cleaning; hairdressing; hotels; law clerks and the security industry. The agricultural workers Joint Labour Committee is to be retained in the future.

4. The economic crisis and subsequent labour market reform

Since 2008 the major economic crisis has had a profound impact in Ireland economically and politically. The country has suffered one of the worst fiscal impacts of all EU countries. Ireland is a small, open economy, heavily dependent on international trade and foreign direct investment, especially from US multinationals. From the mid-1990s, the Irish economy expanded at historically unprecedented rates, which spurred high levels of employment growth and job creation and unemployment dipped to around 4.4 per cent at the height of the country's economic boom. However, the worldwide impact of the financial crisis sparked by the property loan scandal in the United States in 2007 also hit the Irish economy and was exacerbated by domestic factors, including a failed banking system and the bursting of the property bubble.

4.1 Government responses

The Fianna Fail (Centre right party) / Green coalition government (defeated at election in early 2011) imposed a number of 'austerity' measures during 2009–2010 in an attempt to stem the crisis. The first casualty of the crisis was the consensus corporatist approach embodied in social partnership as the government pursued unilateral policies rather than negotiated ones (Regan 2012). In effect social partnership began to unravel in the talks on a new deal in 2008 and signalled the shift from national to enterprise-level collective bargaining.

In November 2010, mounting debt problems forced the Irish government to apply for a 90 billion euro bailout from the Troika. In addition, there were bilateral loans from Denmark, Sweden and the United Kingdom (EU 2014). The Troika 'Programme of Financial Support' for Ireland was implemented under a new Fine Gael (Christian Democrat party) / Labour coalition government elected in February 2011. From 2011 to 2013 Ireland had successfully completed a number of reviews under the Programme and formally exited the bailout in December 2013. There has been substantial restructuring and job losses since 2008, and unemployment rose rapidly to 14.5pc in December 2011 as a result of the crisis. The accumulated Irish government debt in 2012 was 66 billion euros and in the main these funds were utilised to recapitalise or buy the debts of Irish private sector banks. The national debt increased from 20 per cent of GDP in 2007 to 84 per cent of GDP in 2012, and the general government debt increased from 25 per cent of GDP in 2007 to 117 per cent of GDP in 2012 (Department of Finance 2014).

The recession involved massive adjustments in Ireland's labour market. At the peak of the economic crisis in 2012 unemployment increased to 15.2 per cent, with a total of 328,700 jobs lost (UNITE 2013). During the same time nominal hourly wages remained remarkably stable. The changes in employment are usually discussed in relation to two causes. One is the extent to which changes were due to a one-off adjustment (mainly to employment in the construction sector) as an unsustainable construction bubble collapsed. A second aspect is the extent to which jobs were lost due to the general impact of the recession (with the expectation being that these jobs will be recovered once the economy expands). A further (third) aspect, which has been somewhat neglected in the public discourse, is the extent to which changes in the labour market represent long-term underlying trends (sometimes referred to as 'secular' trends) (UNITE 2013).

The Irish government adopted a number of unilateral approaches, one of which was the decision to cut the national minimum wage as a financial emergency measure. The minimum wage had not been increased since 2007 but was cut by 1 euro per hour to 7.65 euros in February 2011. This measure formed part of the Fianna Fail/Green Party government's four-year economic recovery plan under the Troika financial support programme. There was a high-profile industrial dispute in early 2011 at the Davenport Hotel in Dublin over cuts to workers' pay following

the government decision to reduce the minimum wage by 1 euro per hour. The five minimum-wage workers involved in the dispute were represented by SIPTU and subsequently won their case at the Labour Court. The new Fine Gael/Labour government reversed the cut in the minimum wage and restored it to 8.65 euros from 1 July 2011.

In August 2012 the Industrial Relations (Amendment) Act 2012 was enacted in response to employers' attempts to move away from REA/JLC system of setting pay and conditions in certain sectors of the economy in favour of individualised agreements. The purpose of this Act was to make new provision for the making of EROs and for the functioning of Joint Labour Committees. This became necessary following the decision of the High Court in *John Grace Fried Chicken Limited and Ors v Catering Joint Labour Committee, Ireland and the Attorney General* [2011] 1 I.L.R.M 392, which held that the provisions of the Industrial Relations Act 1946 under which these orders were formally made, were invalid having regard to Article 15 of the Constitution. The 2012 Act extensively amended the provisions of the 1946 Act in relation to the existence and functioning of REAs. A further legal challenge to the REA/JLC system came in the *McGowan & ors v Labour Court Ireland & ors* [2013] IESC 21 and the *Unconstitutionality of Registered Employment Agreements* in the Irish Supreme Court. The Supreme Court ruled that REAs were unconstitutional. The government has pledged further legislation to put the REA/JLC system on a proper legal footing.

The changes to the REA/JLC system introduced by the 2012 Act included an inability-to-pay clause for employers. In January 2012, in the announcement of the 2011 fourth quarter review of the Troika programme, one of the changes agreed in the Memorandum of Understanding between the government and the Troika was that the legislation would be amended to allow employers who get temporary inability-to-pay exemptions of less than two years to seek extensions of those exemptions for up to two years. The main rationale put forward for these changes was that the REA/JLC system added to the cost of labour, though this is disputed (see Turner and O'Sullivan 2013). In the long term this has rendered the protected bargaining system almost non-existent and has increased the wider European trend of increasing derogations from industry-level agreements (Hendy 2014). In addition, based on a Supreme Court ruling delivered by Justice O'Donnell *McGowan & Ors v Labour Court Ireland & Ors* [2013] IESC 21 has meant that REA

decisions will be much more legal in nature than was ever intended under the voluntarist industrial relations architecture (for example, the proposal is that in future the Labour Court will determine wage rates and terms and conditions, based on public consultation rather than rely on recommendations from a JLC, as in the past). In effect, the previous arrangement of bargaining and negotiation in specified economic JLC sectors could be replaced with a form of legal arbitration. A national union official commenting on the potential shape of the new REA system stated: 'I'm advising trade unions in these (JLC) sectors not to enter into the new REA system. To do so would be the end of voluntary bargaining.'

Previous reforms have seen the growth of individual employment rights, contributing to an increasingly complex system of institutional arrangements that operate in a quasi-legalistic fashion in the adjudication of employment relations cases. In 2011, the Minister for Jobs, Enterprise and Innovation launched a reform of the current employment rights institutions as part of the Troika agreements. Under the plan, the existing five workplace relations bodies will be replaced by a new two-tier structure: a new Workplace Relations Commission and an expanded Labour Court. The Workplace Relations Commission will take on the functions of the Labour Relations Commission, the National Employment Rights Authority, the Equality Tribunal and the first instance functions of the Employment Appeals Tribunal (EAT). The Labour Court will become the single appeal body for all workplace relations appeals, including those currently heard by the EAT, which will effectively be abolished under the reforms. The new Commission is intended to improve the state's industrial relations institutions.

4.2 Trade union response to the crisis

Collective bargaining since 2008 has been severely weakened and constrained by the financial framework adopted by the Irish government in response to the Troika programme. The 'fiscal adjustment', as it has become known, has resulted in major cutbacks in public expenditure in a whole range of areas, including health care, social welfare and education. The 'fiscal adjustment' was criticised by ICTU mainly as an acceptance by the Irish government to stick rigidly to the Troika financial targets and timescale which plans to reduce the national debt at a very rapid pace. ICTU had proposed a longer time frame for the economic adjustment

and for protection of public services in their Social Solidarity Pact but it did not find any support from government (Begg 2010). ICTU held a series of national demonstrations at weekends to protest at the direction of government policies and held a one-day public sector strike.

In response to the demise of national social partnership ICTU and other trade unions have focused on forms of renewal and began discussions on future union amalgamations and the establishment of new institutional arrangements. ICTU (2011) issued a discussion document called 'Future Positive: Trade Unions and the Common Good' which is a series of proposals to revamp ICTU structures. The largest union SIPTU along with the shop workers' union MANDATE established new organising departments to increase union membership. ICTU helped create a trade union sponsored economic think tank called the Nevin Economic Research Institute to provide unions and the public with non-mainstream economic analysis.

A type of public sector national partnership emerged in the form of two agreements (Croke Park 2010–2014 and Haddington Road 2013–2016)¹ which have had the effect of introducing pay cuts, wide changes in terms and conditions of employment and voluntary redundancy programmes across the public sector. In the public service, pay was reduced under emergency financial measures by the government on a progressive scale of 5–15 per cent in December 2009 and net earnings were also hit by a pension levy from March 2009, also on a progressive scale of 5–10.5 per cent.

In the private sector there emerged a protocol between ICTU and IBEC for the 'Orderly Conduct of Industrial Relations and Local Bargaining in the Private Sector' in 2010, which was renewed in 2013 as a mechanism to underpin industrial peace. In the manufacturing sector SIPTU quietly launched an enterprise-level collective bargaining campaign in 2011 seeking modest pay rises of around 2 per cent, often rationalised in relation to German pay rises and patterns for European rescue plans (IRN 2013). In addition to the pay deals SIPTU decided to carry advertisements in their publications for goods produced in unionised factories under the banner 'Supporting Quality Invest in Our Futures' (Liberty 2013).

1. Third Agreement 2015 was called Landsdowne Road

4.3 Employer response to the crisis

In December 2010 IBEC formally withdrew from social partnership negotiations and collapsed the longstanding consensual arrangements. IBEC claimed that they did so due to the unprecedented scale of job losses in 2009, and the prospect of further losses in 2010 and 2011 and that there was a need to restore competitiveness for economic recovery outside of national partnership (EIRO 2010). The end of partnership afforded IBEC an opportunity to reconsider its activities and they instituted a strategic shift in orientation. The majority of its members operate in non-unionised environments and collective bargaining was no longer a main function of the organisation and thus industrial relations were not even mentioned in its briefing document announcing the new direction of the organisation, 'The Future is This Way' (Sheehan 2013).

Some private sector employers responded to the crisis by freezing basic pay/salaries at pre-crisis levels, while extra earnings have been cut. A significant minority have also cut basic pay levels, borne out by IBEC's Quarterly Business Sentiment Survey for 2009, showing 56 per cent of employers freezing pay and 25 per cent cutting pay in 2009. A smaller minority had moderate pay increases, mostly under a national wage agreement struck in late 2008 – which most employers did not implement and was eventually abandoned at the end of 2009. Overall, the sense is that employers adapted a range of HR bundles, although not in any systematic way, that achieved various outcomes such as employment stabilisation and forms of restructuring without withdrawing from engagement with unions (Teague and Roche 2014).

Cautious union pay claims emerged heralding a dynamic and evolving approach to collective bargaining, particularly in the manufacturing sector. In terms of collective bargaining in post-crisis Ireland, many traditional features remain evident and prevalent, albeit with a shift to localised levels and with more concessions on the part of unions (IRN 2013). Unions meanwhile also continue to push their claims through workplace-level negotiation and referral to state machinery as a bargaining move and tactic. However, the full extent and the degree to which unions have made excessive 'concessions' to employers remains uncertain, as does the scope of bargaining issues and the precise variability of bargaining character and depth across various industries and manufacturing firms and sub-sectors (for example, metals, pharmaceuticals, medical devices,

food and drinks, foreign multinationals, indigenous manufacturing, and among large and small firms).

5. National and sectoral evidence: the character and processes of collective bargaining and labour market reform since the crisis

In the following two sections the data collected in the research will be outlined and discussed. In Section 5 we outline the responses to the crisis by the government, employers and trade unions. In Section 6 the data collected in the five manufacturing case study companies will be presented and discussed.

5.1 Government responses

Initial government responses to the economic crisis included the unilateral imposition of pay cuts and new forms of taxation introduced as emergency measures, although subsequently agreements on pay, conditions and workplace changes were reached with public sector unions. Under the terms of the Troika bailout on 28 November 2010, the Irish government agreed to introduce a number of changes that would have a direct impact on the labour market. Some of the general points were spelled out in some detail in the terms of the 'Memorandum of financial and economic policies of 7 December 2010' (MOU 1) and were as follows:

To reduce long-term unemployment and to facilitate re-adjustment in the labour market, we will reform the benefits system and legislate to reform the national minimum wage. Specifically, changes will be introduced to create greater incentives to take up employment. (MOU 1: 7)

Under the terms of the various Memoranda of Understanding (MOU) that flowed from the Troika agreement the Irish government was to be subjected to quarterly monitoring and reporting of progress made to the Troika representatives. Four main areas were identified by the Troika and agreed by the Irish government to reform the labour market:

- (i) A reduction of the national minimum wage by 1 euro to 7.65 euros per hour.
- (ii) A review of the functioning of REAs. This involved the commission of a review of Joint Labour Committees to investigate labour market rigidities with regard to wage levels, which was known as the Duffy-Walsh Review (2011). The review concluded that the current system of REA and Joint Labour Committees should remain but be reformed to be more responsive to changing economic circumstances. Employers were subsequently given the right to claim ‘inability to pay’.
- (iii) Reform of all state labour relations bodies and the creation of a new combined body called the Workplace Relations Commission.
- (iv) The fourth element emerged in the latter part of the Troika monitoring process and comprised new legislation to reform the collective bargaining system, which formed part of the Programme for Government in 2011.

Troika-inspired labour market changes have not been opposed by either of the Irish governments in power since that time. Although the new government elected in 2011 reversed the changes to the national minimum wage, the other significant changes were deemed politically acceptable. There was a view that the REA/JLC wage setting system, which was in any event being challenged in the Irish courts by employers, was already regarded as needing reform and the crisis offered an opportunity to implement it:

It was well recognised for some years in the Department and beyond that the system of the REA/JLC was outdated and needed change. The successful court challenges, in particular the McGowan judgement which declared the REA/JLC system set up 1948 as unconstitutional, were not unexpected. The current economic circumstances and the tight reporting mechanisms of the Troika agreement meant we had to deal with them in an urgent manner and fashion a responsive modern system as a result. (Government official)

The legislative arrangements surrounding REA/JLC wage bargaining are uncertain and the government has promised to bring forward

legislation to address all legal issues and put the system on a proper legal footing. The government had previously brought forward legislation to advance the proposed Troika changes in the REA/JLC system but this was deemed invalid by the Supreme Court in 2013 (*McGowan & ors v the Labour Court Ireland & ors* [2013] IESC 21).

The social partner interviewees agreed that the merging of the state's industrial relations mechanisms – the Labour Relations Commission, National Employment Rights Authority, the Equality Tribunal and the Employment Appeals Tribunal – into the new Workplace Relations Commission was needed as these bodies had been created to address issues as they arose over the years and were addressed in an ad hoc manner without forming part of any long-term plan or agreement:

Over the years various governments had decided to address pressing issues of the day such as equality, a more robust regime of workplace inspection and so on and in actual fact they were bolting parts onto the IR system and in some cases without linkages. The new Workplace Relations Commission will bring some form of consistency of approach and hopefully be more efficient to use. (Government official)

The need for new state employment relations machinery as agreed with the Troika had apparently already been identified by Irish government officials. Perhaps, then, the manner of the public announcement of the publication of draft legislation for the new body was aimed at the Troika, as it stated:

Landmark reform will see five state workplace relations bodies merged into two – Minister Bruton ... secures government approval for legislation to reform workplace relations bodies, deliver 20% savings in staffing and 10% in budgets while providing improved services. Move forms part of reform programme which will see total number of Agencies under Department of Jobs reduced by 41 by end 2014. (DJEI 2014)

The proposed reform of the Irish system of collective bargaining, under a commitment of the Programme for Government in 2011 and subject to review by the Troika, includes a new proposed 'legal right to collective bargaining'. However, the legal right will, in practice, apply only to

workplaces that do not currently have collective bargaining. National-level respondents indicated that the legislation is 'almost finalised'. An impending issue is the definition of an 'accepted body' that can bargain on behalf of workers, which need not be a recognised trade union. A government official commented:

the crucial part of the reform will be the test of a genuinely independent excepted body.

5.2 Employer and union responses to social dialogue

The collapse of national-level corporatist bargaining (social partnership) has not meant the end of social dialogue in Ireland. There are two actions that indicate a continuing preference for social dialogue in the economic crisis. The National Implementation Body (NIB) was a high-level conflict prevention body that emerged from social partnership in response to the Irish Ferries dispute and has since ceased to exist. However, social dialogue re-emerged with an agreement in the private sector between ICTU and IBEC entitled the 'Orderly Conduct of Industrial Relations and Local Bargaining in the Private Sector' in 2010, renewed in 2013. In effect this is a mechanism to underpin industrial peace in the Irish economy and provide a channel of negotiation in times of industrial crisis. The purpose of the industrial peace agreements was to establish an informal dimension to the formal conflict resolution machinery of the state and a mechanism for the peak-level involvement of ICTU and IBEC to police against adversarialism or industrial disputes spilling out of control on the streets. Respondents often contextualised Irish reforms in relation to media images of more vocal and politicised protests around similar issues in Greece:

In the absence of partnership bodies or the NIB it was desirable that private sector protocols or industrial peace agreements were entered into. (Employer)

It was important to signal that we in Ireland can resolve differences ... to make clear to the Troika that, heaven forbid, social dialogue would prevent us looking like Greece. (Union official)

The second clear indication of a preference for some modified form of social dialogue was the manner in which public sector agreements were concluded and the message this sent to private sector employers concerning the value of dialogue. The government had already taken unilateral action to introduce the Financial Emergency Measures in the Public Interest Act 2009 (FEMPI) to reduce pay in the public sector and had threatened to do so again if public sector unions did not agree to reforms of terms and conditions and some modernisation measures. The public sector agreements involved long and detailed negotiations, with the Labour Relations Commission acting as facilitators. The outcomes of the negotiations were put out to ballot for agreement or rejection by union members. The initial Croke Park agreement was rejected by some unions, including the largest union SIPTU, and was renegotiated to take account of union members' concerns and subsequently agreed to in another ballot. By publicly conducting the painful business of pay cuts and obtaining reforms in work practices through collective bargaining, the Irish government highlighted to the wider economy that the state did not want to move away from social dialogue between government and trade unions. Indeed, the public sector agreements highlighted the utility of social dialogue as a means to resolve problems even in the midst of an economic crisis.

What has evolved since the crisis, according to respondents, is a complex and flexible web in which bargaining has undergone change and in some instances has remained relatively robust. This degree of continuity and change may be explained by the tendency in a small country such as Ireland for social partners to rely on an informal network of social dialogue, even when formal structures collapse, as they did in 2009. The two very public instances given above, in the private sector industrial peace protocols and the intense, very public negotiations with public sector trade unions, both sent a clear signal to the wider society and to private sector employers that the government still supported the current incarnation of voluntarism and the process of social dialogue. A return to social partnership institutions does not seem inevitable or even a desirable intention of the main political parties at present, even though several union respondents advocated the utility of national social dialogue in some form. Some employer groups, notably IBEC, were more sympathetic to a non-union HRM style – shaped perhaps more by their attachments to foreign multinationals – than to collective bargaining with unions:

Since the onset of the economic crisis there is no collective bargaining as I see it – it just doesn't happen anymore. Social partnership is gone and the need to have collective bargaining went with it. Employers through the recession have exercised their right to pay wages and salaries how they see fit – there is no longer a role for unions in the system. (Employer)

A final development to the range of issues subject to negotiation has been that of workers' pensions. Pre-dating the crisis unions expressed concern that many occupational company pension schemes were underfunded. The result has been the inclusion of pensions as a distinct and more common collective bargaining issue. A related issue since the crisis, commented on by national union officials and confirmed by a government spokesperson, is that retired workers have no bargaining rights over changes because they are retired (for example, no longer legally defined as a worker). A government spokesperson commented:

the difficulty for retired workers is there is no legal protection or any avenue for them to bargain when changes are proposed to their occupational pension.

5.3 The durability of collective bargaining and social dialogue amidst the crisis

The largest trade union in Ireland and the main one in manufacturing, SIPTU, decided in 2010 that pay gains rather than continued concessions were needed to support union legitimacy and to show a role for union bargaining. Irish national social partnership ended in 2009 and the last agreement was called 'Towards 2016: Ten-Year Framework Social Partnership Agreement 2006–2015' (often referred to as 'T16').

Contained within that agreement were pay awards and a review timescale in which to agree new pay deals, referred to as transitional agreements. This was an unusual national partnership agreement, which attempted to span a ten-year period while previous agreements had covered shorter timescales from 18 months to three years. Therefore, when partnership ended many companies had agreed to abide by the pay terms of T16 and individual company agreements varied regarding implementation dates. Thus it was not unusual from 2010 onwards for companies to be

completing elements of T16, or others to have opted out on the grounds of 'inability to pay' and for there to be no agreements in place on pay generally in some manufacturing companies.

The decision to develop a pay rise strategy against a background of severe economic crisis affecting the entire country was taken by SIPTU after much careful consideration and development:

What we did not want was a hue and cry from a very hostile media that the unions are back seeking pay rises and are attempting to bankrupt what is left of the country for their own selfish interests. The job of unions is to get benefits for our members through collective bargaining. So we had to very quietly start collective bargaining in our members' best interests with selected employers who we knew were profitable and could pay. (Union official)

The main element of the strategy was to agree a wage rise figure that was in line with economic developments in Germany and the ECB forecasts, which appeared to be moderate and likely to be obtained from employers. The agreed pay rise figure became known as the '2 per cent strategy'. There were three other key elements to the '2 per cent strategy'. One was that there would be no public announcements about the strategy and it would be pursued quietly and under the radar of the media. Second, localised bargaining directly between the company and union was to be conducted without any outside third parties, in particular to keep the employer bodies (for example, IBEC), managerial-type consultancies and the LRC away from the negotiating table, at least initially. A third key feature was a slow and carefully crafted campaign of incremental and modest pay increases across manufacturing. The strategy targeted leading exemplar firms who were known to be still doing well amidst the recession and had the ability to agree a pay rise, mainly unionised multinationals. Subsequently to roll out the precedent of a deal secured in one firm to the next, targeting different companies in selected sub-sectors of manufacturing. One of the national union respondents explained:

This union had been engaged very deeply with many manufacturing employers from the start of the crisis to save companies and jobs and at times agree very unpalatable changes in our members' terms and conditions. We had seen long established well-run companies wiped

out by the downturn from 2008 on. Many firms that supplied the construction sector closed. It was crucial that the union got back to bargaining to make gains from those employers who could pay and move beyond the pay freezes that set in after the end of T16. (Union official)

SIPTU has, for its own organisational reasons, categorised manufacturing in Ireland in three sectors: (i) pharmaceuticals, chemicals and medical devices; (ii) agriculture, ingredients, food and drink; and (iii) electronics, engineering and industrial production. The strong economic position of the pharma and medical devices industries and their large unionised workforces made it SIPTU's first target for the '2 per cent strategy'. In 2010 SIPTU achieved five or six deals in key companies that were seen as crucial to the union and its efforts at restarting collective bargaining.

The five or six deals from the 2 per cent strategy in 2010 were highly significant wins for the union. Localised collective bargaining was back, making gains and proving to be effective for our members. It also was a point to prove to the outside world that unions could still obtain the union premium rate in wages. (Union official)

Typically, the deals obtained by SIPTU under the '2 per cent strategy' were subsequently negotiated by the TEEU and applied to their members in the same companies. Many of the agreements were multi-year, ranging from 19 months in 2010 and rising to two and a half years by 2014. The average pay increase obtained was 2 per cent, while some agreed 1.9 per cent or 2.2 per cent from 2010 to 2014. In other words, the 2 per cent was a median figure around which negotiations commenced. The pace in the manufacturing sector quickened with SIPTU achieving 35 such pay agreements in 2011 and 75 in 2013, some of which union officials describe as '2% second rounders'. In total, SIPTU estimated that the '2 per cent' campaign resulted in over 220 collective agreements between 2010 and 2014, covering upwards of 50,000 workers.

Do we feel that the '2% Strategy' was the right one – yes, we do. When we decided on this way of getting back into collective bargaining as a means to get gains in 2010 the whole atmosphere was poisonous towards unions. Would I say that 2% was a cautious and moderate strategy – yes I would! It has been successful for the union and restates our role as a player in the economy again. (Union official)

One aspect of the ‘2 per cent strategy’ has been the return of localised collective bargaining for the first time in over 25 years in Ireland. Some concerns were expressed by unions and employers that the skills to successfully conduct local agreements were absent at local level, given the previous dependence on national corporatist negotiations through (former) social pacts.

It became the norm for so many years to speak to the employers which mostly were not real negotiations about the national deal. In reality most companies paid up but quibbled about linkages to change in a not very serious manner. So for me the 2% strategy was a new ball game of putting out feelers to employers, checking their temperament as a form of preamble so that when we started pay talks negotiations would begin and we were not met with a flat no way. (Union official)

Employers were equally unsure about local bargaining and tended to approach the matter of renewed pay increases with extreme caution. Previously under the partnership agreements, while there was flexibility on implementation in practice, most employers followed the broad terms of the agreements.

I had heard nothing even on the grapevine about the SIPTU 2% strategy until the local full-time union officer asked to meet me to talk about our shared future, as he put it. The initial discussion between us was frank and open. As a company we knew we could award a pay rise and we could see our employees needed it as they were hurting under the strain of new taxes and complete economic bad news everywhere was just depressing. During partnership people got pay rises for nothing, as a company we wanted some structural changes in exchange for pay – something for something. There was straight dealing with the union guys and we bought into the ‘2% strategy’ with targeted changes to be met and concluded a 2 year agreement. (Employer representative)

By 2014 it was clear that SIPTU’s ‘2 per cent strategy’, first rolled out in 2010, was having a significant impact in achieving pay rises for workers in the manufacturing sector, with over 220 such agreements concluded in this period. For the trade unions the return to localised collective

bargaining was a strategic decision taken in the absence of national partnership or other forms of national social dialogue. One union officer, while extolling the successes of the '2 per cent strategy' said:

The manufacturing division in SIPTU has achieved the return of pay rises and the norm of company-level discussions on pay deals, not just cuts. While in itself this is a welcome union success story there are many issues that urgently needed sorting out, such as workplace pensions, the nature and scope of collective bargaining, and others, but this stuff can only be agreed at national level social dialogue with government. The return of social partnership may [not be imminent] but perhaps a new social dialogue forum can be created. (Union official)

Collective bargaining in manufacturing firms has been described as a positive development for workers, obtained as a result of what might be regarded as a 'moderate' or 'pragmatic' approach encapsulated in the '2 per cent strategy' adopted by the SIPTU, and subsequently by TEEU and UNITE trade unions. They have found some success with employers by strictly following this strategy, which has also caused some ill-feeling in at least one of our case study companies. In the latter case the local union were about to conclude a three-year pay deal that amounted to 9 per cent increases, but when the employer learned of the '2 per cent strategy' (publically announced in the media by this time on the back of several successes by the union president), they refused to pay more than 6 per cent over three years.

Two other interesting or novel features emerged from the research regarding the nature of relationships between employers and unions forged by their responses to the crisis and their willingness to cooperate. The first feature was SIPTU's undertaking to assist in promoting the sale of goods and services produced by unionised manufacturing companies. Their 'Supporting Quality Campaign' extolled the virtues to consumers of protecting quality Irish jobs through purchasing quality goods made by fellow workers in Ireland as a way to sustain employment. The union carries a full-page advertisement for the supporting quality campaign in each edition of its monthly paper *Liberty* and on its website. One union officer commented on the logic of supporting this campaign:

Asking workers to spend their hard earned cash on goods they are likely to need and buy anyway allows people to support in a tangible way other union members' jobs, makes sense co-operatively speaking and allows the union to show it supports unionised companies.

The second interesting or novel feature, which signals new extensions to the range of bargaining issues despite crisis and reform, is the role of SIPTU's training division. A new 'IDEAS Institute' was formed within SIPTU to support training initiatives concerning 'change management, innovation and restructuring', which assisted local managers as well as shop stewards. The concept underpins the notion of 'bargaining for skills' and involves the union engaging directly with managers about how to deal and consult with workers and other managers about future changes in production processes, lean production management techniques or achieving higher levels of efficiency through an agreed mechanism of workplace innovation. Over 20 companies had participated by 2014 in the process, which has involved a scoping and detailed planning exercise concerning the type and nature of changes that need to be achieved in companies, conducted by SIPTU's IDEAS Institute. In practice, the workplace changes and innovations that have occurred in workplaces due to their involvement with the 'IDEAS Institute' have involved the agreed adoption of new work practices, processes or technology and the training of managers and employees.

6. Case study evidence: patterns of change and reform at workplace level in manufacturing

In this section we outline the evidence from case studies involving five manufacturing companies in Ireland. The five cases are representative of three manufacturing sub-sectors, namely metals, food and drink, and pharma and medical devices. There is added variability in the selection of the cases as two of them had experienced no discernible impact from the crisis, while the other three were significantly affected and major restructuring took place. However, all the evidence from the cases indicates that collective bargaining through localised social dialogue was a crucial factor in reaching agreed sustainable solutions to their economic difficulties.

6.1 MetalColrl

This metals firm has had a factory in Galway for over 35 years with a local reputation as a good and steady employer. The two main products are trucks and trailer refrigeration units. There has been collective bargaining in the company from the very beginning, mostly via UNITE, and the TEEU represents a small group of maintenance staff. Among the production staff UNITE has 80–90 per cent density and the equivalent of a full-time union officer; two employees are given five and three hours, respectively, each day and also have a union office and other facilities on site. Three respondents were interviewed (shop steward x1, HR manager x1, full-time UNITE official x1).

The company was severely hit in the early stages of the economic crisis in 2007/2008, when orders were cancelled or put on hold. A range of stabilisation measures were taken to secure the future of the plant which was under threat of closure from their corporate US head office. Those measures included: voluntary redundancies, closing down shifts to move to a single day shift, introduction of three-day working which lasted 15–18 months (depending on job function), closure of defined benefit pension scheme to new entrants, lay-offs of permanent employees and ending the employment of all temporary or contract workers. All changes made in the plant in direct response to the crisis in the early stages were by negotiation with unions and agreed by workforce votes. One manager commented:

This plant was under very serious threat of closure and the lads [union], much to many managers' surprise, recognised this fact early on and played a very pro-active role with the local management team to get our plant in shape to meet the major financial challenges that Corporate wanted to see done. (HR manager)

The need for a response to the crisis was obvious to the workforce:

We saw for ourselves on the shop floor that we had moved in the space of 2 months from completing an average of 70–85 orders each day to completing 18–20 [and] that the factory was in serious trouble like never before. (Employee)

The UNITE union committee in *MetalCoIrl* convened many special meetings to develop strategies to deal with all eventualities, from workforce reductions to plant closure. A union officer commented:

There was no doubt in all our minds that the plant was under serious threat of closure and the important aspect from the union's point of view was to be ready and get involved at all times and be willing to make suggestions and ideas to management.

Initially, the management of the plant wanted to soften the impact of the crisis and move to a four-day working week as an interim measure. The union believed that such a move by the company would be overtaken by unfolding wider economic events and requested that the company consider a three-day working week instead. As a union officer explained:

The atmosphere in the plant and more widely in the city and country was deeply pessimistic and the last thing we wanted to be doing was making matters worse for workers by being involved in an escalating series of cuts and more cuts to pay.

The union had commenced talks with the local Department of Social Protection regarding any statutory payments their members might be entitled to from a four- or three-day working week and to make arrangements for the 'signing on' of the workforce. During the discussions the union learned that the structure of the unemployment benefit scheme in Ireland was notionally calculated on a week by week basis and that the 'unemployed week' commenced on a Wednesday. In discussions with *MetalCoIrl* the union therefore proposed working a three-day week (Tuesday, Wednesday and Thursday) to fulfil all orders existing on the books and that increases in orders would be dealt with by way of bringing employees back on a full working week basis on an agreed rotation of workers. This was agreed and implemented and formed the framework in which *MetalCoIrl* began to work their way through the crisis in an agreed manner. The union contended that the three-day working week met all management's demands and protected the wages of employees to the largest extent possible in the circumstances.

I worked a three-day week for over 14 months but the method of calculating the 'dole' meant that I lost on average 25 euros per week on short-time. At the same time, the plant managers got all their

orders done on time and agreed with us to introduce some in-house training in this time. (Union officer)

Reductions in employee numbers were made across the board. The HR department was reduced from 12 to three staff members and changes were also made to plant facilities and work practices. Management and union representatives differ in their respective views on these workplace changes; the union believes the crisis brought about no new changes other than those already under discussion. However, the HR manager said:

We believe that the place is in better shape after the crisis as the last few years were used to 'lean things out' and get rid of some old working practices and we have a lean headcount. (HR manager)

The management had a long-term plan given to us some time ago to create three new value streams and group some work station/ functions together which in principle we never disagreed with. The main concerns are to protect seniority of workers in different areas and agree a process that allows for change and offers no diminishing of rights previously obtained. (Union officer)

By 2014 the plant was back to full capacity with over 640 employed on site; over 450 were directly working on the manufacturing side and the others in administration, marketing and European positions. The production area has had to expand into the office block (HR offices) and they are recruiting new staff for permanent posts and have a temporary evening shift running to deal with a spike in orders. Since 2010 pay has increased each year by 2 per cent and the current pay deal ends in March 2016. A new product and an R&D project were due to locate to the plant sometime in late 2014 or 2015. The structural changes have had a positive effect regarding the attitude of their corporate head office to the Galway plant:

Recently corporate leaders visiting the plant told everyone that the flexibilities shown by the workers to negotiate changes [indicated] a very clear desire to protect their jobs and get us through the bad times[; this has been] recognised by Corporate through new long-term investment in products and facilities; unfortunately this realistic view taken in Galway was not evident elsewhere and [those who refused to adapt have ceased to exist]. (HR manager)

UNITE and the company can be said to enjoy a good working relationship, but it has also been adversarial with nine individual cases referred to the state's industrial relations bodies in recent times. The union noted that some of the cases taken to the state industrial relations bodies were not sanctioned by the union plant committee, which disagreed with their members; they were made on an 'individual' basis, although the union did provide representation in each case. Management at the plant state that they have a good working relationship with trade unions and have seen the value of collective bargaining in bedding down agreements, which helped the company survive the crisis, noting that other *MetalCo* plants had been closed altogether. Social dialogue at the local level in this plant is credited with saving the plant and jobs but as the HR manager comments it is not always conducted without tension:

Working with the unions is challenging and is the way things are done around here and today they [unions] are flexing their muscles again as they see good times ahead. As a management team we have seen real and significant changes happen and we intend to hold our costs and continue to get efficiencies from the workforce.

6.2 FoodCoIrl

FoodCoIrl in Dublin is in the food and drink sector of manufacturing and is part of a well-known UK multinational. The plant manufactures a drink liqueur which was introduced to world markets just over 30 years ago and is considered by some as a truly innovative Irish food product. Ever since the liqueur was launched in 1974, it has experienced growth, although this growth slowed in 2008 due to the economic downturn and consumer sentiment regarding a 'luxury' product. By early 2013, however, *FoodCoIrl* was back in growth. There are two plants in the world making the product, one in Northern Ireland, which opened in 2003 to manufacture the generic product, and the other in Dublin which now manufactures the blended 'niche' versions. It had also until recently produced another drink spirit which is now produced in Scotland. Just over 200 people work at the Dublin plant, which has been unionised from the beginning, with SIPTU the largest union. SIPTU re-organised its internal structures and all their members in the Dublin plant are represented by one FTO instead of three, as in the past, which has unified collective bargaining processes. The craft union TEEU represent a small number

of maintenance staff. Five respondents were interviewed (shop steward x2, HR manager x1, production manager x1, full-time SIPTU official x1).

Two main challenges for the Dublin plant emerged from the interviews: to survive the economic crisis and to continue to deal with internal competition from the modern, comparatively 'lean costing' plant in Northern Ireland. The HR manager has been at this plant for seven years, the two shop stewards were highly experienced and have 22 and 14 years' service, respectively, with the company; the FTO has been dealing with the company for six years. Therefore, all the interviewees have direct experience of the impact of the economic crisis on the company and how they dealt with the situation, which saw volumes drop by nearly 25 per cent in the first instance, the first such fall since the product was launched in 1974.

There was a three-pronged approach to dealing with the crisis. In order to manage the downturn in sales it was agreed with the unions to move to a three-day working week, some temporary lay-offs and a pay freeze. The second phase involved delayering of management positions, the 'encouragement' of voluntary redundancies among the long-term staff and not filling vacancies. One union officer felt that the working relationship with management was very important with regard to how the company reacted to a severe downturn in orders:

There is a level of trust between the company and the union that has been built up over years and that is why the union committee were able to ensure that there was no enforced or unilateral action by management in the early stages of the crisis.

One of the shop stewards recognised the need for the union to adopt a reasonable and positive attitude to the sudden downturn and said:

Essentially we had our backs to the wall in 2009 and it seemed that not just us in this plant but Ireland was on the brink of closure. The company came looking for savings and short-time working which made sense if we had no orders but our job was to save jobs and attempt to protect terms and conditions, which we did do.

In late 2010 corporate head office set them the task of achieving 5 million euros in operating savings and bringing down the 'cost of a case'

of the liqueur. The latter became the third phase of dealing with the crisis, which involved a major restructuring project of 'line and product' changes that took 18 months of negotiations to be agreed upon and used the services of the Labour Relations Commission. The company did not use IBEC or any consultants in their negotiations. For the union the need to avoid outside management interference in the process was essential:

We deliberately wanted to engage management within the plant to totally focus them on this place and solve cost and production issues in-house and not involve IBEC or any other management consultant types who might bring another agenda to the table that we did not need. (Union officer)

There were interesting and contrasting reactions from the workers and the HR manager regarding the lengthy negotiations.

Some other managers in the group kept asking why was the negotiations taking so long and I explained that we went through everything line by line and in the end that period of time allowed us to be more considered and look at things in the round and as a result we dropped some matters off the agenda. (HR manager)

The union shop stewards felt that the major restructuring was so important that the approach needed to be very deliberative in nature. One steward said:

We know that the big restructuring took 18 months to conclude and that seems like a long time. We want to test every single management proposal and cost it and see if there was anything we could do to maintain jobs but achieve the same savings. In fact the longer the talks went on, some of the more extreme management ideas fell off the agenda under prolonged scrutiny. Also we felt ... the need to slow down management haste as they were spooked by all the bad news in the Irish economy and by the end of the talks orders were starting to roll in again – so taking one's time makes for a better deal.

The agreement resulted in the restructuring of employee functions on production lines and a reduction of 40 staff; the withdrawal of canteen subsidies; buy-out of some premium pay rates; the closure of the defined benefit pension scheme and the establishment of a new defined

contribution pension scheme; new pay scales for new employees; a pay increase to run up to 2017; and all redundancies were to be voluntary. It was also agreed to continue using long-term seasonal staff to deal with spikes in production. The three union representatives and management all believed that the future of *FoodCoIrl* in Dublin was at stake, although they felt that the parent group would retain the plant in some form. All respondents spoke of the critical importance of saving jobs and of keeping the plant economically viable through an agreed sustainable deal. The HR manager was very positive about the contribution of collective bargaining to the survival of the plant:

If you ask me could we have survived the economic downturn, persuaded head office to keep us open and get such a big cost saving and production restructuring deal without the unions – no way! ... collective bargaining can be tough for some managers and some don't get it, but there is trust between me and the union guys and deals stick and problems are sorted out – it works for us.

The deal reached essentially ended many fringe benefits that the unions had built up over the years through bargaining. One union officer commented:

There are no doubts the members and union representatives feel that this deal has taken back a lot gains made in terms and conditions over the years. The point was to protect the long-term viability of the plant and union jobs and we achieved that and we have moved on and done a deal on pay increases to get back some lost cash through the '2 per cent strategy'

6.3 PharmaCoIrl

PharmaCoIrl operates in the pharmaceutical sector at a long-established manufacturing site bought from another large pharmaceutical company in 2008. The plant produces developed medicines, some well-known brands, in tablet form, packages and distributes them throughout Europe, the Middle East and Asia. The main challenge facing this plant was the 'patent cliff', which saw many well-known drugs coming off patent and affecting sales and production levels in the wider company. Some of the production from this plant has been moved elsewhere

in the group, resulting in closure of some work areas and some voluntary redundancies. The workforce of 650 in 2008 was reduced to approximately 350 in 2014 after a series of negotiations with the unions. This plant has been unionised from the beginning over 40 years ago, with SIPTU representing most of the staff, claiming 90 per cent density in their grades. TEEU represents craft workers in the maintenance section. At least one other plant in the group in Ireland is non-union. Four respondents were interviewed (shop steward x1, HR managers x2, full-time SIPTU official x1).

Collective bargaining is well established and very few issues ever get referred to third parties. The union convenor has worked in the plant for 15 years and has been a shop steward for the past six years. The FTO with responsibility for the plant visits when needed, otherwise once or twice a year. A union representative remarked that the new owners were making changes, but only by negotiation with the unions, and said:

There have been big changes in this factory since I started 15 years ago and through collective bargaining and a good union committee we have managed to maintain good jobs here with above average pay in social partnership times.

The backdrop of the recession and the industry pay norm of 2 per cent were reflected in the collective bargaining in the plant and marked a changed approach by the management, who agreed a pay rise but demanded changes in work practices in return. The union representative described the new approach and how they dealt with it in the collective bargaining process:

In the last pay deal the company gave 2 per cent and added a clause for 'on-going change' at the last minute. We signed off on that and spent the next 6 months getting them to define 'on-going' as we had agreed changes that were planned and many were implemented and were generally agreed to have worked to meet their problems. So there is a changed atmosphere at the moment; nothing will be given to the union easily.

The ability of the union to face up to the changed circumstances was well regarded by the HR manager and seemed to demonstrate a positive attitude to localised social dialogue:

We deal well with the unions and can solve all problems we face by building on the relationships we have made with each other over the years. One thing the unions have shown us is that they are not afraid to engage with proposals on changes on lean production ideas or find ways to save on costs.

The senior HR manager had worked at the plant for over five years and was moving to a new plant at the time of the fieldwork. There had been four or five different plant managers over the previous eight years, with individual management styles varying in how they approached HR and union matters. As such the recession has not been an issue for this plant but the re-organisation by the parent company and dealing with the product end of life due to the 'patent cliff' have been the main issues. In fact this appears to be the case for most of the pharmaceutical sector in Ireland.

Nonetheless, the recession was a backdrop in all the discussions on changes and the voluntary redundancies but workers leaving had fewer options to get work elsewhere, which meant that many of those who did leave had very long service, some of over thirty years or more. The relationship between the union and the HR manager was reported by HR to be a good and straightforward one. Nonetheless a union officer did emphasise that there was a good working relationship, although that did not mean that there were no competitive or adversarial aspects in the manner of their collective bargaining processes:

To be honest you ask me is there trust between the management and the union. The truth is we are both actors in the IR process, they have an agenda and we have an agenda and we agree to work together and stick to deals made. Do I feel that if management can get one over us that they won't – no way! That's how much I trust them.

6.4 MedCoIrl

MedCoIrl manufactures contact lenses and other eye care products and has had a plant in Ireland for over 30 years. The company was the subject of two buy-outs by venture capital funds in 2007 and 2013. In May 2014 the venture capital fund management announced a unilateral restructuring plan that had to be accepted by the workers in a very short space of time, less than three weeks. The main aim of the plan was to

achieve savings of 20 million euros in running costs via 200 redundancies and a 20 per cent cut in pay. Five respondents were interviewed (shop steward x2, HR manager x1, full-time SIPTU officials x2).

Over 1,100 people are employed at the plant, with SIPTU representing the vast majority of the workforce and TEEU representing around 100 in craft grades. Therefore collective bargaining has been a feature of life through the existence of the plant.

Local management and the unions had routine rows that could last for months at a time and then there were trips to the Labour Court. When a deal was struck or recommendations given (Labour Court or Labour Relations Commission) the local management, to their credit, never back-tracked. Often we felt that the local managers wanted us to go to the court so they could show head office that a state body thought we were right and they had to give us our demand. (Union representative)

The stark reality faced by the employees at this plant was a clear decision by the venture capital fund to close the factory unless significant pay cuts and reductions in other costs were accepted in a very short space of time. This was met with extremely hostile local political and press reaction as the closure of this plant would have had major economic and social consequences for the wider region. Considerable public and political pressure was thus applied to the venture capital company to engage in a meaningful manner with trade unions. The venture capital corporate team arrived with an Irish industrial relations consultant/expert to negotiate on their behalf and a public relations team, all separate from the local plant management.

The main union SIPTU felt that the ultimatum to accept the pay cuts and redundancies was very real:

Some of the workforce thought the threat to close was a bluff. We knew from the initial intent shown and the past track record of the corporate management representatives and the manner in which they delivered a brutal message very directly in a ruthless fashion meant the survival of the factory was at stake. Also the local management team were totally side-lined in this process and this added to our deep concerns. (Union representative)

The workers at this plant felt deeply betrayed by the actions of the venture capital fund, describing as 'brutal' the 'take it or leave it' manner of informing the workforce of their demands. Shop stewards were alerted that the company was going to meet with them on the morning of the announcement and then hold a general meeting of employees. In fact, shop stewards discovered that the local and national media had been briefed that the plant 'may close' and were outside the factory gathering news. Once the union stewards alerted the plant management to the media outside they were then called into a meeting and given the venture capital fund company press release. Local management were not in a position to provide answers as many of them had only learned of the statement at the same time. A management representative of the venture capital fund addressed four general meetings of employees from various shifts that day in the canteen, reading a prepared statement, and then immediately walked off the platform and did not allow any comments or questions from the workforce.

The interviews reported on here were with management and the union shop stewards in the aftermath of an agreement to keep the plant open in return for significant cost reductions in the operations. Employees at the plant agreed overwhelmingly to accept an 18.5 million euro cost-cutting deal, a small improvement on the 20 million euros originally demanded, which includes: a 7.5 per cent reduction in basic pay, elimination of some bonuses, one hour added to the working week, a reduced sick pay scheme, removal of subsidies to canteen facilities and an improved redundancy package for the 200 workers being made redundant. Agreement was reached after intense discussions between the company and the unions, initially at the plant, but later at a discreet location in Dublin to allow the talks to take place away from the glare of publicity. Part of the agreement was for the venture capital fund to commit some investment capital to the plant to sustain its future prospects.

The start of the talks between the unions and the company at a local hotel became a media circus and every word leaked or overheard became headline news. This started to cause great concern that proper negotiations would not start on both sides.

We had no choice but to move to a secret location to engage in talks away from the city and allow an atmosphere to develop of teasing out problems and finding solutions. (Management representative)

The negotiations were intense and facilitated by the LRC; they lasted three days and nights. SIPTU deployed forensic accountants to examine all expenditure line by line. The union insisted that the company's owners justify the cost reductions line by line. The negotiation process demonstrated a willingness to have social dialogue and reach an agreement. It was not apparent at the time of the company's initial ultimatum that there would be room for manoeuvre or room to facilitate an agreement. One union representative commented that the union attitude and approach seemed to impress the owners and make the talks serious and meaningful and said the following:

The serious or 'mature manner' [as the management put it to them] in which SIPTU approached the talks convinced 'venture capital' that they wanted to save the plant from closure. Our main aim was to save jobs, core pay and get a deal that could work. We kept members informed every step of the way through the union Facebook page. The deal that was made was a hard one to bring back to the plant as we had to surrender many of the extras built up in good times. It was a success for our union and proves the point that we are for jobs not just up for a scrap. (Union representative)

Local managers described the venture capital fund company's ultimatum as 'coming from left field'; they were unaware of the actual contents of the cost savings demands until the day of the announcement. One outcome of the agreement reached was that local managers were given an annual budget to run the plant, making them wholly responsible for day-to-day activities, when previously they had required head office approval for even minor expenditure. The HR manager felt the plant budget gave local management more control over the workings of the plant, if not its destiny. Managers at the plant firmly believed that the factory would have closed if there had not been union collective bargaining. The HR manager said:

There is no doubt that the manner in which the unions conducted themselves in the negotiations was very important in convincing our parent group that they wanted the plant open, were reasonable and would work the deal struck. ... Could the company have survived without collective bargaining? No, is the short answer and there are other closed plants elsewhere in the group in recent years to prove that point.

6.5 MedivCoIrl

MedivCoIrl is an American-owned multinational, founded in 1949. The company developed the first ever battery-powered external pacemaker and is today known for cardiovascular and cardiac rhythm medical devices used to extend life through hospital treatments and operations worldwide. Globally, *MedivCoIrl* employ about 40,000, of whom 2,400 workers are located at the Irish plant. Of these about 1,400 are hourly-paid workers, 80 per cent are members of SIPTU, which has a closed shop agreement for collective bargaining. The other 20 per cent of hourly paid operatives are agency staff supplied by an outside contractor firm in recent years. These workers are not unionised (or at least *MedivCoIrl* do not recognise them if they are) as agency workers are not part of the closed shop agreement. The remaining 1,000 employees are white-collar, professional and technical staff that are traditionally non-union. Three respondents were interviewed (shop steward x1, HR manager x1, full-time SIPTU official x1).

The crisis and reforms have had minimal direct impact at *MedivCoIrl*, although some restructuring has been in evidence and bargaining processes and issues subject to negotiation have undergone change. Collective bargaining in the plant is best described as vacillating process that is both 'adversarial' and 'cooperative' between management and SIPTU. There is a history of referral of issues to state agencies (for example, Labour Court, Labour Relations Commission) for mediation and conciliation. In reality, these were bargaining tactics either by the union or management, seeking external verification of positions, and local negotiation would resume to finalise details post-LRC or Labour Court recommendation on a given issue (for example, pay, working time, flexibility, short-term contracts). Both the HR manager and the SIPTU convenor spoke favourably of the role of government agencies in helping to persuade their respective constituencies of their bargaining positions.

If a deal is about to go down, what do you do next? Getting that sort of external option can help persuade the workforce of the need to get to a negotiated recommendation at the end of the day. (HR manager)

There have been several changes in bargaining arrangements and processes over recent years. First, while the company locally has good relations and would previously have sought advice and services from

external consultancies or employer bodies (such as IBEC) concerning bargaining issues, this activity had diminished. In the main, external survey data would provide market research on, for example, wage rates, ahead of negotiations, but little direct external negotiating support was provided to the company. Management tended to make ongoing efforts at direct bargaining at the enterprise level, often focused on additional benefits (non-pay elements) around the minima of those negotiated in national partnership agreements. For example:

National partnership only ever existed as a guide for us. We usually paid above any national agreement anyway. The collapse of social partnership never really impacted us.

A second broad change included the integration of union bargaining machinery with a non-union consultative forum. Plant-wide issues would be referred to a 'Staff Dialogue Group' (SDG) that included management, union, but also non-union employee representatives. For example, if SIPTU negotiated changes to pensions or holiday entitlements which might impact on all (including non-union) staff, the issue would be referred to the SDG before implementation. There are three potential impacts from the SDG process but they have yet to be fully analysed over a period of time. One is that the process could weaken union bargaining power with the employer as it may dilute the union constituency to include non-union representatives. Another is that it may diminish negotiation which has a definite agreement-making function to a process that seeks views and is only consultative by nature. The third change is related to the employer's expectations and demands for greater concessions and conditions as part of pay agreements. The HR manager explained:

We kept just giving pay rises as part and parcel of the Celtic tiger boom years. In 2009 that all changed. We had a pay pause and then in 2010 honoured the 2.5 per cent part of the national deal. Then we started asking for more back. We took away the bonuses and looked for savings and staff reductions and efficiencies ... 2014 was the most difficult set of negotiations and a lot has been agreed we would never have got before the crisis.

MedivCoIrl is one of the companies targeted by SIPTU in its '2 per cent' pay campaign. Negotiations concluded in June 2014 produced a pay settlement of just over 2 per cent, covering a three-year period (for

example, 2.5 per cent in year one; 2 per cent in year two; and 1.7 per cent in year three). At the same time, a range of conditions became part of the final agreement, reflecting a higher degree of ‘concession bargaining’ on the part of the union and ‘renewed managerial confidence’ to demand more. In summary, the agreement included:

- pay rises as indicated above (2.5 per cent, 2 per cent and 1.7 per cent in the three years);
- new entrant rate of pay (lower than for existing workers);
- cuts in bonus and other related premium payments;
- recode sick leave as annual leave days (at local department manager’s discretion);
- summer holiday pay to be paid weekly;
- work restructuring and new ‘lean manufacturing’ working practices;
- agreement that agency workers, after one year’s unbroken service, can become direct but temporary employees (on new entrant lower pay scale). When they have served two years and eight months, they may then be eligible to become permanent employees.

Finally, the fact that agency workers could eventually become *MedivCoIrl* employees represents something of double-edge sword for SIPTU. On one hand, there was unease at agreeing a new entrant pay scale that effectively meant future workers would be on a lower rate of pay compared to existing employees. However, once made direct employees these workers could then avail themselves of union membership and be afforded bargaining rights under the closed shop agreement. Thus management secured a reduced hourly rate for new entrants, while SIPTU were able to extend membership among previously unorganised agency workers. The shop steward explained:

Our aim as a union has been to get agency workers into membership. Once unionised they have more rights and we can get them onto more permanent contracts.

The adversarial dynamic to local bargaining at the *MedivCoIrl* plant also signalled a number of intra-union tensions. The local shop steward felt that the SIPTU campaign of rolling out, incrementally and progressively, the 2 per cent pay campaign across manufacturing has cost workers at the plant. In the concluding stages of the 2014 agreement, noted above, it was explained that a pay rise close to 9 per cent over three years was

on the point of being finalised (averaging 3 per cent per annum). In the meantime, at national level SIPTU had made public the successes of their 2 per cent campaign. As a consequence, management pulled back and withdrew the 3 per cent average annual rise and only offered 2 per cent. The union convenor remarked:

SIPTU let us down a lot here. Some senior SIPTU people wanted to tell the world and their dog how great they are at getting 2% 2% 2% and that's enough for people. Management couldn't wait to throw that back at us and would then only cough up the 2%, saying that's all SIPTU wanted. It presented a sort of national pay norm when we were getting a better deal. We virtually had 9% in the bag and SIPTU announcements cost us that.

7. Discussion of emerging themes

In this section we discuss a number of the themes that have emerged from the research in terms of responses and adaptation to the new economic situation brought about by the recession and the end of national social partnership in Ireland. The performance of the manufacturing sector in Ireland throughout the crisis has been uneven, with those associated with the construction sector being extremely badly affected. The pharma sector was largely untouched by the recession, but had the emerging challenge of the 'patent cliff' to take into account. On the other hand, two of the case studies in this report felt forced into significant restructuring; one case in the food and drink sector and the other one in the metal sector manufacturing large-scale refrigeration units. Both suffered a dramatic and immediate loss of orders as their product markets plunged from 2008–2010, although they have been experiencing a recovery phase since late 2013.

Three main themes emerged from the research. The first is the *government responses* to the crisis and their various commitments to the Troika MOUs and their consequent long-term implications for the framework of the Irish labour market and its regulation. The second is the role of localised social dialogue, which will be described in terms of *Varied employer preferences* and *union responses*. The third theme is the degree of *continuity and change* that has emerged in the Irish industrial relations system and how these will shape the conduct and pattern of collective bargaining into the future.

7.1 Government responses

The main response of the Irish government to the economic crisis was to seek a bailout of funds from the Troika and to implement the terms of the 'Economic Adjustment Programme'. The most visible of these are additional labour activation measures run to promote training of the unemployed by various government departments. On four commitments given to the Troika there have been mixed outcomes. The 2010 decision to cut the minimum wage by 1 euro per hour to 7.65 euros was part of the Troika MOU in 2010. The Finance Minister said at the time 'it is one of the highest in Europe and not sustainable in the time of crisis' (Dail 2010), but this measure was reversed by the newly elected government in 2011. This action indicates that the Irish government did have some latitude concerning reforms outside the actions taken on fiscal budget constraints.

The three other commitments within the framework of crisis reform include: changes to the model of REA/JLC wage setting; a new state workplace relations body to regulate industrial relations; and anticipated legislation on collective bargaining; all of which will have significance in terms of creating a new industrial relations architecture. Although the broad outlines were known by the end of 2014, any specific impact from new structures or legislation must await further research assessment in the future. It is worth noting some of the challenges and context the Irish government will face in pursuing labour market changes that were committed to the Troika. First, employers twice used the courts to challenge the processes and constitutional standing of the REA/JLC system, which led to new legislation for reform of bargaining and wage setting determinations, much of which is likely to favour employers and weaken workers' rights and protections, especially for those in low paid sectors. Although the government has indicated the value of maintaining the protections of the REA/JLC system, employer groups are highly organised and continue to lobby for their complete abolition, propagating the narrative that such wage regulations are *anti-business and anti-job creation* (RTE 2014). Second, the remit of the new workplace relations commission appears to be designed to deal more with individualised rights and may not be in a position to deal adequately with collective bargaining challenges and issues. It appears that there is widespread acceptance in Irish industrial relations circles for a reformed and streamlined industrial relations architecture, although its success

will be judged not just on efficiencies but on how it resolves collective workplace issues in practice. The third commitment is a thornier one to deal with; firm proposals to reform the legal position of collective bargaining had not been publicised by the end of 2014, although there is a commitment in the 2011 Programme for Government to do so, and is mentioned in Troika reports on Ireland. The data herein suggest that the broad reforms and specific changes agreed with the Troika on the three commitments were not in conflict with the prevailing opinions in government circles. However, the reporting timescales demanded by the Troika monitoring teams did force prompt legislative responses from the Irish government.

Broadly, there have been two phases of the impact of the crisis on Irish manufacturing: the initial shock or survival from 2008–2010 and the subsequent adjustment and restructuring from 2011 onwards. The absence of national social partnership structures from 2010 created a vacuum of processes and mechanisms for the conduct of collective bargaining. The return to localised collective bargaining has filled that vacuum and there have been various outcomes and patterns with regard to the forms of collective bargaining, which generally reflect the two main phases of the impact of the crisis as experienced at company level.

In the unionised firms reported on here there was a tradition of collective bargaining and the evidence that emerged was that there was no attempt or even a desire on the part of the various management groups to use the crisis to move in a de-unionised direction. Indeed, the evidence from *MedCoIrl*, *FoodCoIrl* and *MetalCoIrl* suggests that the role of collective bargaining was an essential component in achieving cost savings, implementation of restructuring and convincing corporate head offices of the continued viability of each plant. Therefore, the role of local social dialogue through established mechanisms of collective bargaining between employers and trade unions was instrumental in firms' surviving the initial impact of the crisis and in positioning firms for the future.

There is no doubt that the manner in which the unions conducted themselves in the negotiations was very important in convincing our parent group that they wanted the plant open, were reasonable and would work the deal struck ... Could the company have survived without collective bargaining? No, is the short answer' (Management representative)

7.2 Employers' responses

Employer responses to the crisis in the firms studied here displayed a variety of preferences with regard to how to adapt to the sudden downturn in their product markets and how they responded organisationally. These we call *varied employer preferences*, which were in many respects 'market'-driven and reflected a global neoliberal economic paradigm. At the same time, collective bargaining and negotiation affected employer options. For example, *MedCoIrl* wanted agreements on cost savings and restructuring to be concluded in a very short time, potentially included plant closure, which were changed through collective negotiations. In contrast, *FoodCoIrl* were engaged in union consultations for 18 months to complete their substantial restructuring. At *PharmaCoIrl* and *MedivCoIrl*, who were largely unaffected by the crisis, management agreed a negotiated 2 per cent pay rise, but for the first time added new clauses on performance and productivity. Thus even firms that were performing relatively well during the crisis managed to obtain concessions from workers, but did so by using collective negotiations as a way of reaching agreement and implementing change. Management at *MetalCoIrl* initially responded to the crisis by informing unions that there was a serious possibility that their corporate head office would close the plant unless drastic costs saving actions were taken. The response from the unions was to engage management in detailed talks which yielded agreement to reduce the working week, lay off temporary and contractor workers and introduce a voluntary redundancy scheme. *MetalCoIrl* have survived the crisis and are planning to expand their plant; there has been a return to adversarial collective bargaining between management and unions with evidence that at least nine cases were sent to the state industrial relations bodies for adjudication in 2013 and 2014.

7.3 Responses from unions

The trade union response to the crisis in its various stages can best be described as *union strategic pragmatism*. In the initial phase of the crisis in *MetalCoIrl* and *FoodCoIrl* in particular the unions were forced into shock or survival bargaining to save the plants from closing; once their situations stabilised the need for major restructuring and cost savings became their main focus. In the latter cases and with *MedCoIrl* in 2014, trade unions had to face the strong possibility of plant closure and the ensuing agreements did surrender gains they had previously

negotiated. To achieve the scale of the cost savings needed at *FoodCoIrl* and *MedCoIrl*, for example, there was a filleting of collective agreements to protect jobs and core pay. This process varied from company to company, depending on the extent of their individual crisis.

At company level, trade unions dealt with the practical issues around survival and restructuring that arose through localised social dialogue, with a degree of concession bargaining evident in some instances. In the research the main feature of *union strategic pragmatism* was the development and roll-out of the SIPTU ‘2 per cent strategy’ as a means of obtaining pay gains for union members and restarting a form of traditional adversarial bargaining. The quiet, under the public radar and deliberate targeting of the ‘2 per cent strategy’ at specific companies from 2010 onwards, incrementally rolled-out through the manufacturing sector to obtain over 220 pay agreements by the third quarter of 2014 covering 50,000 workers has by and large been successful. It was a pragmatic strategy that was quietly handled at company level to avoid hostile media attention; importantly, a moderate pay rise was sought. For unions the ‘2 per cent strategy’ was a very important strategic national move that asserted a return to gains for workers in contrast to the retrenchment or survival role of unions seen in the early part of the crisis.

Localised social dialogue has long been a feature of Irish industrial relations, even within the framework of national social partnership. Some trade unions want the return of some form of national social dialogue forum to advance national issues, such as those on pensions and collective bargaining. From the employers’ side there did not appear to be any wish to return to any form of national partnership. Nonetheless, the continuity of national partnership mechanisms was reflected in the two private sector industrial peace protocols between IBEC and ICTU. For its part the government indicated to the wider society, by agreeing to retain the REA/JLC system and by concluding the public sector agreements, that they still did not wish to see forms of partnership or national wage setting mechanisms eliminated in the public sector.

8. Summary and conclusion

The period under review in this report – 2008–2014 – witnessed dramatic changes in the economic and political fortunes of the Irish government.

The actions they took as a result of the economic crisis have put immense economic and personal burdens on the Irish people. Ireland was seen by many as an economic underperformer compared with its European neighbours in the post-war period (EU 2012). The subsequent era, when the country was known as the ‘Celtic tiger’ – from the mid-1990s to 2008 – saw employment grow from 1.1 million to 2.1 million (in 2007) and wages and salaries grow at significant levels and traditional emigration turn to net immigration (Whelan 2014). In 2007 it would have been unimaginable that a sovereign Irish government would have asked for a financial bailout, that unemployment would rocket to over 15 per cent and ‘austerity’ imposed through emergency legislation would reign throughout Irish society for the following seven years – and is likely to continue for another decade or more.

Several underlying factors have contributed to the impact of the changes in Irish industrial relations: the collapse of national-level social dialogue; a wave of employer challenges to the legal authority of statutory wage setting arrangements in some sectors (for example, the JLC/REA system); a new mood of employer self-confidence with pay freezes, pay cuts and job losses; and finally, but by no means the least significant, the government commitments entered into with the Troika on labour market reforms. These factors of change have in one very important sense turned the model of social dialogue and bargaining upside-down; that is, from a highly centralised system to a new decentralised and localised bargaining arrangement, which is now focussed more directly on local actors and workplace activists.

However, at the same time, there is a strong undercurrent of continuity. Above all, the evidence points to a sustained durability of robust collective bargaining in different parts of the manufacturing sector. Some unions have successfully adapted to the challenges of the crisis by devising a protective wage rate strategy through the coordination of a constellation of single-enterprise bargains based on a shared goal of a 2 per cent pay rise to offset austerity and hardship. SIPTU’s campaign in this area was first rolled out in a relatively quiet, piecemeal manner by targeting key manufacturing (mostly multinational) employers. The objective appears to have been highly successful, with over 200 agreements made with employers by late 2014, which in turn has had a spillover effect on other parts of the economy (in retail and services, for example). Likewise, employers have adapted to a new decentralised

industrial relations architecture with tighter collective agreements focussed on core pay.

The overall response in Ireland can therefore be defined as containing elements of both ‘structural change’ and ‘process continuity’. That is to say, the structural platform for social dialogue has witnessed major change, from a national corporatist model to new local and enterprise-based bargaining. Notwithstanding such fundamental change, the ‘process’ of collective bargaining continues to add value by achieving agreement, consensus and wider understanding for workplace change. Social dialogue itself remains creative and innovative and is pragmatically and politically much more advantageous than unilateral employer imposition.

The risk is that Ireland’s system, unlike its European counterparts, remains predicated on a permissive voluntarist arrangement between the social partners. Such voluntarism means that social actors may – and indeed have – simply walk away from the goal of engagement through social dialogue. There is, therefore, a counter argument – and evidence – that a more regulated system to mandate social dialogue can enhance creativity and problem-solving to facilitate deeper and more supportive change.

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All links were checked on 3.12.2015.

Annex: Table 1 Case study workplaces: interviews, context and background

Case studies	Employers' association membership	Workforce size	Workers representation	Impact of crisis	Significant restructuring	Company agreement	Interviewees
Large metals/ machine (MetalColtr)	IBEC	850	UNITE & TEEU	Significant	Significant and crisis-led initially	Yes	Management, trade unions, shop stewards
Large food & drink (FoodColtr)	IBEC	200	SIPTU & TEEU	Significant	Significant and crisis-led initially	Yes	Management, trade unions, shop stewards
Large pharma (PharmaColtr)	IBEC	650	SIPTU & TEEU	Minimal	Minimal, influenced by new ownership	Yes	Management, trade unions, shop stewards
Large medical devices (MedColtr)	IBEC	1,000	SIPTU & TEEU	Some	Significant. Partial crisis-led. Influenced by new venture capitalist buy-out planned closure (aborted)	Yes	Management, trade unions, shop stewards
Large medical devices (MedivColtr)	IBEC	2,400	SIPTU	Minimal	Minimal. Status quo prevails	Yes	Management, trade unions, shop stewards

Chapter 4

The reform and impact of joint regulation and labour market policy during the current crisis: Italy

Sabrina Colombo and Ida Regalia

1. The traditional pattern of labour regulation

Consistently with the substantial voluntarism of the Italian system and infrequent direct state intervention in industrial relations, collective bargaining remained long unregulated and largely dependent on shifting power relations between the social partners which left broad latitude for change in practices and informal arrangements. Over time, besides a highly centralised level of negotiation – that of cross-sectoral agreements between the union and the employers' confederations signed when necessary to address very general issues – the bargaining system assumed a bipolar character centred around two main negotiating levels: the national industry (or sectoral) level – devoted to the periodic definition of pay and conditions valid for an entire industry or sector – and the company or plant level – devoted to negotiation (usually ameliorative) on aspects of the specific workplace. It was not until the fundamental tripartite agreement of 1993 that a sufficiently clear and steady specification was given to the competences, procedures or issues pertaining to the two levels. Consequently, the balance between centralisation and decentralisation frequently changed according to circumstances and to power relations.

More generally, a distinctive feature of Italy's industrial relations system, was - and to some extent still is - its low level of institutionalisation (Cella 1989). Trade unions and employers' associations, which were organisationally weak in the immediate post-II World War period, but were able to acquire large followings and strong organisational capacity and influence over time, have remained up to now free voluntary organisations regulated by private law, and the relations between them have continued to be largely determined by power relations, rather than

by stable recognition of their role in regulating the distributive conflict (Streeck 1993).

This had many consequences. In organisational terms, the arena of representation continued to be relatively open to newcomers – and not only on the side of labour. This helped the rank and file to challenge the strategies of the larger organisations, as exemplified by the growth of ‘autonomous’ unions – especially active in the particularistic representation of occupational and other small groups in services (Bordogna 1994) – and by the recurrent emergence of opposition to the main organisations, which hampered the development of stable forms of cooperation. As regards action, in the absence of a clear definition of mutually accepted procedures, recourse to conflict was encouraged as a way to test power relationships; and bargaining repeatedly shifted from the centralised to the decentralised level and back again, according to circumstances, while issues overlapped at various levels according to the climate and market power of specific groups or categories of workers (Regalia 2012: 389).

It has been said that Italian industrial relations developed in a manner characterised by a dual tension (Regalia and Regini, 1998): that between the official (often intransigent) positions of the actors public discourse at the centre of the system and the actions (often more pragmatic and adaptive) undertaken in the periphery; and that between voluntarism and scant formalisation of relations between the labour market organisations and their high institutional involvement in the *de facto* administration of social policies. In a situation of voluntary trade unionism, where closed shops were never possible, nor were strike funds ever available, and in which no extension mechanisms of collective agreements did ever exist either, the unions, and more generally the social partners, because of their strong following acquired over time a relevant capacity of influencing policy-making in the social and economic fields. Therefore – it has been argued – the labour market regulation in Italy has been characterised by a relative strong role of social partners (Colombo and Regini 2014).

Until the late 1960s, policy-making in Italy was characterised by unilateral initiatives of governments and by external pressures from social partners. Until that period, the social partners had not developed structures and strategies suitable to directly affect policy-making. On the one hand, up to the mid-1970s governments were able to curb inflation

by means of unilateral monetary and fiscal measures. On the other hand, trade-union confederations traditionally had little desire, even less the ability, to build consensus on wage restraint, not least because of their low levels – then – of workplace representation. Even when, since the early 1970s, the unions were able to increase very rapidly their membership as well as their workplace organisations, their strategy of action continued to be aimed at exerting external forms of influence on decision-making processes by means of collective mobilisation.

However, by the end of that decade, the international economic crisis generated very high rates of inflation and rising unemployment in Italy, creating the conditions that made concerted agreements on economic policy highly desirable if not necessary. Inflationary pressures obliged governments to adopt measures contrary to those which they had imposed unilaterally (monetary and fiscal policies) in previous years (Salvati 2000). At the end of the 1970s, Italian governments were formed by unstable majorities consisting mainly of ‘centre-left-oriented’ party coalitions with a certain connection with the unions.

Hence it became increasingly crucial for them to negotiate economic policy measures – especially incomes policies – with the social partners. Both employers’ associations and trade unions regarded such political negotiation as a second-best solution, but neither could pursue their interests the way they used to – i.e. for the unions, wage improvements by collective bargaining; for the employers, by transferring high labour costs onto price increases. It should be noted that, in Italy, the unions are divided along political lines and often in competition. Until 2002, however, they were able to find ways to substantially overcome their divisions, so as to make the search for concerted solutions possible.

Thus the period of ‘political exchange’ began. The outcome was the enactment of the so-called ‘bargained laws’ during the 1970s – a law on the restructuring of firms in 1977, a law to support youth employment and the law on vocational training in 1978 – and the conclusion of tripartite agreements during the early 1980s – on incomes policies in 1983 and on labour market flexibility in 1984, not signed however by the largest trade union confederation, Cgil. After that period, tripartite negotiation entered a crisis until the early 1990s. Influential analyses of social pacts (Regini 1995) have pointed out that these first experiences in the late 1970s and early 1980s were disappointing and led the actors to

abandon tripartite concertation for about a decade. The two subsequent tripartite agreements of 1992 and 1993, however, were generally greeted as very successful in reaching their goals as well as having the latent function to partially institutionalise the highly voluntarist system of Italian industrial relations. This success of the method of concertation accounts for all the actors' greater willingness to rely on it as a consensual and effective mode of governance. Thus, in 1995, 1996 and 1998 social pacts were reached again in different policy areas. But their effectiveness progressively declined, and they slowly turned into little more than symbolic action, indicating all the actors' willingness to cooperate towards achieving the pursued public good – until even their symbolic value was seriously undermined by the breakdown of the unions' unity in occasion of the 2002 Pact.

The 2002 Pact (not signed by Cgil) and the ensuing reform of the labour market led to a period of crisis of concertation. This crisis was mainly based by the willingness of the centre-right government to involve in the policy making only social partners with a similar governmental view, thus weakening the method of concertation as an instrument of an encompassing decision-making process, at the same time substantially prompting the end of trade union unity. Following the victory of the centre-left coalition in 2006 elections, the dialogue between the social partners resumed and, given the country's socio-economic crisis, they immediately pressed for reaching a new social pact. The 'Pact for Welfare' was finally signed in 2007. It has been termed a 'new generation pact' (Carrieri 2008), mainly because of the issues that were the subject of the negotiation. In fact, the concertation agenda for the first time included the topic of the management of flexible forms of employment and the reform of welfare provisions aimed at a greater inclusion of previously excluded categories of workers.

In terms of policy content, the negotiation over wages and incomes policy had been incremental until the July 1993 Pact on the structure of collective bargaining. Since that pact, a better distinction between the pay components to be dealt with at the national sectoral level was introduced. The change affected especially company-level bargaining, where the traditional negotiations on 'fixed' components had to be replaced by the negotiation of variable bonuses based on company performance. Concerning labour market policies more specifically, in the early 1990s the influence of the social partners were limited to

generic pledges, while it came to the forefront with the 1996 Pact for Employment, the 2002 Pact for Italy, and the 2007 Pact for Welfare. From this point of view, trade unions and their role in regulating the economy acquired a certain importance *vis-à-vis* the challenges that European economies had to face regarding the need for greater flexibility in the labour market (Regini 2000).

In 1999, the OECD classified the Italian labour market as one of the most rigid in Europe because of its excessive employment protection. In 2004, the OECD revised its estimate – because its analysis of the costs of worker dismissals was based on a serious calculation mistake – and Italy is now considered one of the countries with intermediate labour market rigidity. More specifically, considering the ‘overall EPL (Employment Protection Legislation) index’ of the main European countries as a synthetic measure of their labour market rigidity, in 2003 Italy appeared to be characterised by an intermediate level of rigidity as far as the regulation of temporary employment is concerned. However, the index remained rather high if the measures regulating worker dismissals were considered.

If we evaluate the regulation/deregulation trend of the Italian labour market, we can easily realise that, up to the last few years, interventions regarding dismissals (including the shock absorbers system and active policy measures) were virtually non-existent. On the contrary, we can observe numerous interventions aimed at regulating and facilitating the entrance into the labour market, through a progressive lowering of previous restrictions, culminated with the Law of 2003 that further expanded the possibility to resort to a large variety of atypical forms of employment. Notably, what characterises these interventions aimed at those first entering the labour market is their being substantially approved with the consensus of the trade unions. Most of these measures were in fact negotiated between the social partners (either through national tripartite concertation or bilateral collective bargaining). The exception was represented by Law 30 of 2003 through which the social pact of 2002 was put into effect. In this case, the largest trade union confederation (CGIL) not only did refuse to sign the tripartite agreement, but it also subsequently called a series of general strikes, especially targeted against the reform of the legislation on unfair dismissals (as provided by Article 18 of the Workers’ Statute) that the pact had established to radically change.

On the contrary, the last social pact, signed in 2007 under a centre-left government, intended to offset the most negative effects of the increased flexibility in labour market entry. On the whole, then, at the outburst of the crisis in 2008, the increased flexibilisation of the Italian labour market regarded mainly those first entering the labour market. In most cases it had not just been the result of unilateral interventions by the governments.

More generally, at the beginning of the new century, the role of the trade unions in socio-economic regulation appeared to be at an important cross-road all over the European countries. The decrease in the number of unionised workers had weakened the trade unions' bargaining power and had made them more dependent on the decisions and support of other actors in the political and industrial arena. This is mainly due to changes in the labour market (expansion of the tertiary sector, spread of fixed-term contracts, higher unemployment, etc.) (Visser 2005). Within this context, the Italian case is however particular. While in many European countries the trade union density had been declining, in Italy it remained around 35 per cent, far above that in countries such as Germany and the overall OECD average that register values around 18 per cent (OECD 2011). In the manufacturing sector union density was even higher, accounting for around 40 per cent (Baccaro *et al.* 2003). Moreover, after the reform that took place in 1993, trade unions continued to be quite strong and extensively rooted within workplaces, also from this point of view continuing to be an important component of the overall Italian social model.

As regards collective bargaining, national sectoral collective agreements (covering *de facto* almost 80 per cent of workers even in absence of extension mechanisms) are still a relevant method to define working conditions, as well as its company-level integration. Company-level bargaining has never had a large coverage, instead. It remained fairly limited over time and concentrated mainly within medium-to-large companies. Nearly all companies with fewer than 20 employees are not covered by such agreements. Among sectors, manufacturing has recorded the largest contractual coverage, while recently there has been an increase in the credit and retail sectors (Casadio 2010).

1.1 The Italian economy and the advent of the crisis

The international financial and economic crisis which began in 2007 and affected Italy mainly since the end of 2008, erupted in a context initially characterised, from the economic point of view, by an economy already in crisis (as table 1 shows, the GDP growth was significantly below the EU average even before the crisis), and from the industrial relations' point of view (as we shall see in the next section), by the persistence, indeed the exacerbation, of unsolved problems, but also by prospects of renewal in the near future (Regalia 2012).

Italy has historically had the highest public debt of the EU member states. This makes the problem of reducing public spending much more macroscopic and urgent than in the other EU countries, while maintaining the levels of welfare provision is a very critical and highly controversial issue (Colombo and Regini 2014). As we can observe in Table 1, the public debt and the distance from the EU average increased significantly in recent years.

In any comparative analyses of political economies, Italy is usually depicted as a deeply dualist country. The Centre-North and the South differ widely in terms of economic performance, development and well-being, as well as in terms of prevailing social norms and values. One would expect that, after more than 150 years of political unity, the interventions by both the national state and the societal institutions taken in order to correct the inequality of outcomes typical of any market economy should have largely attenuated such disparities. This has not been the case, however. The territorial differences have persisted or even increased over time. Suffice it here to mention some recent data on basic economic indicators. According to Eurostat (2011), the gap between the regions with the highest and the lowest GDP per capita is greater in Italy than in any other major European economy (excluding the London and Paris regions) (Pavolini 2011). Also the relative poverty rate varies dramatically, ranging from a level of 4.9 per cent of poor people in the North to 6.3 per cent in the Central regions to 23.0 per cent in the South (ISTAT 2011). The unemployment rate is more than double in the South (13.3 per cent) than in the North (5.9 per cent) (ISTAT 2010). Finally, if we take patents as an indicator of economic innovation, the data are even more striking: in the period 2000-2004, only 688 patents were registered in the South, against more than 9.818 in the North (Ramella and Trigilia 2010).

Table 1 Italian economic indicators

	2007		2008		2009		2010		2011		2012		2013	
	Italy	EU28	Italy	EU28	Italy	EU28	Italy	EU28	Italy	EU28	Italy	EU28	Italy	EU28
GDP (percentage change)	1.7	3.2	-1.2	0.4	-5.5	-4.5	1.7	2	0.4	1.7	-2.4	-0.4	-1.9	0.1
Public debt and deficit (% GDP)	103.3		106.1		116.4	74.3	119.3	79.8	120.7	82.3	127	85.1		
Inflation	2	2.4	3.5	3.7	0.8	1	1.6	2.1	2.9	3.1	3.3	2.6	1.3	1.5
Unemployment rate	6.1	7.2	6.7	7.1	7.8	9	8.4	9.7	8.4	9.7	10.7	10.5	12.2	10.9
Unit labour costs (index 2005=100)	103.6	103	108.3	104.3	112.6	106.1	112.4	107	113.5	107.7	116	111.1		
Labour productivity (euro per hour worked)	32.6	31.3									32.2	32		

Source: Eurostat.

All over the country, the persistence of the economic crisis and the emergence of the sovereign debt crisis led to a significant worsening of employment indicators and increasing difficulties for companies. The austerity measures, inspired by the European Institutions in order to ensure the stability of public finances, have contributed to maintain a low domestic demand both for consumption and investments and worsened the overall prospects of the economy (Pedersini 2013). From this perspective it can be said that European Institutions had an influence on the consequences of the crisis. The only two indicators reported in table 1 in line with the EU average are the inflation and the Labour Productivity, while the labour costs growth and the unemployment rate are above the average especially after the advent of the crisis. It is not a surprise, then, that together with the need of controlling and curbing the public debt, a better regulation of the labour market has become a relevant issue in the reform agenda in order to tackle unemployment and companies' economic difficulties.

2. Actors involved in the process for the adoption of the reforms

Italy, with a public debt always above 100 per cent of GDP since the advent of the euro, is particularly exposed to any external shock affecting interest rates. This is why at the beginning of the crisis Italy did not, and could not, react with a substantial fiscal stimulus, apart from automatic stabilisers, as other EU countries did (OECD 2010: 106–110; 2011: 140). Three major austerity packages were approved under the Berlusconi government: in summer 2008, in late spring 2010 and – comprising two interventions – in July and August 2011. Between the July and August measures the crisis of the Italian sovereign debt escalated and the European Central Bank, in a letter at the beginning of August, pressed the government 'to take immediate and bold measures to ensure the sustainability of public finances'. In particular, the July 2011 package should be frontloaded by at least one year to reach a balanced budget in 2013. The government was also encouraged 'to consider significantly reducing the cost of public employees, by strengthening turnover rules and, if necessary, by reducing wages' – although measures in this direction had already been adopted in 2008 and 2010 (Bordogna and Pedersini 2013).

In November 2011 as a result of the exacerbation of the Italian debt crisis, Berlusconi's government was replaced by a technocratic government

led by an internationally recognised economist (Prof. Mario Monti). Since the beginning, the new government made proposals related to the restructuring of public expenditure to meet European requirements, but also to a labour market reform (as we shall see in the next section). This second aspect is only partly linked to the OECD indexes of labour market rigidity. It is more related to an internal debate started long before the advent of the crisis. The Monti government was supported not only by the other European countries leaders, but also by a parliamentary majority in a climate of national emergency. This led to a weakening of conflicting factions but also of the position of the trade unions. The premier's statements during that time were very critical on the role of the social partners in the policy-making. He explicitly said that concertation was no longer an efficient instrument for reforms, thus staying in line with the positions of the previous centre-right governments.

As regards the social partners' in front of the crisis and rising unemployment, cohesion consolidated among the trade unions and with the employers. Very soon, in 2009, the social partners were involved in the definition with the government of measures to support workers hit by the crisis. For this purpose, some forms of social shock absorbers were extended to cover also workers previously excluded by any kind of welfare provision. Thereafter, in early 2010, unions and employers began to meet to draw up a reform plan to be submitted to the government on seven critical topics: research and innovation, social emergency, simplification of public administration, the Southern Italy socio-economic condition, public spending, tax and productivity (Rinolfi 2010). However, the agreement – reached on all the issues except the last one – did not lead to concrete results in a political context characterised by the government's increasing inadequacy in facing the crisis. Nor did it directly influence the economic and social strategies of the subsequent Monti technocratic government (Regalia 2012).

3. The content of the reforms

3.1 Financial, labour market and pensions reforms

To tackle the Italian public debt crisis, the main interventions focused on the reform of the public sector – an issue that had already been on the political agenda since the 1990s - and on curbing public spending.

On the topic measures were taken by the Monti's government, but they would have been also carried out by the government settled after 2013 elections. Most measures affected public personnel, through across-the-board cuts or freezes aimed at reducing the main components of the total public sector pay bill. Some of them were provisions targeting wages and salaries, and others were aimed at reducing employment levels. Other measures, with indirect but important effects on sections of public employees, consisted in substantial cuts in financial transfers from central government to regions, provinces and municipalities. Moreover, in accordance with the Europlus Pact and the Fiscal Compact, the principle of structural balance of the public budget was introduced in the constitutional law of the Republic in April 2012, to take effect from January 2014 (Bordogna and Pedersini 2013). In addition, to reduce the public expenditure, the Monti's government approved a wide-range pension reform (L. 214/2011 and 2012/L.14). This reform was not negotiated with the social partners, as it had happened previously. The reform changed dramatically the eligibility criteria, by extending to all workers the contribution-based system (by which pension was to be calculated on the amount of contributions paid rather than on the amount of wages earned). This measure had already been introduced (and negotiated with the trade unions) in 1995, but only for those who started working after December 31st 1995.

Moreover, few months after the enactment of the Pension Reform, a complex labour market reform (L.134/2012 and L.228/2012) was approved that tried to increase exit flexibility intervening at two levels: reforming the rules on unfair dismissals, on the one side, but at the same time reforming also the system of shock absorbers, in order to counterbalance the effects of the reduced worker protection, on the other side. As already said, while on the side of entry flexibility rules had already been relaxed with a substantial support by the trade unions in the past, exit flexibility (i.e. dismissals) had continued to be a critical and hotly debated topic for discussion and conflict between governments (especially centre-right ones) and employers' associations on the one hand and trade unions on the other hand. The most controversial issue was a part of the Statute of workers (article 18) concerning the protection of workers from unfair dismissals.

Article 18 of the workers' Statute (Law No. 300 May 20, 1970), which applies to companies with at least 15 employees, stated that the

dismissal was valid only if it was for just cause or justifiable reason. In the absence of these conditions, the employee might recur to the labour court. Before the 2012 labour market reform, the judge - once recognised the illegitimacy of the dismissal - had to order that the complainant was reinstated in his/her workplace, maintaining the same working position occupied before the layoff, and had to be given wage compensation. Alternatively, the employee might accept an allowance equivalent to 15 months of the last wage, or an allowance established according to his/her length of service. Under the 2012 reform article 18 was changed. The new rules go beyond the automatism of unlawful dismissal and reconsider the previous provisions regarding the worker's reinstatement, distinguishing between three types of dismissal: discriminatory, disciplinary and economic:

- (i) The dismissal is discriminatory when determined by reasons connected to political beliefs or religious faith, to membership in a union and/or participation in strikes and other trade union activities, to sex, age, ethnicity or sexual orientation.

In this event, as provided by the previous legislation, the dismissal has to be declared invalid and the maximum sanction has to be adopted: i.e. reinstatement with integral compensation (equal to all lost wages and contributions).

The same rules apply in case of oral dismissal (i.e. with only oral communication), or when the dismissal happened to coincide with marriage, motherhood or fatherhood.

- (ii) The dismissal is disciplinary when motivated by the worker's behaviour. It can be either for 'just cause' - i.e. when the infraction is so severe not to allow any continuation, even temporary, of the employment relationship - or for 'subjective' justifiable reason, i.e. in case of major non-compliance of contractual obligations on the part of the worker.

The judge may decide that there are no valid reasons for dismissal in two events: because the fact doesn't subsist or because it can be sanctioned with a penalty otherwise. The judge can then decide whether to adopt, as a penalty, the reinstatement with compensation limited to the maximum of 12 monthly payments, or the payment

of a compensation for damages, amounting to 12-24 months wages, without contributions.

- (iii) The dismissal can also be motivated by 'objectively justifiable reason', i.e. for reasons relating to 'production activity, organisation of work and the regular functioning of it', as it happens for instance when the introduction of a new mode of production or a contraction of the market require the company to reduce the number of employees at a certain position.

If the judge finds that the decision is not justified by objective reasons, he/she may order the company to pay a compensation for damages from 12 to 24 months, according to the worker's seniority and the company's size. If, however, the judge believes that the dismissal is 'manifestly unfounded', he/she will adopt the same discipline of reinstatement due to disciplinary dismissal.

Besides the reformulation of article 18, the labour market reform introduced new measures to rationalise the social security benefits system (mainly with regards to unemployment benefits): the most important programmes were unified and generalised, while their previous generosity for specific categories of workers reduced, and the possibility to receive benefits was extended, at least in principle, also to workers with non-standard forms of employment.

The reforms of the pension system and of the labour market were the result of an almost unilateral initiative on the part of government that gave only very limited consideration to trade unions' opposition. In particular, the interventions on unfair dismissals had not been negotiated with the trade unions, while they were in line with the employers' associations' pressures for increasing exit flexibility. However, the trade unions' opposition was not against the whole labour market reform as such. The two main critics were, on the one side and from a procedural and symbolic perspective, that they had not been involved in the decision making process, and, on the other side and most importantly, that the shock absorbers reform appeared not to be based on a solid actual financial coverage, so that real support of workers after the reduced protections on dismissals was not guaranteed.

3.2 Collective bargaining and representativeness reforms

Even if the reforms introduced to tackle the crisis by the technocratic and other recent governments did not directly affect collective bargaining, they influenced however the general climate of the Italian social dialogue and consequently the framework of labour regulation. These measures were seen as a symbolic attack to trade unions' power on labour policies (Colombo and Regini 2014). As we have seen, on the one hand, the reform changed an important article of the 'Statute of Workers' (from many points of view a 'symbolic' law, enacted in a period of extensive collective mobilisation led by the trade unions); on the other hand, the trade unions had not been allowed to be part in the decision-making process as it generally used to happen in case of labour market reforms in the last decades.

From the point of view of labour regulation, the labour market reform has effectively increased the managerial power of intervention on exit flexibility, reducing workers protection, without intervening on possible improvements in terms of quality of work. All that has taken place in a framework of substantial unilateral intervention from the Government. At the level of industrial relations more in general – i.e. to do with long-standing issues not necessarily or directly connected with the crisis – tensions and divisions resumed among the trade unions on certain events with a strong media impact. One was the controversial reform of the collective bargaining system in 2009 – an agreement on the rules – achieved with an interconfederal agreement strongly backed by the government but not signed by the Cgil, which regarded it as excessively detrimental to the position reached unitarily among the trade unions the year before. Contested above all was the loosely defined possibility for company-level agreements to derogate from the national sectoral one.

Along with changes on the duration of contracts (from 4 to 3 years) and changes of wage increases determinants through the substitution of the criterion of programmed inflation with a consumer price index, the crucial topic was the possibility to derogate at company-level collective bargaining from provisions established at the national sectoral collective agreements. Point 5 of the agreement regards 'Arrangements for the governance of crisis situations and for the employment and economic development of the territory'. It provides that 'for the purpose of directly managing crisis situation or to promote economic development and

employment in the area, the national labour collective agreements may allow territorial employers' associations and territorial trade unions to reach agreements to modify, totally or partially (even on an experimental and temporary basis), single points of the economic and normative framework established by the national collective agreement. The possibility to derogate is based on objective parameters identified in the national contract, such as labour market trends, available skills and expertise levels, the productivity rate, the rate of initiation and cessation of productive initiatives, the need to determine conditions of attractiveness for new investment. In any case, the agreements thus reached need a prior-approval by the parties that signed the national collective agreement to be effective'.

The second event consisted of the controversial episodes that occurred in 2010-1 at the Italian Fiat plants of Pomigliano (near Naples in Southern Italy) and Mirafiori (at Turin in Northern Italy) following the imposition by the management of a radical reorganisation of work as its condition not to move production abroad (Pedersini 2011). In both cases, the proposal was not signed by the Cgil metal workers' federation, in a context of severe tensions and social conflict which dragged on for a long time and led to a profound change in the company's industrial relations practices, to Fiat's withdrawal from the national collective agreement and from the agreement on the in-company worker representation bodies (Rsu), and finally to its exit from the employers' association.

On the other hand, however, there ensued other (and much more numerous) events of entirely the opposite sign. In fact, to be considered is that, besides the media clamour that initially surrounded the split among the confederations – often described as marking the beginning of a new era characterised by the decline of the Cgil and by more cooperative and modern industrial relations – it was not at all clear what might be the consequences of a trial of strength with the largest trade union in a context still characterised by a low level of institutionalisation. As a consequence, the employers' representatives soon sought to establish informal contacts with the Cgil. Already from the autumn of 2009 onwards, soon after another important agreement was reached without the metalworkers' union affiliated to Cgil, a period of unitary agreements (at both the sector and company level) in fact began, in which ironically all parties claimed to implement the rules that each considered the proper ones. This was actually a case of the system's ability to adapt pragmatically to the situation.

There was also an intensification of unitary agreements and experiments at other levels, especially in order to cope with the consequences of the economic crisis. These included bipartite cross-sectoral agreements at regional/territorial level among the social partners to boost the economy, defend employment, promote forms of local welfare programmes (an example being the pact signed at Treviso in Veneto in 2011); innovative agreements at company level (even in the metalworking sector) on restructuring and/or employment stability and negotiated forms of company welfare; and finally, widespread negotiation with the local authorities on anti-crisis support measures, life-work conciliation, welfare and other social issues, in which the trade unions act not only as representatives in the labour market but also as representatives of citizens more generally. Also reinforced was the joint management of training programmes, and of social and mutualistic welfare schemes, in bilateral bodies jointly with the management revue employers' organisations, especially for temporary agency workers and the artisanal sector.

Moreover, also in regard to the rules, an interconfederal agreement on trade-union representativeness and collective bargaining was reached in June 2011 between the trade unions and the main employers' association, Confindustria. The agreement, that was signed by all the three main trade unions, thus healing the split of 2009, was immediately interpreted as having a great potential, providing the basis for a more balanced and solid reconfiguration of relations among the parties (Regalia 2012). It appeared as a symbol of a new era in the Italian industrial relations, since it jointly established a set of agreed upon criteria to measure the trade unions' representativeness, as well as the rules on collective bargaining levels and the possibility of derogating from the national collective agreements.

A fundamental issue concerned the procedures to measure and certify the representativeness of trade unions to be admitted to the national collective bargaining. The devised mechanism relied on the combination of two criteria: on the one side, the size of each trade union membership – as it results on the basis of workers' contributions to their organisation that are automatically deducted from their payroll - to be certified by INPS (the National Social Security Agency); and on the other side the results obtained by each organisation at the elections of workplace representatives. Regarding collective bargaining, the agreement is in

some respects even more explicit on the issue of contractual derogations than the one signed in 2009. It established that company-level bargaining may suspend or reduce some of the arrangements reached at both the national and the previous company-level bargaining, even temporarily and/or experimentally; and it specified the conditions under which such derogations may take place.

However, soon after the June unitary agreement among the social partners, in September 2011 the Berlusconi government intervened unilaterally on the system of collective bargaining with a specific statutory provision: the art. 8 of law 148/2011. This article consists of five paragraphs. The first three are correlated and have character of general provisions, while the last two provide some requirements, in fact aimed at extending the effectiveness of the company-level agreements signed by Fiat. The ratio is still the flexibilisation of labour relations, to be pursued by company-level or territorial collective bargaining, labelled for the first time as 'proximity' collective bargaining to highlight its greater responsiveness to the interests of the parties. With some delimitations, the law gives such 'proximity' collective bargaining the right to derogate not only from the discipline established by national collective agreements, but also (and especially) from the legislation targeted to protect workers on a wide range of issues. This particular function - so far recognised to the collective bargaining autonomy - it is not assigned to the 'proximity' collective bargaining in general, but to 'the specific agreements with efficacy to all workers concerned' aimed at 'increasing employment, the quality of employment contracts, adopting forms of employee participation, the emergence of not regular work, to increase competitiveness and salary, corporate crisis management, investment and startups new activities' (Garilli 2012).

The social partners, reacted to this initiative by the government that they had not asked for with a joint declaration in which they committed themselves not to take advantage of the opportunities provided for by the law. At the same time they started a new negotiation on the best way to increase labour productivity that finally led to the interconfederal agreement on productivity of November 2012 - an agreement this that was not signed however by Cgil. The agreement further specifies the derogatory potential of decentralised bargaining and envisages the assignment of 'full autonomy' to second-level agreements on specific and important topics, such as work organisation and working time

(Pedersini 2013). It explicitly highlights the role of the social partners in making decisions on working conditions and adjustments to support productivity. The point 7 ('Collective Bargaining for productivity') of the agreement is particularly explicit on that: 'Social Partners consider that the collective bargaining between the more representative organisations, in single sectors, on a national basis, has to be carried out with full autonomy, even on subjects that affect directly or indirectly labour productivity and so far regulated mainly or exclusively by the law. Therefore Social Partners undertake to tackle with collective bargaining the most urgent issues'.

Among other things, actually they committed themselves: i) to devolve upon collective bargaining a full negotiating autonomy with regard to the issues concerning tasks and skills arrangements, as a prerequisite to allow the introduction of organisational models best suited to capture and promote technological innovation and the professionalism necessary for the growth of productivity and corporate competitiveness; ii) to redefine working hours schedules and their distribution according to flexible models in connection to investments, technological innovations and market fluctuations, in order to achieve the productivity goals established; iii) to devolve upon collective bargaining procedures to harmonise the use of new technologies with the protection of the fundamental rights of workers. Rather soon, however, in May 2013 a new unitary framework agreement on union representativeness and the validity of company-level collective agreements was reached again between the three union confederations and the main employers' association. The agreement, which was fully in line with the provisions of the interconfederal agreement of June 2011, was subsequently signed by other employers' associations. For the detailed definition and the effective implementation of the agreed upon provisions a further unitary framework agreement was finally signed in January 2014.

4. Analysing the impact of the labour market reforms

Within a general scenario characterised, as said, by the intervention and involvement of strong and influential trade unions, but within an industrial relations system based on the substantial voluntarism of the relationships among the parties, the regulation of labour was continuously subject in Italy to instabilities and uncertainty.

What happened since the outburst of the crisis – particularly with regard to the labour market reform processes that we have observed – has been in fact more the outcome of dynamic and ongoing debates taking place for a long time to improve the logic and performance of the system than a reaction to the advent of the crisis. The economic crisis has, if anything, accelerated some changes, but it did not lead to unexpected and really traumatic reforms to the existing system of labour regulation. The discussion on the flexibilisation of the labour market (mainly regarding dismissals) and the reform of shock absorbers had been going on since the 1990s and, as we have seen, some attempts to reform the system had been already initiated. Also the pension reform was part of a long process begun in the early 1990s. With regard to collective bargaining, on the one hand, the pressure towards more decentralised negotiations has been an objective of one of the three major trade union confederations (Cisl) and of the employers' associations for some time; on the other hand, the possibility of derogating from the provisions of sectoral collective agreements by negotiations at company level had been already agreed upon before the crisis in the chemical sector, a sector characterised, as we shall see immediately, by a strong tradition of cooperative industrial relations.

In this section we shall now focus on the impact of these reforms with a particular attention to what happened in the Italian manufacturing sector. This is a sector traditionally characterised by a paradox: on the one hand, from many points of view it is strong, competitive and successful; on the other hand, it presents major shortcomings, largely related to those of the national context in which it operates.

According to a report prepared in 2014 by Federmeccanica, the employers' association in the metal industry affiliated to Confindustria, since the crisis in Italy industrial activity has been reduced by a quarter; for metalworking the fall was of 30 per cent. Investments decreased by 26 per cent, reaching the lowest level since World War II. Seven million Italians are unemployed: a figure twice that recorded seven years ago. Families have cut seven weeks of consumption, equivalent to 5,000 euros per year. The total GDP decreased by 9 per cent and by more than eleven points per capita, i.e. 2,900 euros per head (Federmeccanica 2014). However, the national statistics office (ISTAT 2014) estimated that between 2010 and 2013, 51 per cent of manufacturing companies increased their total revenues. The trend in sales was divergent if we distinguish between the internal or the foreign markets: only 39 per cent of the total number of

manufacturing units increased domestic sales, while 61 per cent increased their sales abroad. In some industries, the performance on foreign markets was particularly brilliant. This is the case of the machineries (which registered a sales increase of 21.8 per cent abroad compared with a decrease of 15.5 per cent in the domestic market), pharmaceuticals (with variations of +22.9 per cent abroad and -5.6 per cent in the domestic market) and metallurgy (+14.2 per cent and -4.7 per cent).

ISTAT (2014) presents a typology of companies according to their market performances:

- The ‘winners’: these are companies that, even in the years 2011-2013, increased their revenues both in Italy and abroad. They account for over 4,600 units (equivalent to 18.1 per cent of the Italian manufacturing companies);
- The ‘growing abroad’: these are companies which on the one side increased foreign sales, but on the other side reduced the internal ones. They account for around 8,500 companies (the 33 per cent of the total);
- The ‘growing in Italy’: these are companies which achieved a good performance locally, but recorded diminishing revenues abroad. They account for a little more than 3,400 units (the 13.3 per cent of the total);
- Those ‘in retreat’: these are companies whose revenue declined both in national and international markets. They are over 9,100 units (the 35.6 per cent of the total).

This last type of companies represents the largest group in relative terms. The strategies adopted are mainly defensive, i.e. aimed at reducing their activity without strong intervention in innovation and requalification of employees. On the contrary, companies that hold on internal and foreign markets appear to be betting heavily on human capital and more generally on human resources management.

Investments in human capital is a strategy that calls into question the relationship with workers and therefore the possible involvement of their representatives in the management of working conditions. From this perspective, the theme of collective bargaining and its renewal has emerged both in official documents and in interviews with social partners. In particular, recently the main manufacturing employers’

association (Confindustria) stressed the need on the one side to maintain the national sectoral collective agreement, but on the other side to renew it through a new agreement with the unions, the objective being a reform to better adapt the collective bargaining structure to companies' needs and a wider diffusion of company-level bargaining. It has to be stressed that according to Confindustria these changes should take place in accordance with the trade unions and the national collective bargaining should maintain a central role in the regulation of labour. This commitment by the largest and more influential employers' association is also evident from the emphasis on the positive assessment and expectations regarding the already mentioned interconfederal agreement on trade union representativeness of January 2014, which can be found in the association's official documents and in interviews.

Certainly, the debate on the possible reform of collective bargaining structure and union representation, that is taking place for long now, is not without tensions and there are differing positions even within the same organisations of interest, as we shall see in the next paragraphs. However, the most important point for our discourse is the willingness of the social partners – and particularly the employers' associations – to renew the traditional instruments of the regulation of working conditions through a negotiation between them, without interventions by the state.

4.1 Fieldwork: actors and case studies selection

In the empirical analysis that was conducted to go deeper into the processes of change, the main documents prepared by the social partners and existing data related to the trends in collective bargaining were considered. Together with this secondary analysis 25 in-depth interviews were carried out with key informants.

Table 2 shows the distribution of the interviews between levels and sectors. At the national level, the focus was on the main organisations of interests. Selected were representatives of the general secretariats of the trade union confederations with the largest number of members (Cgil and Cisl). Similarly, on the side of the employers' associations, the focus was on the main and most influential confederation in the manufacturing sector with the highest number of affiliated companies (Confindustria). Concerning institutions, a former Minister of Labour was interviewed.

Table 2 **Distribution of interviews and case studies by level and sector**

Level	Actors		Number of interviews
	2 unions' top leadership representatives (Cgil and Cisl)	2 employers' association's top leadership representatives (Confindustria)	
National	Minister of Labour in charge in 2013		5
Sector	A. Metal: (traditionally a rule-maker in collective bargaining)	2 employers' association's top leadership representatives (Confindustria)	7
	3 unions' top leadership representatives (from the two main confederations: Fiom-Cgil and Fim-Cisl) + 1 employers' association's top leadership representative (Federmeccanica within Confindustria)		
Companies	Large	B. Chemicals: 2 unions' top leaders (Femca-Cisl; Filctem-Cgil); + 1 employers' association's top leadership representative (Federchimica within Confindustria)	4 interviews for each company (from management and unions)
	Medium	– Bayer – Sanofi-Aventis – l'Oreal	3 interviews (from management and unions)

The second level of the analysis focused on specific sectors. Selected was first the metal sector for its relevance in the Italian production system and for its tradition of rule-maker in Italian industrial relations. It is also a traditionally conflictual sector at the point that the last national agreements were not signed by all the unions Cgil. The second sector in the analysis is Chemicals. This industry is on the contrary traditionally characterised by a cooperative-type of industrial relations. It was the only one that introduced, long before the crisis, a more flexible articulation of the collective bargaining structure, including the possibility of controlled forms of derogations of the national sectoral agreement by collective bargaining at the company level.

Concerning the selection of the case studies, it has to be stressed that in the ongoing debate on collective bargaining in time of crisis a particular emphasis is being put on the behaviour of those companies that are recording good performance in the market and are interested in the consensus by workers, directly or through their representatives. According to the suggestions of our key-informants, therefore, case studies displaying good industrial relations or innovative arrangements were selected.

Table 2 presents the main features of the cases analysed. As we can see, in most cases some kind of so to say 'virtuous' collective bargaining process did take place, aimed at trying at the same time to keep jobs as much as possible within the organisation and also at improving some aspects of the workers' conditions, while facilitating the reorganisation/flexibilisation of production. This social aspect took particularly the form of negotiated welfare provisions (e.g., supplementary pension schemes, health funds) and/or initiatives to improve work-life balance.

The case in some way more traditional is Electrolux. This multinational company had developed an overall plan to reorganise production by which part of the activities in Italy had to be delocalised to other countries. However, the proposal not only was strongly contested by the unions, but it was also opposed by the employers in the interested area that started a kind of local mobilisation. After a long phase of discussion and industrial action, an important agreement was finally signed entailing a more flexible organisation of work and working time and restrictions in the benefits previously assigned the unions, while the company did not proceed with the delocalisation.

Table 3 **Main characteristics of the selected case studies**

Company	Size (number of employees)	Sub-sector	IR tradition Adversarial (A)/ Cooperative (C)	Union density
Electrolux	Multinational: In Western Europe more than 23,000 employees In Italy, 3,335 employees	Appliances	C (but some relevant conflicts especially when the crisis started)	50%
Tenaris-Dalmine	Multinational: 27,000 employees worldwide in Italy, 2,300 employees	Steel	C	70% (the majority are blue collars)

Recent company-level activities				
	Recourse to strike	Issues	Intervention of national and local government	Main results of the agreement
2014	Yes before the agreement. A lot of strikes and public opinion attention	<ul style="list-style-type: none"> - Organisation restructuring, without closing some plants - Investments in innovation - Some interventions in working time for some plants -Reduction of the unions'permissions (for meetings with workers and other unions' issues) - The company promise to avoid unilateral actions in reducing the personnel 	Agreement reached after the intervention of local representatives and the Ministry of Economy	<ul style="list-style-type: none"> - Saved jobs - Negotiated strategic issues for innovation - Even if the agreement reduced unions' permissions, it reinforced the role of unions in the reorganisation process
2014	No strong conflicts, but some strikes in every contract renewal	<ul style="list-style-type: none"> - Interventions on working time: flexibility on working time without costs for the company (no overtime work). It introduce a system of flexible management of worked hours (the surplus can be used for workes permissions and production stops); - Perspectives of tasks reorganisations 	No direct interventions of institutions in the recent bargaining process, but relevance of local institutions and national institutions during the past reorganisation process. The company is linked with local institutions.	<ul style="list-style-type: none"> - Continuity of Cooperative IR - Introduction of more flexibility in the organisation of work to face the crisis

Table 3 **Main characteristics of the selected case studies (ctd)**

Company	Size (number of employees)	Sub-sector	IR tradition Adversarial (A)/ Cooperative (C)	Union density
Cifa	Since 2014 part of a Chinese multinational (Zoomlion Haevy Industry) In Italy: 300 employees	Constructions tools and machineries	C (but recently adversarial due to the crisis)	25% (the majority are blue collars)
Bayer	Multinational: 113,000 employees worldwide; In Italy, 2,500 employees	Pharmaceutical	C	15% (mainly Cgil)
Sanofi-aventis	Multinational: More than 100,000 employees worldwide; In Italy, 2,500 employees	Pharmaceutical	C	35%
L'Oréal	Multinational: 77,400 worldwide In Italy 2,000 employees	Cosmetics	C	8% (on average, higher where there is the production plant)

Recent company-level activities				
	Recourse to strike	Issues	Intervention of national and local government	Main results of the agreement
2013	Yes to support the use of solidarity contracts instead of the wages guarantee fund	<ul style="list-style-type: none"> - Contractual solidarity - Redundancy managing (early retirements, voluntary dismissal) 	No intervention of institutions	<ul style="list-style-type: none"> - Difficulties to negotiate with the company - Saved jobs but Unions still discussing with the company to maintain the number of employees. The crisis is affecting companies strategies
2014	Yes in 2007 for the closure of a plant in Italy, but the agreement has been accepted by the majority of unions and workers	<ul style="list-style-type: none"> - Productivity rewards and IR rules - contractual welfare and company's social responsibility 	No intervention of institutions	<ul style="list-style-type: none"> - Continuity of cooperative IR and in the issues negotiated. - Workers perceive these issues as their acquired rights
2013	Yes in 2014 against the company proposal of re-organisation with dismissals.	<ul style="list-style-type: none"> - productivity rewards, - occupational welfare with also work life balance) - crisis management 	No relevant political interventions of institutions. Trade Unions tried to involve the Milan municipality administration to have support against the reorganisation of a research centre, but without success.	<ul style="list-style-type: none"> - Continuity of cooperative IR and in the issues Good salary increase - Good welfare policies (extended to the employee's family) - Good restraint of dismissals thanks to negotiation of trade unions and strikes
2013	No relevant strikes	<ul style="list-style-type: none"> - Productivity rewards - attention to equal opportunity policies (work life balance, kinder gardens) - Contractual welfare (income support by sustaining some costs, for example some school cost for employee's children) 	No intervention of institutions	<ul style="list-style-type: none"> - Some problem in the effective implementation of the productivity awards. The company declare that with the crisis it is difficult to maintain those awards. Trade Unions declared that the company doesn't welcome discussion on its economic balance - Contractual welfare and equal opportunity policies are well implemented as they are now a tradition in company bargaining.

To be noted that in reaching and signing the agreement many local institutional actors (the Regional and Provincial Presidents) and the government (represented by the Ministries of Labour and Economic development) were also involved.

In the next paragraphs we shall analyse the main trends in the process of collective bargaining at both national and company levels, drawing the state-of-the-art of the diffusion of collective bargaining according to the positions of the main actors involved. In the third paragraph we shall focus on the characteristics of the actors involved and the organisational and strategic changes underway. In the fourth paragraph we shall enter into the contents of collective bargaining. Finally, in the conclusions, some observations on current and future trends will be drafted.

5. Process of collective bargaining

In Italy the collective bargaining structure is fundamentally bipolar and based on two main levels: the national sectoral and the company-level bargaining. Besides these two levels, an interconfederal or intersectoral one at the centre and sometimes a territorial collective bargaining at the decentralised level can be added. As already said, such collective bargaining structure is poorly institutionalised, given the traditional voluntarism of industrial relations. However, collective bargaining is historically an accepted regulatory framework for companies.

Long before the crisis, the debate on collective bargaining focused on the need to reform the scope and character of the national collective agreement in order to promote company-level bargaining. Although there were different and even divergent opinions on the matter, the most widespread position on the media, within academics experts in IR and the political parties was that the national collective bargaining at the industry level should be radically reformed, if not eliminated, reducing its weight within the regulatory framework at least for large companies. Instead it might be kept substantially unchanged for setting terms and conditions for small companies, given the limited possibility of negotiating at the company level in these contexts.

In recent years, due to the inclusion of the topic in the program of the new government led by Matteo Renzi, it also emerged a position favourable to a minimum wage established by law - replacing the economic part of the national sectoral collective agreement. The aim would be to cover all the workers, including those that currently would be excluded by the sectoral agreements. In this way, however, the scope of these would be drastically reduced.

5.1 Sectoral national collective bargaining

Covering about 80 per cent of workers, the system of the national sectoral collective agreements is still the most relevant method to define working conditions in Italy, supplemented by the negotiations that can take place at the company level. Even for micro and small companies the sectoral national collective agreement seems to represent the fundamental benchmark. In a recent survey conducted on a representative national sample of 2,300 micro and small firms (05-49 employees), 89 per cent of the respondents said that they referred to the national sectoral agreement, at least to set wages, while only 11 per cent said they adopted unilateral decisions or direct individual negotiations with employees. Those who said they combined reference to the sectoral agreement with collective bargaining and even more individual negotiations were 23 per cent (Regalia 2014).

These data indicate that the national sectoral collective agreement represents a reference framework. Interesting from this point of view are also those that are presented in Table 4. It shows that the share of employees waiting for the renewal of their sectoral collective agreement tended to diminish over time; this means that the updated contractual coverage tended to increase. The average renewal time decreased as well, but only until 2009; afterwards it started increasing again. This can be explained by an intensification of the tensions between the social partners in achieving agreements. An example is the case of the national Metalworkers' collective agreement that after long negotiations has not been signed by the Cgil.

Table 4 **Sectoral collective agreements indicators (2005-2012)**

	2005	2006	2007	2008	2009	2010	2011	2012
Employees waiting for a sectoral collective agreement renewal (%)	43,9	45,2	59,2	43,2	16,1	39,7	37,2	30,4
Average renewal time (number of months waiting for the renewal)	5,4	4	7,2	4,4	2,6	4,2	6,5	9,3

Note: all employees with the exception of managers.

Source: ISTAT (2014b).

The figure of 2009 is significant for both indicators. This is the year in which the first interconfederal agreement on a more flexible collective bargaining system, introducing the possibility to apply contractual derogations of the sectoral agreement at the company level, was signed by Confindustria, Cisl and Uil, but not Cgil. As we have seen, the Cgil did not sign this agreement, but later it signed the 2011 agreement, by which the possibility to apply contractual derogations was detailed more precisely.

In 2009 there was a strong pressure to renew the sectoral agreements. In fact, the majority of the national collective agreements were renewed nearly in time in that year. On the reasons that can account for this there are however divergent opinions within the unions, as suggested by the statements below. Cisl supported the reform of the collective bargaining structure, while Cgil continues to be critical with the possibility of derogations:

We regularly renew our contracts, but we tried to leave free second-level bargaining to intervene in relation to company needs. This allows changing the timing of salaries increases and editing one or more parts of the contractual regulations. I judge this positively overall: If we had maintained a classical approach to negotiation, in these years of economic difficulties, we would not have signed national contracts. With a classical bargaining, we would not have made national collective agreements. A method entrusted exclusively on power relations and conflicts would make impossible to renew the national contracts. [Member of the Metal national general secretariat Fim-Cisl]

Since the late 2000 we experienced a period marked by separate agreements. The contractual model is the separate 2009 agreement. This for the first time introduced the derogation possibility, i.e. allowing to change rules and regulations of the national collective agreement in the company-level bargaining. The 2009 agreement defined a new idea of negotiating wages. It introduced the harmonised index of consumer prices (HICP) and basically moved the weight from the national collective bargaining to the second-level bargaining. The last aspect was, at least for Cgil, a problem, because we continue to highlight the need of a strong national collective bargaining. The derogation possibility, the power to the second-level bargaining. There was, over the years, including agreements which have modified national collective agreements. Another thing is to have a general rule that assumes that there is a derogatory rule that companies could apply irrespective of the conditions. [Member of the National General Secretariat, Cgil]

As already said, in the chemical sector the possibility to derogate from the national sectoral collective agreement at company level was already present before the crisis and the key informants interviewed declared that contractual renewals in this sector have been very fast. This is a sector where there have never been serious divisions between the unions and the relationship with the counterpart has traditionally been cooperative:

In our sector the relationship between Cgil, Cisl, Uil and Ugl (in few cases, has always tried to give a unitary response to major problems of workers. The divisions don't help, neither the union to address problems, nor the workers. All contractual renewals have been signed together. [Member of the Chemical national general secretariat Femca-Cisl]

Industrial relations are a service. To be a good service they should produce good results. In a period of expansion it is easy. But when there is a crisis, it is difficult because in recent times, the social partners are not very strong. For us IR always are very important and a competitive factor. Because they are useful to create the conditions of consensus. It is a long time changing process (started before the crisis). Even the unions are changing. Two years ago we renewed the national collective agreement in a week, without strikes, and on two central issues: productivity and competitiveness. [Member of the

National Board of Chemical employers' association Federchimica-Confindustria]

More generally, the national collective agreement is still considered a positive framework, even though we registered different opinions within the unions with regard to the introduction of elements of normative flexibility. Not surprisingly, within the employers' associations the requests are for greater flexibility. In general, the key informants stressed the necessity to increase the national sectoral agreement flexibility according to the needs of companies:

The national collective agreement is generally welcomed by companies. The real problem is that it should be revised to be more flexible and suitable to the needs of companies. The opposition to a reform are not coming only from the unions but also from companies. Small companies urge to make it even stronger because they are not willing to negotiate with unions in the workplaces, even more so since the unions often aren't organised at company level. Small companies appreciate the national sectoral agreement as a general regulatory framework. [Member of the Confindustria National Board]

In interviews to employers' associations the emphasis is on the need of a cultural change. Within the chemical sector, recently the employers' association and the trade unions have jointly organised some territory courses on the culture and perspective of industrial relations in which workplace trade union representatives and human resource managers were invited to participate together. The aim was to discuss problems and shortcomings of the industrial relations system in order to promote a culture of renewal among the social partners at the decentralised level:

There are many training initiatives to promote and improve the social partners' culture. Recently, an initiative has been launched through a joint action with the unions. Since last year we are organising together with the unions territorial meetings in the various regions of the country, aimed at unions representatives and human resource managers. We still believe in rules. We keep talking about a lot of rules. But the culture is even more important, in the sense of the real people's behaviours. From this point of view, there are problems on both sides, companies and unions. [Member of the National Board of Chemical employers' association Federchimica-Confindustria]

Confindustria official documents highlight the need not only to have the national sectoral collective agreement renewed, while keeping it as a regulatory reference, but also to develop collective bargaining at company level. While Federmeccanica, the employers' association in the Metal sector affiliated to Confindustria, highlights in its recent *Manifesto of Industrial Relations* its position by which, together with collectively mediated 'industrial relations', also direct relationships between management and workers (or 'internal relations') should be promoted:

Industrial relations should be composed of two elements: industrial relations and internal relations.The internal relations are not an alternative to industrial relations, far from this they must be considered integrated elements of a homogeneous set. We will invest a lot in industrial relations and we believe that even in this case, we should promote a new culture based on participation ...We believe in a system of industrial relations in which the collective level is linked to the individual and company level, and where the company level can replace the national level only according to the criteria established in it (the national collective agreement). The national collective agreement must leave room for that when companies are in the conditions and are willing to derogate totally or partially from the national level..... soon we will send a request of meeting to the unions in order to start this phase of reform. [Official document Federmeccanica: *Manifesto delle Relazioni industriali*, 2014]

Employers' associations are then asking for renewed regulatory instruments: in all cases, however, through a negotiation with the unions.

5.2 Company-level bargaining and 'Internal Relations'

A recent study (Cnel 2010) estimated a decrease in annual collective bargaining intensity at company level, but this trend started before the crisis. In the two sectors considered in our study the company-level contractual intensity started decreasing since 2004: in the metal sector, the contractual intensity decreased from almost 30 per cent of companies in 2003 to 10 per cent in 2009, while in the chemical sector the intensity decreased from 43 per cent in 2003 to 17 per cent in 2009. The most recent data supplied by the Cisl Second-Level Bargaining Observatory (OCSEL 2014) confirms these trends. The observatory analysed 3,500

company agreements signed in the period from 2009 to 2013. The companies involved are 1,963 and they employ 788,259 workers. Analysing the data by company's size, and focusing on companies that signed at least one agreement in the period considered, it results that the second level bargaining involves mainly medium and medium/large companies. Focusing the analysis on 2013, the scenario is deeply marked by the crisis. Distinguishing by sector, the share of companies that signed at least an agreement is: 18 per cent metalworking; 15 per cent commerce, 10 per cent chemicals; 9 per cent textiles.

The majority of our key-informants in both the considered sectors stressed that company-level bargaining has reached a deadlock. Social partners are still signing agreements, but their number is not increasing - on the contrary, it is decreasing - nor are such agreements innovative in character. As a result, the company-level bargaining coverage did not increase:

The results in second-level bargaining are still unsatisfactory for us: it continues to be practiced in few companies, and these are usually medium to large size companies. We are not able to develop satisfactory negotiations in small companies, which, in Italy, are the majority. We can't develop with Confindustria a territorial collective bargaining similar to the one we have for example in the craft sector. Then, we have in most Italian companies a lack of attention to the problem of organisational innovation: lack of training, lack of innovation, lack of research and development. [Member of the National General Secretariat, Cisl]

This is in general. If we consider our case studies, they revealed a rather generalised willingness by managements to cooperate with the unions. As illustrated in Figure 2, in some cases the agreement that was finally signed was the outcome of a period of strikes against industrial restructuring plans which provided redundancies.

Metal sector negotiations were more conflictual than the chemicals. It has however to be noted that, if on the one hand the Fiat case is an example of both unions' division (the corporate agreements were signed by Fim-Cisl and Uilm-Uil, but not Fiom-Cgil) and the negotiating counterpart reluctance to really finding a joint solution (finally Fiat exited from Confindustria and the national collective agreement); on the

other hand, the majority of metal companies signed unitary agreements and obtained relevant results, even if sometimes with industrial disputes and after a period of industrial action. A case in point is the Electrolux, whose restructuring process started in 2008 and finally resulted in the 2014 threat of plants de-localisation. All the process, from 2008 to 2014, was accompanied by industrial action and also the mobilisation of other actors and local governments. Finally, under the pressure of the mobilisation, also the Government intervened and a solution was found by which the de-localisation was avoided.

From some points of view, a peculiar case, among the ones analysed in the metal sector, is Tenaris-Dalmine. It has always been characterised by cooperative industrial relations. However, this is the case where the management appears more dissatisfied with the national sectoral collective agreement. Interviews revealed that, given the traditional smooth cooperation with the trade unions within the company, the national agreement is seen as not sufficiently suitable to the specific company needs:

We have a model that includes, every 6 months, a CEO's meeting with the unions in each plant. We talk about what happened in the fundamental areas of the company, the forecast for the next months. It is a meeting that now is almost an automatism. Along with this we have committees, with a large participation of trade unions, where various issues are systematically discussed: safety, environment, work organisation. There are no company's issues that are not discussed and analysed with the unions. This is the backbone of our industrial relations. We are part of Confindustria, but we are more focused on the company-level agreement. The national collective agreement is not very suitable to the nature of our steel company ... For us it is a too 'tight' regulation. I would say it's more a burden than anything else. What it is agreed at the national level, it is unlikely that suits our needs. [Manager in Tenaris-Dalmine]

In any case, according to our interviews, it doesn't seem in the metal sector to emerge a clear tendency towards increased individualised bargaining and 'internal relations', as in the Federmeccanica's *Manifesto*. Rather, there are signals of a somewhat increased tendency of agreements being signed between managements and ad hoc forms of (unofficial) trade unions. These agreements are considered not genuine and inadequate

even by the employers' association. Confindustria defines this kind of agreements 'pirate agreements', because they are not signed by the most representative union organisations, they are not based on a real social dialogue and they introduce divisions among the employers' side. This is one of the reasons why Confindustria highlighted the relevance of the agreement on trade union representation and representativeness (in January 2014).

On the contrary, in the chemical sector the so-called 'internal relations' are quite common. Generally, they are not much welcomed by the trade unions. This trend emerged especially together with the diffusion of programmes of occupational welfare that were sometimes used within companies to reinforce the relevance of individual relationships between management and workers, partly reducing the scope of union representation. Among the case studied, Sanofi-Aventis has over time introduced corporate welfare programmes not always negotiated with the unions. Obviously, the unions are not very supportive of this trend, which is generally considered a threat to their role of mediators between workers' needs and management positions:

Our companies, mostly chemical, pharmaceutical or multinationals, in recent years, have strengthened the relationship between employee and management, on the one hand in order not to lose the professional skills, but also to decrease the bargaining power. This company-employee relationship has increased: if once companies focused only on middle managers (80s-90s), at the end of the 90s they started developing direct relationships with many employees and, since 2000, also as a result of the crisis, they started focusing on skilled workers difficult to find on the market. The aim is, on the one hand, to keep the worker within the company, but, on the other hand, to reduce the role of the unions. Although industrial relations are good, companies are continuing with this policy. [Member of the Chemical national general secretariat Femca-Cisl]

However, in the chemical sector practices of 'internal relations' are a structured tradition, especially in multinational companies. If we saw that trade unions tend to consider them as a threat to their mediation role, it is also true that in practice unions are conscious that 'internal relations' have not really eroded the negotiation arrangements and the IR practices. Interviews showed that the chemical unions realised that

‘internal relations’ are now institutionalised. If it is a practice that may move resources from collective bargaining, the tendency is for ‘internal relations’ to focus on some purely individual issues (tasks, benefits, etc.) leaving to bargaining the traditional collective issues (wages, hours, etc.):

Let’s say that there are some companies, typically multinational companies, in which the direct relationship ‘company – employee’ is taken for granted; there are systems of human resource management based on one-to-one dialogue. This coexists with the collective bargaining, although, of course, it drains resources. It is almost institutionalised and in some cases it is established in national agreements. In some cases it is a real consolidated practice. To be honest I don’t think it’s possible a world in a chemical company in which a worker is willing to give up on this relationship with the management because it is considered normal, it is required, even if workers are unionised. Although this raises problems of resources, it has never been a factor limiting collective bargaining; it is not exactly an attempt to overcome the social partners. On some issues we are working to increase the transparency of unilateral managerial practices. It is not a matter that has changed particularly during these years. [Member of the Chemical local general secretariat Filctem-Cgil]

5.3 Role of the state and other actors

As we have seen above, the Italian Government during the crisis often intervened unilaterally to reform the labour market and the pensions system. However, these are not interventions that have directly affected collective bargaining. In fact, the former Minister of Labour when interviewed was somewhat uncertain in trying to assess the Government’s role in the collective bargaining between the social partners. The reforms fostered by the State apparently did not affect the bargaining patterns and the relations between social partners: in particular, it does not seem that companies took advantage of the possibility of using the reformed article 18 of the workers’ statute (new rules for dismissals).

Some interventions have rather influenced indirectly the company-level bargaining. Among the most relevant government interventions there is the de-taxation of solidarity contracts and variable wage rewards to

increase productivity. However, as a consequence, the expected wider diffusion of company-level bargaining did not take place:

What I perceive is that the constant action on de-taxation scored a certain type of bargaining, the variable part of it. This has not increased bargaining opportunities: it is carried out with different characteristics, but there has not been an increase in the number of companies with a second-level collective agreement. [Member of the Metal territorial general secretariat Fiom-Cgil]

We established some funds for the salary of productivity. But they have been used in a limited way. There is some surplus. By the way these are expansion measures. Not crisis measures. If the economy does not grow even productivity does not rise. [Former minister of labour]

Although in Italy there are no provisions of compulsory mediation or arbitration in case of industrial action, the State has often played the role of a third actor intervening in collective bargaining to solve the most controversial conflicts, especially in some sectors and companies. During the crisis, however, the situation changed. The State's mediatory role in national sectoral collective bargaining decreased: this is particularly evident in metal sector, where the contract renewals have generally been complex and characterised by harsh confrontation. This is a case in which the intervention of the State used to be stronger in the decades before the crisis.

Recently, the intervention of the State occurred especially to solve conflicts in the readjustment processes involving larger companies, in order to avoid the destruction of jobs. Among our cases, it is the Electrolux the one in which the intervention of local and national politicians as mediators was fundamental in the signing of the agreement. This is the reason why the agreement has been considered somewhat traditional by our interviewees, as this practice was common long before the crisis:

In all national collective agreements, signed in recent years, there have been no ministerial or governmental mediation. For the metal sector it is not normal: the contracts in the 1960s, 1970s, 1980s, and 1990s, were partly done 'in government offices.' Also the 2008 national contract was closed with the Minister of labour. We had however a rather strong presence of the institutions in situations

of crisis, especially in the event of companies with a large number of workers involved: in such cases we solved many disputes at the Ministry of economic development and the Ministry of labour (more frequently at the Ministry of economic development). [Member of the Metal national general secretariat Fim-Cisl]

I think that Governments in recent years decreased their mediatory role to find solutions. The State is less and less present. And this is because, after all, the general idea – both for Centre-right and Centre-left governments – is that the big regulator is the market. Contrary to what happened in other European countries which have imposed restrictions, even to individual companies. [Member of the National General Secretariat, Cgil]

During the crisis no new actors did emerge to intervene in the labour regulation processes. The involvement of local institutions in the processes of reorganisations of production and industrial readjustment is also a tradition in Italy. Local governments have traditionally been interested in the dynamics of the larger, historical companies based in an area, that represent a significant proportion of the local economy, even if this does not necessarily leads to investments or to an active role in their bargaining processes. In the event of companies' restructuring, local institutions used to make pressures to influence management decisions.

Tenaris-Dalmine is an interesting case of this kind of relationship with local institutions. As indicated in Table 2, this company benefited from a tradition of local institutions involvement, although they were not formally involved in the negotiation of the last company agreement. Interviews revealed how the town developed following the presence of this steel company: employment, services in the area, etc. It does not seem, however, that the local institutions (and especially the municipal administration) had any important role in supporting the company since the advent of the crisis. It rather seems that the unions did not consider any longer useful and effective the involvement of the local institutions in public discussions about the crisis:

The Prime Minister was involved before the recent agreement, during the restructuring process. The company influenced the territory. Dalmine [*the town where the company is based*] has developed around the company. We do public meetings attended by

the Mayor, the municipal administration, members of Parliament elected in the territory. I think that politicians are not very skilled to help companies in the crisis. Moreover, they cannot influence a lot the management of redundancies. [Company-level representative in Tenaris, Fiom-Cgil]

We relate, primarily, with the province and the municipalities in times of crisis, not in times of expansion – and this is our limit. But the contribution of local institutions is often limited. Few investments and projects to relocate the redundant workers. [Member of the Chemical local general secretariat Filctem-Cgil]

In the other cases studied, the national and local institutions had not a role in company negotiations and restructuring processes. In the chemical sector there is a rather strong interaction with national and local institutions. However, this is mainly oriented to deal with environmental and safety issues in a perspective of corporate social responsibility, because of the potential dangerous nature of chemical plants. Moreover, it is a relationship mainly with local agencies for controls and authorisations:

The other critical issue in the chemical sector are permissions. New plants are not very welcomed, despite the fact that many studies show that chemical companies are less at risk than other companies. No politicians during the election campaign would say ‘there will be a chemical company’. Even where the plants are present, where there is a large chemical group, I have to admit that relations with the administrations are difficult. Often it is a matter of hostile behaviour on environmental impact monitoring, hostile to plants enlargement, etc. [Member of the Chemical local general secretariat Filctem-Cgil]

6. Character of collective bargaining

We have already said that the collective bargaining in Italy was historically characterised by a frequent resort to industrial action and strikes. However, these adversarial features of collective bargaining have softened over time, being substituted by a more pragmatic adaptation to circumstances, and practices of micro-concertation (Regini 1995), by the social partners.

Figure 3 shows the evolution of the number of strikes and employees' participation over time. The number of strikes and employees' participation increased more or less regularly until the early 1970s: a period this of strong worker mobilisation that led to the enactment of the workers' Statute, the labour protection law, within which the famous article 18 relating to dismissals as previously described is located. After this period recourse to strikes as well as employees' participation in the industrial action diminished over time, up to recent years in which the number of strikes is very limited. The tendency of workplace conflicts in the manufacturing sector (Figure 4) is similar to that of the economy as a whole (Figure 1).

The most recent data (ISTAT 2014d) indicate further reductions in the number of working hours lost for labour conflicts. The hours of strike in July 2014 were 0.6 per thousand hours worked, with a decrease of 0.4 hours compared to the same month in 2013. In the large companies in manufacturing the impact of hours of strike was equal to 1.1 per thousand hours worked, while in services the incidence was equal to 0.4 per thousand hours worked. In comparison with July 2013 in the manufacturing sector hours of strike decreased by 1.2 hours every thousand hours worked, while it increased in the services sector of 0.1 hours.

In our cases, as we can see in Table 2, the renewal of company-level bargaining was sometimes associated with strikes. They were mainly forms of protest against the measures to tackle the crisis decided by the companies:

- The decision to relocate the production abroad in Electrolux.
- The proposed closure of some plants in Bayer;
- The use of collective dismissals to face the crisis in Sanofi-Aventis;
- The willingness to use solidarity contracts rather than the wage guarantee fund (a typical Italian shock absorber) in Cifa.

Figure 1 Number of strikes and participants. Whole economy (1949-2009)



Source: ISTAT (2014c).

Figure 1 Number of strikes and participants. Manufacturing sector (1949-2009)



Source: ISTAT (2014c).

At least apparently, in consequence of these strikes most of the trade unions' requests were finally included in the company agreements. Thus the strike can still be considered a strong instrument of pressure in Italy. It should be noted, however, that the collective bargaining in the chemical sector is rarely characterised by open conflicts. The strike is a tool more used in the metal sector:

I don't remember strikes for renewals. The tension grows in meetings with the management, perhaps even with tensions in negotiation but workers had rarely been involved. As we tend to avoid conflicts in companies, the same situation is registered at the sectoral level. At this level there is a Permanent Observatory that prepares the negotiation. The last renewal ended very quickly, with good results considering this period of crisis. To remember a strike in the chemical sector you have to go long back in time. [Company-level representative in l'Oréal, Filctem-Cgil]

There are discussions, clearly. But no strong conflicts and above all no strikes. We started the second-level negotiation in the early months of the year, we closed in July; There's punctuality in renewals. We know each other, we know the issues. The weight of the second level bargaining is fairly stable, it can be changed in some respects, but the issues are almost the same. [HR manager, Bayer]

Interviews showed that currently the unions are very cautious in calling on strike. On the one hand because the goal is to address the crisis negotiating with the employers; on the other hand because, paradoxically as it may perhaps seem, it is difficult to activate workers due to the high risk of jobs losses:

Strikes have surely diminished. Surely even ourselves, in recent years, when organizing industrial action, preferred to organise protests on Saturday precisely because we did not want them to be considered as strikes. Of course, the crisis influenced this tendency. At Fiat, for example, where we know that they work one week per month, if the strike is coinciding with the day when workers came back to work, it is problematic, as well as in many other realities. We also looked at the social costs of conflict. [Member of the Metal territorial general secretariat Fiom-Cgil]

Regarding strikes, we don't believe that for every problem they are necessary, we want to deal with the problem before striking. When we organise a strike, the workers' response depends on the problem. In recent years, strikes declined: there aren't many political strikes, we solved a number of issues beforehand. When we organised strikes it was for crisis management, because the company was unwilling to accept the unions' proposals. [Member of the Chemical national general secretariat Femca-Cisl]

This last statement reveals a concern by the unions in respect of their power to mobilise workers. Some respondents from the union side openly declared that they are facing a representation crisis. This perception is mainly based on their decreased public opinion legitimacy, reinforced by the decreasing role of concertation and the increasing unilateral intervention of government in labour market reforms. Moreover, they realise that the company-level bargaining is not substantially developing. This could be a signal of a diminishing trade union power:

We are in the context of a great crisis of representation that has changed the perception of rights. It is evident that there is a weakening of the bargaining which relies, not necessarily on the conflict, but on balance of powers. The Italian unions have always had a contractual role and they were called for 'concertation' (a confederal role). When you have a weakening of confederal bargaining on major issues, namely the State plan to resolve them directly, and, on the other hand you have the crisis influencing negatively the balance of power, it is evident that unions weaken. [Member of the National General Secretariat, Cgil]

However, both for unions and employers, there are not strong signals of relevant losses in membership, even though rank-and-file and leaders often exhibit (even substantially) different positions. On the employers' side, the defection and exit of Fiat is remarkable. However, there are not signals of increasing defection of associated companies. Union density persists at the rates registered before the crisis. Union representatives declared that membership increased in companies that are facing the crisis, also because unions are organising themselves to manage unemployment benefits applications:

We began to manage workers unemployment practices. This was relevant: we intercepted a part of workers who would have never

thought to deal with the unions. This individual relationship has developed, albeit in a very passive way. Individual litigations are increasing, even for dismissals. [Member of the Metal territorial general secretariat Fiom-Cgil]

There is also an aspect that is always forgotten: we have a substantial increase of recourse to the unions' services. Even that is a form of protection... they are representative issues, facing a steady withdrawal of services from the State, the unions play a great substitution operation. [Member of the National General Secretariat, Cgil]

7. Content of collective bargaining

Concerning the content of collective bargaining, a first matter to be considered regards the actual recourse to the possibility of derogating from the sectoral national collective agreement, since this is a rather new topic. As already pointed out, in the chemical sector such a possibility has been provided since 2006. The decision to include this possibility in the sectoral national collective agreement represented indeed a formalisation of what had been already happening in some companies. So basically it was introduced to avoid derogations without defined rules. In other terms, the social partners used the opportunity of the national collective agreement to create a general framework for derogations.

What happened since 2009 in the other sectors does not therefore represents an innovation for the chemical sector. In this sector the possibility of derogation regards all issues agreed upon in the national collective agreement, but derogations have to be negotiated by the social partners at the company level. The collective agreement is less prescriptive in chemicals than in other sectors:

The chemical sector included the theme of derogations in the national contract back in 2006: it is not a new issue. It was necessary to bring to the surface and give some national visibility to some derogation experiences. The social partners thought that it was a problem not to regulate this issue in order to create a general framework. Some companies signed agreements that have already derogated from the national collective agreement and so they asked to include this issue in the national contract. We then discussed the issue without any major tension among

the social partners. In summary the outcome was this: the possibility to derogate is on every issue of the national agreement, but it has to go through a negotiation between the social partners. There was the possibility of a veto. But in fact it is a practice that has not been observed. [Member of the Chemical local general secretariat Filctem-Cgil]

A recent analysis (Cnel, 2010) on the use of derogations in bargaining showed that they have not been used extensively. In the negotiations the social partners preferred to change the terms of the company-level bargaining, rather than amending the national collective agreement, even though temporarily. The national collective agreement is perceived as a strong guarantee. This tendency emerged also in the interviews to the employers' association representatives. They declared that an extremely limited number of companies took advantage, at least openly, of the possibility to derogate from the application of the minimum wage set by the sectoral agreements:

Derogations from the national collective agreement have been applied in very few cases. With the reform of the collective bargaining structure companies had three years to implement the minimum wage established by the national collective agreement. In fact, companies have essentially applied immediately the minimum wage established at sectoral level without waiting for the three years at their disposal. [Member of the National Board of Metal employers' federation Federmeccanica-Confindustria]

In the recent renewals of the metal national collective agreements, the most relevant issues have to do with working time flexibility: variable hours, work shifts, seasonal work, etc. The interview reported below well summarises the issues at stake in the negotiation of the national collective agreement of the metal sector:

We tried to work this way: the first point was the protection of income, then the increase of wages and maintenance of purchasing power, and this is a traditional vision of the function of bargaining. We tried through the national collective agreement, to give companies what they had been asking us for so long: more ability to use machineries according to the company's needs, therefore more flexibility in negotiating working hours, but, in return, greater flexibility of working hours for workers (hourly flexibility in entry and exit, greater ability

to use permissions in relation to the workers' needs). For example, in the last renewal, we set a standard that may sound normal but it was an achievement: the working mother or father may, if they have needs related to family care (like a sick child in the morning) call the company in the morning and inform that they will not be at work that day. He/she has the right to use an individual permission, without coordination with colleagues, or discussing with the management. It's an individual right to manage a problem, an innovation in our sector. Very appreciated from workers. Another aspect is the right to part time. It never had been present before, we've had it with these contract renewals. It is, of course, for a limited number of workers. [Member of the Metal national general secretariat Fim-Cisl]

In the chemicals sector contractual renewals, the most relevant innovations were on occupational welfare programmes (e.g. supplementary pension schemes and health funds and insurances). This issue has a long tradition in this sector. The importance of the topic was stressed by both the employers' association and one of the interviewed trade unions - Cisl, the one most engaged in the extension of this theme in the national contract. In the sector the Cgil has been traditionally quite reluctant in supporting these kind of welfare as it emerges from the interview below:

In recent years, we assessed, especially as Cisl (the Cgil came after, this is my political judgment) that we had not to look at only the direct income, whereby increases in national and company collective bargaining, but we had to look at also indirect incomes such as pensions, assistance, income support, kindergartens ... they are income anyway. We have to take into two types of income: direct incomes (inflation-related in the national collective agreement, productivity related in the company-level agreement), and then indirect incomes (pensions, assistance, etc.). [Member of the Chemical national general secretariat Femca-Cisl]

Among the most recurrent issues in the national collective bargaining there is certainly the occupational welfare as it is widespread in chemical companies. [Member of the National Board of Chemical employers' federation Federchimica-Confindustria]

The occupational welfare issues are also negotiated in the metal sector's national agreement, but in this area the position of the Cgil (Fiom) is

more radical, also because, as we have pointed out repeatedly, they did not sign the recent contract renewal.

7.1 Company-level bargaining

Before focusing on the issues negotiated in our case studies, it is useful to consider some general data supplied by the Cisl Second-Level Bargaining Observatory (OCSEL 2014). These data show a tendency to sign 'defensive' agreements, i.e. mainly oriented to saving jobs. In fact, comparing the 2013 data with those of 2012, we can observe a strong increase in the number of agreements related to restructuring and company crisis: 73 per cent of the agreements in 2013 compared to 64 per cent in 2012. Moreover, we can observe a strong decrease in the negotiation over wages. Presence of the topic decreased gradually from 55 per cent in 2010 to 19 per cent in 2012, up to 14 per cent in 2013. And this even if in 80 per cent of the agreements analysed we can find the de-taxation of productivity wages.

The issue of flexibility, also associated with restructuring, appears to have been extensively negotiated. However, in 2013 it was mainly aimed at promoting more flexible hours (86 per cent of the agreements) rather than at reconciling life and work (56 per cent). Negotiations on company welfare issues, instead, did not basically decrease (8 per cent in 2013; 10 per cent in 2012). This is a signal of the fact that in some companies the current tendency is to reduce wage bargaining in favour of social and health services that are less expensive for companies and welcomed by workers.

It is worth noting that also the negotiation of trade union rights and the right to information and consultation decreased: a decrease of about 16 percentage points (12 per cent in 2013 against the 28 per cent in 2012). In this scenario, the unions appear to be less involved also in issues in which they used to intervene. Trade union involvement in the decisions relating to the personnel training decreased: in 2013 a decline of about 22 percentage points compared to the previous year (switching between 81 per cent in 2012 to 59 per cent in 2013) is recorded.

These trends are confirmed by all respondents declaring that the company-level agreements were mainly signed on some 'defensive'

issues (protection of jobs and shock absorbers activation). There has not been any improvement neither on wages, nor in working conditions:

We made fewer company agreements than before aimed at changing the rules of the game and at understanding what are the workers' needs. Paradoxically, we have unionised many realities as for the crisis dismissal agreements and the management of the workers applications for shock absorbers. There is a significant number of agreements but then if we look at the quality, we recognise that they are obviously defensive agreements. [Member of the National General Secretariat, Cgil]

Unfortunately, today, the most negotiated issue is the process of company restructuring to face the crisis. Before that it was wages. The crisis influences the second-level bargaining. There are sometimes small creativity efforts. The crisis agreements are not only in the field of shock absorbers. In some agreements, unions try to cooperate in reorganisations, relocation or managing changes from a strategic perspective: market changes, new products and innovations. The increased complexity of the agreements is in this. The classic contractual process, from this point of view, is bound to be overcome. A company agreement does not arise any longer from the platform presentation, negotiation, conflict and then the agreement. Almost half of the agreements does not originate from a classic route from the platform, but from a problem. An objective problem they face together with unions. [Member of the National General Secretariat, Cisl]

This general trend emerged mainly in the metal sector. We observed here strong difficulties in negotiating wage productivity rewards and internal career development. According to the distinctions proposed by one of our key-informants, the agreements can be classified in virtuous arrangements (in which the defence of jobs is also combined with programmes of personnel requalification, work-life balance and innovation) and purely defensive agreements (in which the role of trade unions and local institutions may be limited to finding buyers for companies in bankruptcy).

The recent negotiations in the companies studied fall essentially in the category of defensive agreements and thus they can be classified in the second type (purely defensive agreements) with the exception of Tenaris-

Dalmine where the last agreement established the introduction of measures to support work-life balance. The agreement at the Electrolux is characterised by the defence of jobs through the recourse to solidarity contracts:

Collective bargaining in recent years was primarily aimed at saving jobs. In some virtuous cases the issues were: avoiding companies' delocalisation, investments, requalification and redefinition of working hours. In less virtuous cases (where there are insolvency, bankruptcies etc.), we have been working together with the institutions to find buyers who could continue activities, together with signing territorial agreements and finally in some cases even the effort to convince companies to use shock absorbers. [Member of the Metal national general secretariat Fim-Cisl]

In the case of the Electrolux agreement we also find a topic already mentioned above: a decrease in trade union rights within workplaces. As we can see from Table 2, the agreement resulted in a success for the unions in stopping the process of delocalisation. However, the trade-off provided also for a reduction in the previously granted amount of permissions for trade union activities.

It is worth noting also another relevant issue emerging from the analysis of collective agreements in our cases in the metal sector, i.e. the company's resistance in accepting to take in consideration the recourse to the solidarity contracts instead of the traditional shock absorbers. The Cifa's major strikes occurred precisely because the company wanted to make use of the traditional wage guarantee fund rather than of solidarity contracts, which is a tool more suitable to the reorganisation of working time and tasks. These developments show, in essence, some of the shortcomings for the trade unions when trying to intervene in the processes of company reorganisation. In some companies the strategies are more linked to the reduction of the labour cost rather than to a reorganisation of production:

The company initially proposed to use the wage guarantee fund. They had a strong position on this. There have been, then, some relevant strikes that convinced the company to accept the solidarity contract. As Fiom we foster, where there are the conditions, the solidarity contract. It means that the working time is reduced, with a

reduction in pay integrated by the National Social Security Agency. The company preferred the wage guarantee fund because they did not want to negotiate a system of job rotation of some roles as they wanted to dismiss these roles. And they still want that. With the solidarity contract companies are forced to maintain the number of employees at work, at least for a certain number of hours. [Company-level representative in Cifa, Fiom-Cgil]

The situation appears to be rather different in the chemical sector. Here the negotiation of productivity wages appeared quite widespread even during the crisis: in 2014 negotiation of the topic regarded 80 per cent of the agreements. Moreover in 30 per cent of the agreements welfare institutes and corporate social responsibility and in 25 per cent working time arrangements were also negotiated. However, even in this sector, analysis of the agreements showed a declining attention for programmes devoted to the internal development of staff: in the past nearly 15 per cent of agreements contained measures on these issues, while currently only 5 per cent negotiated some interventions in the field (Femca-Cisl, 2014).

In our chemicals cases, as shown in Table 2, the issues more frequently negotiated regarded the productivity wage and the corporate welfare. In all three cases company agreements are now well consolidated and a tradition. And these are issues on which it is always possible to return without difficulty and with the support of the workers. Interviews showed that both Bayer and Sanofi signed good agreements that can be considered more acquisitive than defensive ones:

Bayer is the classic company which has a second-level bargaining consolidated and very rich. The new negotiation we did was mainly based on productivity rewards and welfare. In my opinion, on the one hand the company is still on these costs and the gap between what established in the agreement and the real implementation is never large. The company did not suffer too much from the crisis. This was useful in discussing the productivity rewards. [Company-level representative in Bayer, Filctem-Cgil]

We obtained a very good agreement on the integration of salary through productivity and profitability, managed through collective policy. There was much investment on welfare, which covers both

the employee and his/her household with strong attention to health issues. [Company-level representative in Sanofi-Aventis, Filctem-Cgil]

The case of l'Oréal is a bit different because the company had problems in implementing some of the issues established in the past agreements. The company's request was to revise the productivity reward because the crisis made it difficult to ensure the level previously established. In addition, the company started to reduce the information and consultation of the unions on corporate financial perspective:

There are some difficulties on the productivity reward. In the new platform we've just signed there are some requests for amendment of the previous model. The company was not able to ensure that level and it was difficult for us to verify the implementation. We didn't do many meetings to verify the trend of productivity rewards. Those information arrives only in the closure of the company balance and they say 'we haven't reached the revenue': These awards have a value, of course, if they are provided (they have some importance), not simply because they are written in a agreement. The company is not particularly willing to share budget discussions. [Company-level representative in l'Oréal, Filctem-Cgil]

This case is a good example of the fact that because of external circumstances reaching an agreement with the unions is not sufficient to guarantee an effective implementation of the negotiated terms. In this case the agreed upon productivity wage could not be fully distributed by the company. From this point of view a company welfare programme could be a suitable alternative strategy. As already mentioned, the negotiation of company welfare moves resources and it is sometimes less expensive than productivity rewards. So it is likely that companies may prefer to shift on these programmes rather than funding wage increase.

Moreover, regulation of human resources in the chemical sector is characterised by a greater emphasis on the so-called 'internal relations'. In all our cases, along a practice of negotiation with the unions it also emerged a tendency to intervene unilaterally on issues related to the development of staff and to shift part of productivity wages to personnel benefits in terms of occupational welfare policies. This is a clear tendency of the agreements in all our chemical companies. Both Sanofi-Aventis

and l'Oréal are focusing on occupational welfare through innovative employment policies on work-life balance.

Concerning the strategies to face the crisis and reorganise production, in these cases the use of shock absorbers is not frequent, differently from what we observed in the metal sector. Rather recourse is made to schemes for voluntary exits and accompaniment to retirement negotiated with the unions. A case in point is Bayer. The respondents explicitly observed that shock absorbers are substantially not used and that the management of crisis is based mostly on internal reorganisation measures discussed with the unions:

We were able to manage the crisis without using shock absorbers which we normally do not use. The articulation of solutions, shared with the unions, were, apart from voluntary exits: training on transversal skills, training in support of entrepreneurship, requalification. We guaranteed to cover the first year's salary, and to cover the differential for 24 months if some employees had in the new job an economic loss. Then we had income support and exit packages for those staying in unemployment. [HR manager, Bayer]

Of course it has to be considered that these are companies that have been only relatively affected by the crisis (the whole chemical sector in Italy has not suffered major shocks). It should be also added that these are multinational companies, whose decision-making style is not entirely determined by considerations based on the Italian situation. According to our respondents, Bayer is highly influenced by the decisions of the German headquarter not only in crisis management policies, but also in personnel management more in general.

8. Conclusions

All in all, on the base of our investigation, one can say that in Italy the crisis influenced social dialogue and collective bargaining institutions, practices and outcomes in a rather complex way. In this concluding section, a synthesis of the main findings is presented first in general terms and finally focusing on the consequences of the different processes of change on the outcomes of collective bargaining in the manufacturing sector.

8.1 The role of the state

Starting from the role of the state, as we have seen, a first fundamental distinction has to be drawn between the public and the private sector of the economy. In the former, the outcome has been a formal stoppage, imposed by the Government, of all collective negotiations for five years now, as a measure to curb public expenditure. This resulted not only in a wage freeze, with a *de facto* relevant reduction of worker purchasing power, as well as blocked careers, but also in an increasing impracticality of any real effort in reforming and modernizing the functioning of public administration, as asserted by a former Minister of labour interviewed for the project. The consequence is far-reaching, since the unsatisfactory functioning of the public administration is widely considered one of the major shortcomings of the Italian economic system.

In the private sector, there has not been any similar direct imposition by the state on the autonomy of the social partners. Within a general framework characterised by the substantial absence of concertation and explicit involvement of the social partners in the political and economic arena, the role played by the public authorities in the field of industrial relations and collective bargaining has been more indirect and nuanced.

On the one side, the state intervened by law in order to extend some kind of protection to previously excluded workers, or to reduce, rationalise and at the same time harmonise welfare provisions and labour market policies. Thus, extraordinary measures were introduced soon under the Berlusconi government, in 2009, to offer essential protection against dismissals and layoffs to workers in SMEs not covered by the then existing system of social shock-absorbers. The ‘exceptional’ Wages Guarantee Scheme was therefore set up by an agreement between the central and the regional governments, a side-effect of which was the need in all regions to reach tripartite agreements among the social partners and the regional governments to define the procedures for its implementation (Pedersini, 2013).

Subsequently, under the Monti government, in 2011 the pension system was reformed, one of the outcomes being that working age was suddenly extended with far-reaching social and economic consequences for individuals and firms. In 2012 the Fornero reform aimed at modernising the labour market, at the same time making it easier for firms to hire

and dismiss workers, but discouraging the use of precarious forms of employment, and devising a new and universal system of social shock-absorbers, to be introduced gradually. Further measures, to correct the major shortcomings of this last reform, were introduced by the Letta government in 2013, while new labour market interventions, especially to reduce youth unemployment, have been proposed by the current Renzi government.

On the other side, occasionally the state intervened to influence or support more directly the behaviour of the industrial relations actors in the field of collective bargaining as well. In principle, the most relevant intervention is constituted by the enactment of article 8 of law 148/2011 (under Berlusconi government), that allows derogation by decentralised 'proximity agreements' of both sectoral collective bargaining and the law (Pedersini, 2013). It explicitly aims at encouraging the decentralisation of collective bargaining and has been interpreted by the social partners themselves as a form of unrequested and undesired interference of the government in their autonomy, as we have seen.

However, according to all our key-informants it did not seem to have produced major practical consequences. More effective have been the measures to support the 'productivity wages' - as provided by the intersectoral agreement on productivity of November 2012 - with tax reductions (in line with similar provisions already introduced in 2008); and, more recently, the law allowing tax reductions also in case of 'solidarity agreements': a provision this that made it possible to give a positive solution to important cases of company-level productive crisis and industrial conflict, one of which has been studied for the project.

To this, the role of intermediation and conciliation played by the state in cases of company crises has to be added. In Italy there are no formal procedures and obligations to make resort to arbitration and conciliation in case of industrial conflict. However, for some time the state *de facto* used to intervene, on request of the parties, to solve conflicts, both at the sectoral and plant levels. In recent years, efforts have been made especially to give assistance in the solution of crisis at local and company level, while the mediation role in case of conflicts at sectoral level decreased. About 150 crisis tables have been established at the Ministry of the Economy and Development. However, as emphasised by some of our key-informants also from within the governmental arena, in the

current situation of crisis the degree of success of these attempts has been rather low. Completely lacking has instead been a strategic intervention of the state in providing guidelines and incentives to economic actors and investors through the elaboration of an industrial policy.

8.2 The role of the social partners

Turning to the social partners, distinctions have to be made between the formal positions expressed through declarations, documents and agreements at the central level of the industrial relations arena and the practices and the de facto behaviours of trade unions and employers (on their own or in cooperation with their associations) during collective bargaining at the sectoral level and within workplaces, and sometimes also at territorial level. It is widely known that such distinctions have been and still are of the greatest importance to understand what's going on in Italy (Regalia and Regini 1998).

At the former, central level, the social partners shared common complaints on two major shortcomings of the role played by the state during the crisis: the complete absence of an industrial policy and the tendency of each government to reform or readjust the labour market reform of the previous one. On the one side, the outcome – has been said by our key-informants – is the impossibility, especially for SMEs that are - at least in quantitative terms - the backbone of the Italian economy, to make forecasts and plans and therefore decide if, how and where to invest.

On the other side, the continuous uncertainty about the labour market rules and their implications has been a further element discouraging hiring and employment. This dissatisfaction has often encouraged the social partners to provide their own provisional documents, recent examples being the 2013 'Plan for Jobs. Creating jobs to give Italy future and growth' (*Piano del lavoro*) prepared by Cgil, the guidelines for debate in the other trade unions' congresses, the 2013 'Project for Italy' drafted by Confindustria, or the 2014 'Manifesto of IR' elaborated by Federmeccanica.

More generally, within this context, the prolonged situation of crisis stimulated the national confederations of both trade unions and employers' associations to search for jointly agreed upon solutions

to problems and shortcomings already there for long. As seen, to be mentioned are: i) the inter-confederal agreement of June 2011 on the validity and effectiveness of company-level agreements, as well as on the social parties' representativeness, with which the rupture of the 2009 agreement on the bargaining structure not signed by Cgil was substantially overcome; ii) the officially declared joint commitment of both parties in September 2011 not to take advantage of the derogation opportunities at the decentralised industrial relations level provided by the article 8 of law 148/2011; iii) the agreement on productivity of November 2012, not signed by Cgil; iv) the inter-confederal framework agreement of June 2013, and its implementing agreement of January 2014, on trade union representativeness and the validity of collective bargaining.

Still at the central level, a widespread debate continued to develop on the future of collective bargaining, and especially of national sectoral collective agreements. Amplified by media and exacerbated by the decision of Fiat in 2011 to exit from Confindustria and the sectoral association Federmeccanica, the dominant position, prevailing in the public opinion and within mainstream economic and academic circles more in general, was definitely in favour of a strong decentralisation of collective bargaining and radical retrenchment if not abolition of the sectoral agreements.

As it emerged somehow surprisingly in our investigation, however, this does not seem to correspond fully to the positions of the employers' associations - at least within Confindustria - not to say the trade unions. These positions are certainly differentiated, ranging from the positive assessment of the role played by the sectoral agreements, even for large firms and multinationals, in the chemical industry, to the more critical evaluation, and ensuing request for readjustments, in the metal and mechanical sector. In any case, the opinions of all our key-informants were of a substantial interest in maintaining an important role to sectoral agreements, eventually transformed into more essential and lean framework regulations, coupled with an increasing resort to company-level collective bargaining as well as forms of worker direct involvement and participation in the organisation of production.

A recent document for discussion drafted by Confindustria in May 2014 on a possible new revision of the structure of collective bargaining

claims for more freedom allowed to managements at decentralised level, an example being the request for a tax reduction to be allowed by the state also in cases of productivity bonuses awarded unilaterally by managements within workplaces. At the same time, the same document continues to be in favour of a bipolar structure of collective bargaining, in which the role of sectoral social dialogue is preserved. At any rate, the sectoral agreements have been quite systematically renewed in the private sector of the economy, sometimes in a very smooth and cooperative way – as in the case of the chemical industry.

Consistently, our key-informants from both within the employers' associations and the unions appeared to be very cautious, if not openly sceptical, on the opportunity of introducing some form of statutory minimum wage, as recently proposed by the Renzi government. A widely shared position is that a statutory minimum wage is not necessary because of the extensive coverage already offered by the sectoral agreements. Were this to happen, certainly a substantial change should be expected in the structure of collective bargaining. But before taking an open position, it is widely thought that the government's precise proposal has to be waited for.

8.3 The role of company-level actors

Shifting to the decentralised level, it has firstly to be remembered that forms of decentralised social dialogue can take place at the territorial level too in Italy. Although accurate information on the diffusion of such negotiation is not available, this is a rather flourishing, although very unevenly diffused, phenomenon. It may take different forms. Among them: the collective bargaining of local sectoral agreements between the social parties, by which aspects of terms and conditions of workers, especially in SMEs, in a specific area may be set; the negotiation of local intersectoral framework agreements between the social parties, sometimes named 'pacts', aimed at approaching local topics in a coordinated way; the negotiation between one of both social parties and the local governments on issues of social relevance at the territorial level; the building of territorial pacts through the mobilisation of a large number of actors, aimed at searching for concerted solutions to critical problems, as documented also in one of our cases. These are processes that developed especially during the 1990s, but that have been somewhat

revived in recent years to try to respond to major shortcomings of existing regulation in face of the crisis.

Concerning the developments within workplaces, all interviewed agreed on the fact that collective bargaining at company level did not grow as expected in quantitative terms. More generally, it seems that companies did not react trying to take advantage of the new provisions regarding dismissals or the possibility of derogating from existing norms, as established by the Fornero labour market reform or by the article 8 of law 148/2011, without the unions' consensus. From this perspective, one can say that the unions have substantially maintained their degree of influence, notwithstanding the current rhetoric on their decline.

In the larger manufacturing companies where it is more widespread, the collective bargaining has especially regarded different topics connected to a more flexible use of labour, mainly in terms of working time. The recourse to that particular form of working time flexibility, or, better, coordinated working time reduction, constituted by solidarity contracts has been revived in these years, as a way to support the flexible use of labour needed by companies in the event of crisis and restructuring, at the same time protecting jobs. In few cases – and mainly within the chemical sector among those that have been studied – the agreements provided for significant wage improvements. On the contrary, everywhere increasing difficulties have been recorded in the negotiation of productivity rewards, even more so since productivity tended not to increase because of the crisis.

Also limited improvements have been observed on such more qualitative issues as work life balance (with the exception of some companies in the chemical sector), career development, a more inclusive worker protection (extended to women and the young). However, it has to be added that significant positive developments have been recorded in the field of company welfare programmes. Initiated by a series of much cited and studied agreements signed at Luxottica since 2009, this has become a new terrain for social dialogue, in which the interests of companies and workers can be largely reconciled: the former as they can offer their workforce benefits at a much lower cost than monetary remunerations; the latter as they learned to appreciate the possibility of benefiting of a series of advantages without having to pay taxes on them. According to the existing evidence, the field is currently expanding fast.

This notwithstanding, on the whole the ways in which the parties tried to face the crisis have been characterised by limited innovation. The traditional practices within workplaces of searching for ad hoc solutions according to circumstances, making use of all available shock absorbers, did continue. Also the traditional practices of involving local and regional governments and institutions as mediators to help find solutions and eventually exercise pressures on the national government did continue. From a substantive point of view, the success depended case by case on a considerable number of factors and especially the market position of the interested firms. In fact, a process of continuous and creeping process of change of the productive system of the country has been and is taking place.

8.4 Final comments

All things considered, we can conclude by saying that the empirical analysis in the manufacturing sector showed that the social partners, including the unions, tended to maintain their quite consolidated organisational strength. They tended as well, trade unions included, to maintain an important role in the regulation of labour. Despite a rather strong tendency to intervene on the labour market by law, the collective bargaining practices have not been substantially affected by the recurrent reforms by governments.

Moreover, currently the central government seems to be scarcely interested in industrial relations and the role and problems of social partners, who are thus encouraged to find solutions autonomously. The role of the State as a mediator in industrial conflict did decrease. Local governments and institutions have been displaying instead an increasing tendency to cooperate with the social partners and intervene in the fields of their competence. We can expect from this an increasing tendency also for the social partners, and especially the unions, to search for innovative solutions to current shortcomings at the territorial level.

The employers' associations are still willing to negotiate with the trade unions. Social dialogue is still considered the best way to regulate the labour market. Certainly, Confindustria would like to have a more flexible system of rules, and may shortly intervene again on this field. It is very clear in the opinions expressed by all our key-informants that the difficulties in innovating and increasing the efficiency and performance

of the collective bargaining system are not related only to the possible conservative positions of the unions, but also to the resistance of many employers to departing from already well known practices and investing in innovation.

A possible event that may constrain all parties to revise even substantially their positions and practices would be the introduction of a statutory minimum wage by the government, even without the approval of the social partners. It is however difficult to make provisions, since a precise project has not yet been elaborated.

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All links were checked on 7.12.2015

Chapter 5

The reform of joint regulation and labour market policy during the current crisis: national report on Portugal

Isabel Távora and Pilar González

The sovereign debt crisis has been a period of far-reaching labour market reform to an extent not witnessed in Portugal since the democratic transition that started in 1974. Since 2009, a number of significant changes have been introduced to labour law and collective bargaining rules and, while a process of reform was already under way from the beginning of the decade, the pressures of the international and sovereign debt crisis clearly intensified this course, especially after the involvement of the Troika in May 2011. Indeed, the financial assistance from EU institutions and the International Monetary Fund (IMF) was conditional on the Portuguese government's commitment to implementing a detailed plan of fiscal consolidation and structural reforms. This involved further amendments to labour law, employment policy and collective bargaining, most of which were carried out during the crisis. The objective of this chapter is to provide a comprehensive analysis of these reforms, their significance and implications. The chapter is organised in two parts. Part 1 focuses on the process and substance of the legal reforms and Part 2 draws on case-based empirical research to assess their impact on collective bargaining in the manufacturing sector.

Part 1: The process and substance of labour market reforms in Portugal

With the purpose of analysing the changes introduced during the crisis, we start by setting the context of the reforms with an outline of the key features and recent trends in Portuguese industrial relations and employment regulation. This is followed by a discussion of how the crisis emerged and how it was represented (Section 1). We then focus on the implementation of the reforms in Section 2, which discusses the

roles and reactions of the different national and international actors in this process. Section 3 discusses the main substantive reforms, focusing on three main areas: employment protection legislation, working time flexibility and collective bargaining. Part 1 concludes with a discussion of the significance of these changes.

1. The labour market context of the reforms

1.1 State of the art of labour market regulation before the crisis

Independent trade unions and free collective bargaining became part of the Portuguese industrial landscape only after the end of the dictatorship in 1974. The current system of employment relations and regulation has been significantly marked by the legacy of both the authoritarian regime, the 1974 revolution and the political turbulence that characterised the democratic transition of the mid-1970s (Barreto and Naumann 1998). The low trust and adversarial climate of industrial relations, the tradition of state intervention and a politicised labour movement are part of this heritage (Barreto and Naumann 1998; Dornelas *et al.* 2006; Sousa 2009; González and Figueiredo 2014; Karamessini 2008; Royo 2006). Likewise, the relative protection of employment granted by the legislation in Portugal has its foundations in the comprehensive set of social and employment rights enshrined in the 1976 Constitution, which was devised under the post-revolution orientation towards constructing a socialist society¹ (Barreto and Naumann 1998).

The Portuguese labour movement is organised into two main peak-level union confederations: CGTP-Intersindical (*Confederação Geral dos Trabalhadores Portugueses-Intersindical Nacional*), which has a class-oriented ideology and origins in the authoritarian regime when it was forced to operate in a clandestine manner and with strong connections to the communist party; and UGT (*União Geral de Trabalhadores*), a moderate concertation-oriented organisation that emerged in 1978 with political links to both the centre-right PSD (*Partido Socialista*) and centre-left PS (*Partido Social Democrata*) (Barreto and Naumann 1998; Sousa 2009; Dornelas *et al.* 2006). The different backgrounds and ideologies of the two confederations are reflected in their strategies and CGTP's confrontational

1. The 1976 Constitution underwent seven revisions between 1982 and 2005, adapting the initial text to the post-revolutionary period and to the EU treaties.

approach contrasts with UGT's stronger inclination to engage in dialogue and concertation (Campos Lima and Artiles 2011; Sousa 2009). CGTP is the largest union confederation, but UGT derives significant political influence from its central position in macro-level concertation and its pro-agreement negotiating approach. UGT-affiliated unions organise a significant proportion of workers in public services, large public utilities companies and in the banking sector. CGTP-affiliated unions are dominant in manufacturing. Despite having lost a considerable number of members in the private sector, CGTP is still very influential and has a substantial membership basis in manufacturing (Naumann 2013; Sousa 2009). Nevertheless, since the waning of the revolutionary momentum of the 1970s and early 1980s, trade unions have lost much of their membership. Union density fell from an estimated density of 60.8 per cent in 1978 to 19.3 per cent in 2010 (Sousa 2011: 7). However, there is a lack of systematic and updated membership data due to the absence of official records, whereas data provided by the unions themselves have been perceived as lacking consistency and reliability (Sousa 2011). This fact has recently generated regular debates on the representativeness of labour market organisations (for example, Carvalho de Sousa 2011; Palma Ramalho 2013).

On the employers' side, there are four national-level confederations with a seat in the Standing Committee for Social Concertation (CPCS). The two largest and most influential are CIP (*Confederação Empresarial de Portugal*, encompassing firms in manufacturing industry and in services) and CCP (*Confederação do Comércio e Serviços de Portugal*, an association of firms in services and trade). CAP (*Confederação dos Agricultores de Portugal*, farmers) and CTP (*Confederação do Turismo de Portugal*, an association of firms in tourism) are the other two employers' representatives. CIP and CCP organise firms of different sizes but CIP's strategy is often represented as reflecting the interests of the largest employers, whereas CCP's approach tends to reflect an SME-oriented position (Naumann 2013).

The business structure in Portugal is similar to that in the EU as a whole, in the sense that small and medium-sized enterprises (SMEs) dominate. In 2012, SMEs accounted for 99.8 per cent of total firms in the EU27 (Gagliardi *et al.* 2013: 10); the proportion in Portugal was 99.9 per cent (INE 2012). In Portugal, however, the distribution of firms is more biased towards micro firms (92.1 per cent of the total in the EU27 and 96 per cent in Portugal) (INE 2012). Moreover, employment

in Portugal is concentrated much more in SMEs than it is in the EU27 (76.9 per cent and 66.5 per cent, respectively) and particularly in micro firms (44.3 per cent of employees in Portugal and 33.5 per cent in the EU27). Membership density of employers' organisations is also difficult to quantify, but recent estimates put it at around 60 per cent in 2008 (European Commission 2013: 25).

While industrial relations were initially very adversarial (particularly in the period immediately after the revolution), they became somewhat less so from the 1980s onwards. The emergence in 1978 of the moderate UGT union confederation, with a concertation-oriented approach in contrast with that of more radical CGTP-Intersindical (Barreto and Naumann 1998), was followed by the development of social dialogue and concertation at the macro level. The government's creation of the Standing Committee for Social Concertation (CPCS), a committee composed of the two union confederations and four (initially three) employers' associations for consultation between the government and the social partners, enabled social dialogue at the national level, which led to the signing of a number of tripartite agreements. These agreements initially focused mainly on income policies and became the major influence on wage bargaining at sectoral and company level in the second half of the 1980s and beginning of the 1990s (Barreto and Naumann 1998; Royo 2002). Social dialogue and tripartite concertation were consolidated in the 1990s and early 2000s and several tripartite agreements were signed as their content shifted from income policy to broader areas of employment, social security and collective bargaining. A dispute around the 2003 Labour Code, which introduced new rules on collective bargaining, led to an interruption of the signing of tripartite agreements in 2002/2003 but social concertation regained momentum in 2005 with the change of government to the Socialist Party. While social dialogue and tripartite agreements have enabled successive governments to gain public support for reforms to social and employment policy, CGTP, the larger of the two union confederations, despite actively engaging in social dialogue, has often failed to sign tripartite agreements. In 2005 and 2006, however, CGTP along with UGT signed two bilateral agreements with the employer confederations – one on vocational training and another on collective bargaining – and a tripartite agreement to gradually increase the national minimum wage to 500 euros by 2011 (Naumann 2013; CES 2006). This agreement was, however, to be breached in the outbreak of the crisis and the national minimum wage was frozen at 485 euros in 2011 until 2014.

The last macro-level agreement on wage bargaining was signed in 1997 (Naumann 2013) and collective bargaining in Portugal has since taken place mainly at the sectoral level. Company agreements, although in a minority before the crisis, have also been influential in setting more favourable conditions for the employees of a number of large companies (Dornelas *et al.* 2006; Barreto and Naumann 1998). Articulation between levels is legally possible since the 2003 Labour Code but it is rarely done (Dornelas 2006; Palma Ramalho 2013). Despite the current low union density, collective bargaining remained a key wage setting mechanism in Portugal until the present crisis and worker coverage remained very high until recently. Even though Naumann (2013) still estimates coverage at 92 per cent, other sources indicate a significant decrease even before the crisis (UGT 2014a; European Commission 2013) to around 65 per cent in the period 2007–2009 (European Commission 2013). The high coverage had been enabled to a great extent by the practice of quasi-automatic extension of collective agreements to all workers and employers in the respective sector. Furthermore, the longevity of collective agreements, which remained valid until a new agreement was reached (Naumann 2013; Palma Ramalho 2013) also contributed to high levels of coverage. These two features of collective bargaining – quasi-automatic extension and the legal arrangements that allowed agreements to remain valid after their term – have enabled Portuguese trade unions to remain influential in wage determination and in the regulation of employment, despite their low and decreasing membership rates. However, these rules started to be challenged in the context of a debate on the representativeness of the negotiating bodies on both the employer and the union side (Sousa 2011; Comissão do Livro Branco para as Relações Laborais 2007).

Other key debates and trends before the crisis included employers' demands for greater flexibility on dismissals and the reduction of the associated costs, greater working time flexibility and lower overtime pay. Although some employers aspired to obtain more discretion and flexibility at the company level in these matters, the social partners on both sides were generally comfortable with sectoral bargaining, including the practice of extension of collective agreements (Dornelas *et al.* 2011). To a great extent the policy debate focused on *flexicurity* and a need to balance the protection of workers with the flexibility needs of firms. These concerns underpinned two major reports reviewing labour relations and labour market regulation that informed the negotiations of the social partners on the reform of labour market regulation prior to

the crisis (Dornelas *et al.* 2006; Comissão do Livro Branco das Relações Laborais 2007).

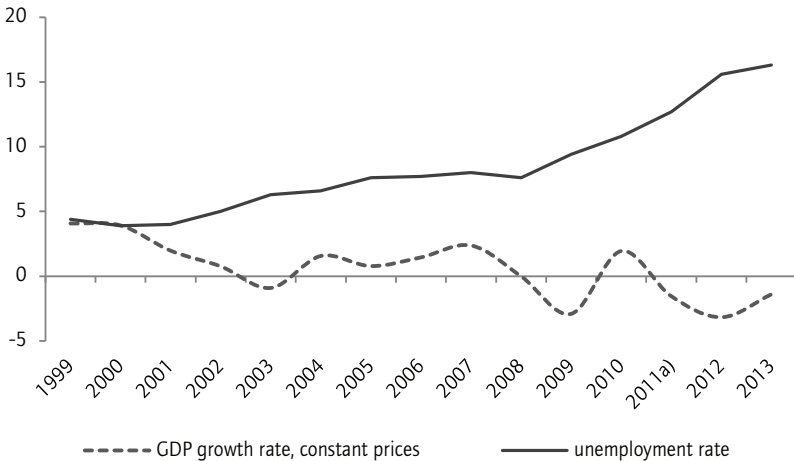
These debates also underpinned the process that led to the enactment of the Labour Code in 2003, which not only unified the different aspects of employment law into a single act but also introduced major changes to labour regulation and collective bargaining (Law No. 99/2003). These changes partly responded to employers' key demands, including greater working time flexibility in the workplace, loosening of the rules for the use of contracts and temporary work agencies and restrictions on collective bargaining, including the restriction of the 'after-effect' period of collective agreements and the elimination of the principle that collective agreements can only establish more favourable conditions than those laid down by the law. These reforms induced a 'collective bargaining crisis' in 2004 (Campos Lima and Naumann 2005; Campos Lima 2008a). As the previous provisions had laid down that collective bargaining could only set more favourable conditions than the law and that each collective agreement should only be replaced by a more favourable one (Palma Ramalho 2013), this presented the employers with an opportunity to let existing agreements expire and/or pressure the unions to negotiate more flexible conditions. As unions tried to protect the terms and conditions of agreements, this led to a stalemate in bargaining. As a consequence, the number of collective agreements published in 2004 was less than half that of the previous year and the number of workers covered declined to almost a third (Campos Lima and Naumann 2005; Dornelas *et al.* 2006). Owing largely to this drastic fall in collective bargaining, subsequent changes in the Labour Code in 2006 and 2009 created new arbitration procedures and clarified rules and timeframes for the expiry of agreements (Laws 9/2006 and 7/2009). As a result of these developments, collective bargaining was resumed and the previous levels of coverage were partially restored (Palma Ramalho 2013; Dornelas 2011) but started to decline again after 2008 (see Figure 3 in Section 7.2). Despite the introduction of new arbitration procedures, these mechanisms have remained relatively ineffectual resources for resolving bargaining disputes (Palma Ramalho 2013).

With regard to employment protection legislation, despite attempts to facilitate dismissals, the opposition of both trade union confederations led the government to abandon these plans until the outbreak of the crisis (Campos Lima and Artiles 2011).

1.2 'Representation' of the crisis and how it emerged

Portugal, like Greece, was relatively untouched by the international financial crisis in its initial stage, but became one of the countries most affected by the sovereign debt crisis that followed (Constâncio 2013; Karamessini 2013). The effects of the financial crisis were nevertheless felt in 2008, with a credit squeeze that exposed some vulnerabilities of financial institutions and led to the collapse of two banks, one of which was nationalised (Castro Caldas 2013). Economic growth, fairly low since the beginning of the decade, stagnated that year and, with the sole exception of 2010, declined afterwards. The unemployment rate, on the increase since the early 2000s, grew sharply throughout the years of the crisis (Figure 1).

Figure 1 Portugal, annual GDP growth rate and unemployment rate, 1983-2013



Source: PORDATA, (www.pordata.pt, accessed on 03.09.2014).

The dominant perception of the crisis in the country in early 2008 referred mostly to the deep and generalised international crisis that started to affect the Portuguese economy mainly through the 'decrease of foreign demand', the 'deterioration of financing conditions of both firms and families' and the 'increase of risk aversion and uncertainty

amongst the economic agents' (Banco de Portugal 2008: 3). However, there was also a widespread perception that there were some structural weaknesses that constrained economic dynamism. Among these, the most widely agreed were the deficit of human capital in the Portuguese labour force, the highly segmented labour market, the complexity and formality of legal procedures and the high energy dependence (Banco de Portugal 2010: 6).

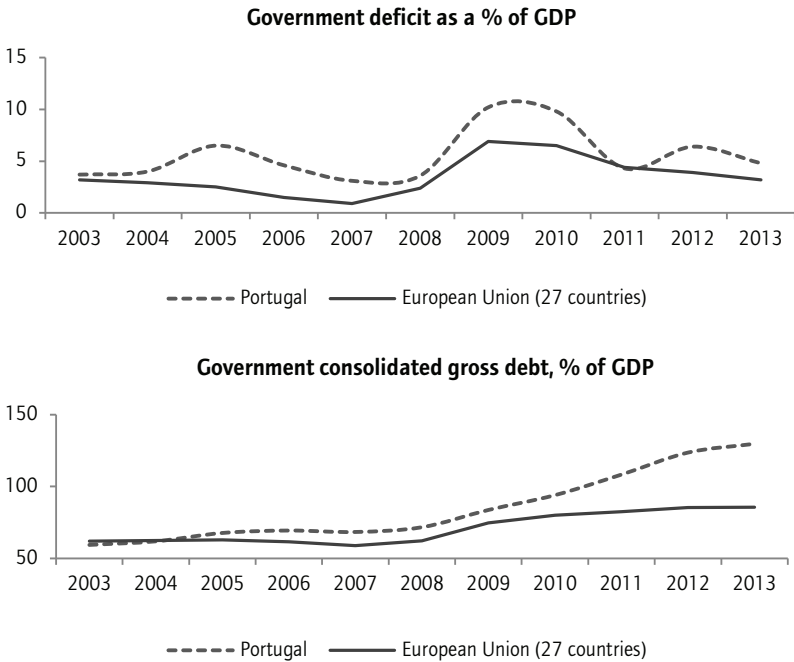
The countercyclical measures implemented in 2009 (following EU guidelines: see European Commission 2008) contributed to a higher than expected increase of the public deficit, feeding a second explanation of the causes of the crisis, linking it to the government's inadequate policy of excessive spending and indebtedness. This second explanation has been at the centre of the political debate in the country since the beginning of 'austerity' policies in 2010. This debate dominated the 2011 electoral campaign: while left-wing parties and the centre-left socialist party emphasised the effects of international financial crises, the centre-right (Social Democrat Party) and right (Popular Party) stressed the excessive public spending of the socialist government as the main cause of the crisis. The latter echoes a widely propagated view and also the European Union's professed version of the crisis, according to which southern European countries were solely responsible for the problems facing their economies due to their financial irresponsibility and excessive borrowing.² While this vision was increasingly contested by certain economists, who emphasised the role of the euro and its rules in the emergence and diffusion of the crisis (among others, Stiglitz 2013; Krugman 2012; Constâncio, 2013), Portuguese analysts and policy-makers continued the mantra 'we were living beyond our means' and that this is what led to debt and deficit growth.³ Even though Portugal does not have a record of budget surpluses and despite the economic stagnation and growing unemployment even before the crisis, the public deficit had been tending towards the European Commission-prescribed 3 per cent and the public debt as a percentage of GDP had stabilised in the years before the crisis (see Figure 2). In fact, the progress made to correct the deficit and the Portuguese government's fiscal and labour market reforms undertaken in the 2000s had been praised by the

2. See the various statements on Portugal issued by DG Economic and Financial Affairs in connection with the Economic Adjustment Programme for Portugal, at http://ec.europa.eu/economy_finance/assistance_eu_ms/portugal/index_en.htm

3. António Borges (FMI), 'Estamos de joelhos face ao BCE', DN, 28/10/2010; Cavaco Silva, 'Não devemos continuar a viver acima das nossas possibilidades', JN, 06/05/2011.

international organisations that had recommended and monitored the implementation of these measures, namely the OECD, the IMF and the European Commission (González and Figueiredo 2014). Nevertheless, when the economic situation worsened in Portugal it was increasingly portrayed as relating both to internal factors (structural weaknesses, expansionary policies that increased expenditure) and external circumstances (relating to the deep worldwide crisis).

Figure 2 Government deficit and debt as a percentage of GDP



Source: EUROSTAT, gov_dd_edpt1.

1.3 Overall responses to the crisis

The responses to the crisis in Portugal were developed in successive phases consistent with the different stages of the international and domestic crisis, but also with the European-level approaches to dealing with it. The first set of ‘anti-crisis’ measures, enacted in 2008, were

financial and aimed at securing the stability of the financial sector; they included measures to ensure banks' financial soundness and the development of state guarantees (Castro Caldas 2013). A second set of policies, explicitly aligned with the European Economic Recovery Plan (European Commission 2008), were for fiscal stimulus and were enacted in 2009 and beginning of 2010 in response to growing unemployment and deteriorating economic conditions.⁴ These consisted mainly of measures to protect jobs by providing fiscal and financial support to firms facing difficulties, extended unemployment protection and improved support for families with children.⁵ However most of these measures were short-lived and were withdrawn before it had been planned to do so in May 2010 (Campos Lima 2010a). Their withdrawal was part of the austerity programme announced in March and April of the same year, which marked the beginning of the austerity era in Portugal.

This first set of austerity measures were part of a Programme for Stability and Growth (2010), which became known as PEC1,⁶ adopted in response to the growth of the government deficit to alarming levels, to the pressures of the international financial markets and to a change of approach by the European Commission (European Commission 2010). This first austerity package was presented by the Socialist government as part of a strategy of fiscal consolidation to reduce the government deficit and control the public debt. Throughout 2010, as the economic outlook worsened and pressure from international markets intensified, the government presented successive programmes of escalating austerity. The measures included suspending planned public investments, cuts to pensions and other social benefits, changes to unemployment benefit and the minimum income programme, income tax increases and successive increases in VAT to 23 per cent and wage cuts of between 3.5 and 10 per cent for public sector employees with monthly wages above 1,500 euros (Campos Lima 2010a, 2010b and 2010c).

While the government initially consulted with the social partners in the Standing Committee for Social Concertation, no agreement was reached as the programme generated strong opposition from the two union confederations. Instead, the austerity measures led to waves of protest,

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4. Programa de Estabilidade e Crescimento 2008–2011 (Atualização de Janeiro de 2009).
 5. Initiative for investment and employment (Law 10/2009, 10 March) and Initiative for Employment (Resolução do Conselho de Ministros 5/2010).
 6. Programa de Estabilidade e Crescimento 2010–2013 (March 2010).

including a large demonstration on May Day, an even larger nationwide demonstration in 29 May 2010 called by CGTP and a general strike on 24 November, the first to be called jointly by the two union confederations, UGT and CGTP, in 22 years (Campos Lima 2010b and 2010c).

Into 2011, as the economic crisis deepened, the government intensified efforts to avoid a bailout but as the impact of the cuts was increasingly felt, this escalated discontent, which translated into a number of strikes in the public and private sectors (Campos Lima and Artiles 2011). Nevertheless, despite increasing discontent, the government reached a tripartite agreement with the employer confederations and UGT in March 2011 (CES 2011). This tripartite agreement covered a wide range of issues, but focused strongly on labour market reforms, including the reduction of compensation for dismissals (and the creation of an employer fund to finance these payments) and changes to collective bargaining rules and decentralisation. However, March 2011 was a crucial month that witnessed the announcement of a new austerity package (so-called 'PEC4'), two major demonstrations and the fall of the government. The first demonstration took place on 12 March and was organised spontaneously, through social media networks, initially by young people, in protest against unemployment, precariousness and low wages (Campos Lima and Artiles 2011). The second one, on 19 March, was organised by CGTP to protest against new austerity measures. The new austerity package, that included further cuts and further fiscal measures, raised strong objections from all opposition parties as some measures, particularly further cuts to pensions and tax increases, were considered unacceptable. Despite having reached a tripartite agreement with the employers' confederations and UGT, paving the way for significant labour market reforms, the government failed to secure sufficient political support for the austerity programme in parliament and this led to the resignation of the prime minister. In turn, this political instability increased external mistrust, leading to the escalation of interest rates on government bonds to unsustainable levels forcing the government, on 7 April, to request financial assistance from the European Union organisations and the International Monetary Fund. Following Greece and Ireland, in April 2011 Portugal became the third European Union member state to request financial support and on 17 May was granted a 78 billion euro loan under the terms of the European Financial Stabilisation Mechanism. In exchange, this required a commitment to a three-year austerity plan, laid out in a Memorandum

of Understanding (MoU). The latter prescribed a set of detailed fiscal consolidation and structural measures, including labour market ‘reforms’ to weaken employment protection legislation, to make working time more flexible and to decentralise collective bargaining. In Section 2 we discuss the implementation of these reforms and the roles played by the different national and supranational actors (in Section 3 we discuss the substance of these reforms).

2. The process of reform: the role of supranational institutions, the state and the social partners

This section focuses on the labour market reforms that took place during the economic crisis in Portugal under the adjustment programme agreed with the Troika. While most of the changes were specified in the MoU, it is important to take into consideration that, first, important reforms to labour law had been taking place since 2003 and second, many of these labour market reforms had already been included in a tripartite agreement that preceded Portugal’s request for assistance. Therefore, while it can be argued that this agreement was already signed under a background of strong pressure from international markets and European institutions, it is difficult to sustain the argument that most of the labour market reforms that took place in this period were directly imposed by the Troika, even if these measures were included in the MoU. In this section, we provide an account of the implementation of the labour reforms and the responses and roles of the different institutional actors.

2.1 The Memorandum of Understanding (MoU) and its implementation

The negotiations of the memorandum with the Troika involved three political main parties: the centre-left PS, the centre-right PSD and the right-wing CDS. Under the uncertain political circumstances, the Troika regarded support from a wide political basis as necessary to ensure implementation of the MoU irrespective to which party won the parliamentary elections scheduled for June 2011. Such support was secured, even though left-wing parties Bloco de Esquerda and Partido Comunista declined to negotiate with the Troika (Campos Lima 2011b; Naumann *et al.* 2012). The social partners were also consulted in this

process. Union confederation UGT and employer confederation CIP both pushed for integration of the measures negotiated in the tripartite agreement signed in March, with the employers emphasising the need to reduce severance pay and the unions demanding the observation of the prohibition of dismissal without just cause. From the employers' side, CCP and CIP also emphasised the need for support in financing firms, with CCP specifically stating that this was more important than reducing wages or increasing taxes (Campos Lima 2011b). CGTP proposed a postponement of the 3 per cent deficit target, but mainly used the opportunity to express its opposition to further austerity measures (for a summary of the positions of the social partners see Campos Lima 2011b).

The Portuguese MoU⁷ is a detailed prescriptive document organised in seven sections, of which fiscal consolidation (section 1 'Fiscal Measures' and section 3 'Fiscal-structural measures'), financial regulation supervision (section 2) and labour market reform (section 4) are the most comprehensive. It states that the conditions negotiated are to be strictly evaluated and implemented and, with regard to labour market reforms, defines very precise measures and targets. These measures cover the unemployment benefit system, employment protection legislation, working time arrangements, wage setting and collective bargaining. 'Active labour market policies' are also included, but these are defined in relatively vague terms compared with the former. Most of the reforms are justified with the argument of reducing 'the risk of long-term unemployment and strengthening social safety nets', 'tackling labour market segmentation, fostering job creation, and easing adjustment in the labour market', as well as the need 'to contain employment fluctuations over the cycle, better accommodate differences in work patterns across sectors and firms, and enhance firms' competitiveness' (European Commission 2011: 52). However there is no explicit reference to structural unemployment. Thus it provides scope to interpret the rationale underlying the measures as mainly supply side-oriented, aimed at reducing alleged 'incentives' for individuals to remain unemployed (by reducing the amount and duration of unemployment benefit). This is an inadequate representation of current unemployment in Portugal, where the unemployment rate has increased sharply (see Figure 1), reaching

7. Three documents and a letter of intent compose the Economic Adjustment Programme for Portugal. The documents are the following: (i) Memorandum of Economic and Financial Policies (MFEP); (ii) Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) and (iii) Technical Memorandum of Understanding (TMU). All of them are included in European Commission (2011).

16.3 per cent in 2013 (INE 2013a). Unemployment rate was particularly high for youngsters (37.7 per cent that same year) and increased sharply for the highly educated; the unemployment rate for those with tertiary education doubled between 2009 and 2013, increasing from 6.4 per cent to 12.9 per cent. Long-term unemployment currently represents the highest share of the Portuguese unemployed (62.1 per cent in 2013). These figures indicate massive structural unemployment and it is hard to argue that voluntary unemployment is the main unemployment issue.

Concerning the need to reduce segmentation and promote flexibility these had already been key issues under discussion in the Standing Committee for Social Concertation before the crisis, particularly in the period of introduction and revision of the Labour Code (2003 and 2009, respectively). In that period, this debate had been framed in terms of *flexicurity*. Given that labour law changes, by both right-wing (in the case of the 2003 Labour Code) and left-wing governments (in the case of the 2009 revision of the Labour Code), had recently been introduced with the objective of achieving a better balance between security and flexibility, some of the new labour law dispositions included in the MoU were interpreted by many as an imposition of the Troika. This interpretation results from the view that some of the MoU labour market policies favoured flexibility to the detriment of security to an extent previously considered unacceptable.

While the MoU includes many of the measures of the March tripartite agreement, it goes beyond them, particularly with regard to labour market measures and most notably the widening of the possible grounds for dismissal and restrictions on the extension of collective agreements, as discussed in Section 3 below. Also significantly, the MoU acknowledges the importance of social dialogue, requiring reforms to social security and labour market regulation to be implemented ‘after consultation with social partners, taking into account possible constitutional implications, and in respect of EU Directives and Core Labour Standards’ (European Commission 2011: 21). However, it specifies the measures that are to be consulted with the social partners, leaving very little margin for real negotiation.

Soon after taking office, the coalition government initiated a revision of the Labour Code. Almost a year after the signing of the MoU and despite several protests and a joint general strike, the social partners

(the employers' confederations, UGT but not CGTP) and the government signed a Tripartite Agreement 'Compromise for Growth Competitiveness and Employment' in January 2012. This agreement was important for the government to secure social support to labour market reforms as, according to the Minister of the Economy and Employment, it would 'reinforce national competitiveness and pave the way to economic growth, while preserving social peace'.⁸ Employers called the agreement 'beneficial for the country and desirable under the country's emergency situation',⁹ 'positive for the economy, for unions and for the country showing the responsibility of social partners'¹⁰ and considered that it gave positive international signs. The unions, as so often, have been divided, with CGTP withdrawing from the negotiations, arguing that the topics under discussion represented a regression on workers' rights and were against national interest. UGT, however, perceived the need to implement the MoU as unavoidable and, after a long process of difficult negotiations, signed the tripartite agreement despite considering that it 'was not completely satisfactory'.¹¹ It did so on the grounds that it included measures to promote employment and growth, improved upon some measures prescribed by the MoU (for example, avoiding a 'new reason' for dismissal based on failure to achieve objectives unless these had been agreed with the worker), that it excluded further labour market measures not required by the MoU that had been proposed by the government (the extension by half an hour of daily working times) and included a clause in which the government committed itself to introduce further labour market reforms only if they had been agreed with the social partners (UGT 2012).

However, throughout 2012 and 2013 the social partners accused the government of progressively disregarding the commitments made in the tripartite agreements, namely, suspending the extension of collective agreements and subsequently introducing new rules without consulting with employers and union confederations and of prioritising budget consolidation over measures to stimulate growth and to address unemployment.¹² In April 2012, UGT threatened to shred the tripartite

8. PÚBLICO, 17/01/2012, Governo e parceiros sociais assinam acordo tripartido.

9. Statement to the press of António Saraiva (CIP), Público/Lusa, 17/01/2012.

10. Statement to the press of João Vieira Lopes (CCP), Público/Lusa, 17/01/2012.

11. Statement to the press of João Proença (UGT), Público/Lusa, 17/01/2012.

12. Patrões reforçam apelo a "novo rumo" para o país, Renascença, 24/06/2013; Jornal Público, 'UGT Ameaça rasgar acordo de concertação', 17/04/2012.

agreement in protest.¹³ The head of the Manufacturing and Construction Employers' Confederation (CIP) also complained that the government was not respecting commitments with social partners, declaring that 'social partners cannot be used to subscribe agreements and then not be heard when it comes to decision-making'.¹⁴

Both employers' and union confederations have become increasingly critical of the policy design and implementation of the MoU measures. The employers' criticism was expressed in a joint statement in 2013 made by the four employers' confederations represented in social concertation.¹⁵ They stressed 'the urgent need for the government to adjust its targets to Portuguese reality', stating that 'the austerity plan adopted in Portugal has been a short-term plan implemented as if it was the only one possible. Given its results, it would be irresponsible to insist on and to deepen it.' They also state that the new policy 'has to involve all the social actors and especially the social partners'.

The coalition government has been very compliant with the Troika programme and has implemented the reforms in a dutiful and timely manner. It regarded its dispositions mainly as technical problems to be solved by sophisticated technical means. While the relevance of technical expertise never came into question, the insensitivity of policy-makers to the social outcomes of austerity and their disregard for social dialogue have been the object of much criticism. The key areas of criticism were highlighted in a report by the Economic and Social Council (CES) pointing to

four main errors that restricted the content of the MoU and the resulting policies: (i) an inadequate characterisation of the crisis underestimating its structural dimension [...] (ii) an underestimation of the importance of domestic demand and of the negative impact of its reduction [...] (iii) an understanding of 'reform of the state' taken to involve merely expenditure cuts [...] and (iv) a very short-sighted understanding of 'structural reforms' as a mere succession of 'competitive internal devaluations'. (CES 2013: 3–4)

13. Jornal Publico, 'UGT Ameaça rasgar acordo de concertação', 17/04/2012.

14. Declaration by António Saraiva to Rádio Renascença, 17 September 2012.

15. CAP, CCP, CIP e CPT unidas por um compromisso para o crescimento económico em Portugal, Press Conference, 24 June 2013.

The difficulties of the process of financial support appeared, at first, to be accepted by Portuguese society and by the social partners (with the important exception of CGTP). The strictness of the policies implemented was initially explained mainly in terms of the country's compromise with the Troika and the importance of giving the right signals to external markets. However, the government's insistence on austerity measures, the lack of concrete sustainable improvements and the disregard of formal commitments made to the social partners led to increasing criticism and opposition. Moreover, the fact that the government proposed a number of measures that went beyond the MoU also contributed to these tensions. Indeed, the government proposed a number of labour market and fiscal reforms in addition to or beyond the requirements of the MoU, some of which have been adopted (for example, reduction of public holidays, elimination of absenteeism-related extra holiday entitlements, extra cuts to pensions and public sector wages). However, certain measures announced by the government had to be withdrawn due to opposition, namely from the social partners (for example, increase of daily working time by half an hour and changes to social security contributions of employers and employees). In addition, a significant number of the measures implemented were later reversed by the Constitutional Tribunal. This process is further discussed in the sections below.

2.2 Social, political and institutional processes

Despite a number of political 'crises', public protests, general strikes and demonstrations, Portugal has maintained an image of relative social stability in the sense that opposition to the austerity measures has been expressed peacefully and there have been no episodes of violence or any rise in extremist movements of the kind observed in other countries during the crisis. Nevertheless, active opposition and protest have been expressed in a number of mass demonstrations since the beginning of austerity. Several general strikes took place, of which three (November 2010, November 2011 and June 2013) were organised jointly by the two union confederations in an (almost) unprecedented display of unity by the Portuguese labour movement. Moreover, public statements by both the unions' and the employers' sides have played an important protest role during the crisis in Portugal.

Political stability, which has also been considered a favourable feature of the Portuguese situation, has also been threatened several times. Two interrelated episodes illustrate the growing political and institutional tensions that have been emerging, to a great extent in tandem with decisions of the Constitutional Court that reversed some of the governments' austerity measures. The first episode refers to the government's attempt to cut employers' social security contribution (by 5.75 percentage points), while increasing that of employees (7 percentage points). This measure was announced in September 2012 as a countermeasure to the budgetary effects of the decision of the constitutional court revoking the cuts in the thirteenth and fourteenth month pay of public employees and pensioners. The social partners from both the employers' and the workers' side reacted with strong criticism to this direct redistribution of income from workers to employers, which was seen as grossly unfair. The head of the Manufacturing and Construction Employers' Confederation (CIP) has been particularly harsh, saying that 'the pillar of social stability suffered an attack'.¹⁶ The public criticism of this proposal was also expressed in a large demonstration on 15 September, a citizen's initiative announced through social media. The widespread disapproval of public opinion and the strong opposition by social partners in both sides led to the withdrawal of the measure. However, the episode contributed to an increase in tensions and the erosion of trust between the social partners and the government, as well as between the two political parties in the government coalition.

The second episode dates back to July 2013. It started with the resignation of the Minister of State and Finance (1 July), followed by that of the Minister of State and Foreign Affairs, who was and still is the leader of the smaller party in the coalition (2 July). Although the latter was ultimately persuaded to remain in the government with the upgraded position of deputy prime minister, these resignations almost led to the fall of the government and signalled substantial tensions between the two parties of the coalition. The Minister of Finance's letter of resignation, which has been made public, expressed significant criticisms of the implementation of the assistance programme. The content of the letter indicated not only the disharmony between the two parties of the coalition government but also the government's hostile stance to the Constitutional Court.

16. Statement to the press by António Saraiva (CIP), TVI24, 13/09/2012.

Considering these tensions that emerged in connection with the rulings of the Constitutional Court during the current crisis, it is worth briefly discussing the context of these decisions and the role that the Constitutional Court has played in recent times in the process of labour market reform. This organ of sovereignty is independent of other state organs and its function is to ensure that the state's functions are performed according to the Portuguese Constitution and that citizens' fundamental rights are observed. Within this role, a key task is to inspect the constitutionality of laws. As such, the court is regularly called on to define the boundaries between constitutional and unconstitutional dispositions of labour regulations, a process that has become more frequent since the implementation of the Labour Code in 2003, and even more so since the outbreak of the crisis.

Despite a consensus that the Court has played an important role in recent times in defining boundaries with regard to labour market reforms, there is some controversy with regard to the Portuguese Constitution. Some argue that the Constitution needs to be revised and updated; others argue that it mainly defines general principles and that there is no urgent need for any revision. A debate took place in 2010 and 2011 (in response to European calls) on changing the Portuguese Constitution to include public deficit and debt targets, but, although the Prime Minister supported this move, it was not taken forward, partly due to arguments that these were not the fundamental matters that should guide economic and social policy.¹⁷ Therefore, when called on by the President and by members of parliament to examine the constitutionality of a number of austerity policies and labour market reforms during the current financial crisis, the decisions of the Constitutional Court were not always aligned with the government's fiscal and financial priorities. Five times during the assistance programme the Court ruled against government measures that had been prescribed or that went beyond the MoU. These concerned mainly labour law reforms and cuts to pensions and public sector wages. In these circumstances, the Constitutional Court can be seen as an institution that sets boundaries between national sovereignty and external pressures, somewhat halting externally-determined measures that challenge what are considered to be citizens' fundamental rights.

17. For example, see PSD e Bloco não querem limites de défice na Constituição, TSF 17/05/2010; PS obriga Passos a recuar no limite da dívida, Económico 16/12/2011; Regra de ouro vira prata, Sol 24/11/2012.

Nevertheless, the decisions of the Constitutional Court against government policies and the reactions of the government have generated much controversy, particularly as these decisions have been represented by some as based on a literal interpretation of an ideological Constitution and blocking much-needed reforms. It has been suggested that the Court has failed to make an impartial and context-integrated analysis of the constitutional dispositions. This has mostly been the position of the government and the coalition parties. The tensions increased as European authorities publicly expressed criticism of decisions made by the Portuguese Constitutional Court; many consider this to be an unacceptable interference in Portuguese internal affairs.¹⁸ The government has grown increasingly impatient with unfavourable decisions of the Constitutional Court to the point at which then Prime Minister Passos Coelho publicly questioned the legitimacy of the Court as a sovereign organ and the process of appointment of its judges.¹⁹

3. Substantive reforms

This section analyses the labour market reforms that were adopted during and in response to the crisis, most of which were prescribed by the Memorandum of Understanding (MoU), although some started before the assistance programme and even prior to the crisis. In particular, the section focuses on the changes to labour law and collective bargaining rules that were designed to increase labour flexibility and management discretion in the workplace. These included changes to employment protection legislation, measures to increase working time flexibility and to reduce the compensation of overtime work, as well as changes to the rules governing collective bargaining with a view to promoting 'organised decentralisation' of decision-making and adjusting labour costs to firms' competitiveness. Most of these measures were implemented through a revision of the Labour Code in June 2012 and were subject, at least formally, to social dialogue with the social partners.

18. FMI: Tribunal Constitucional é uma dificuldade em Portugal, TVI24 10/10/2013; BE critica 'pressão vergonhosa' de Bruxelas sobre Tribunal Constitucional, *Jornal de Negócios*, 18/10/2013; Sindicato dos juizes critica pressão internacional sobre o Constitucional, *Jornal de Notícias* 18/10/2013; Relatório para Bruxelas vê juizes do Constitucional como força de bloqueio, RTP Notícias 18/10/2013.

19. Passos Sobe a Parada na Guerra contra o Tribunal Constitucional, *Jornal Publico*, 05/06/2014.

3.1 Employment protection legislation

Weakening employment protection legislation has long been a demand of Portuguese employers and there have been government attempts to ease and reduce the costs of dismissing permanent employees. However, trade union opposition, backed by the constitutional right to employment security (Art. 53), had previously prevented significant deregulation in this area. This changed with the crisis and with the involvement of the Troika.

The revisions of the Labour Code in Law 53/2011 of 14 October 2011 and in Law 23/2012 of 25 June 2012 reduced compensation for employee dismissal from 30 to 20 days per year of tenure, with a cap of 12 times the employee's monthly wage, and revoked the previous minimum compensation of three months' pay.²⁰ The Labour Code revision in Law 69/2013 of 30 August further reduced severance pay to 12 days per year of tenure in the case of collective dismissals (Art. 366) and created a transitory regime for reducing severance pay in the case of individual dismissals of employees on permanent and fixed-term and temporary contracts (Art. 5 and 6).²¹ These changes correspond to what had been prescribed by the MoU in May 2011 (Section 4.4). However, the Tripartite Agreement between the government, the employers' confederations and UGT union confederation²² reached in March of the same year had already paved the way for these reforms, in particular, the reductions in severance pay introduced by Law 53/2011 and 23/2012. Following the MoU and the March 2011 tripartite agreement, a new employer fund was created to partly guarantee the compensation of workers in case a firm faces insolvency or financial difficulties (Law 70/2013).

Another area of reform concerned the definition of dismissals, or the situations in which dismissals are possible. This included changes to the notion of dismissal due to the worker's unsuitability or, in a more literal translation from Portuguese, 'failure to adapt'. In accordance with the MoU (Section 4.5), Law 23/2012 determined that this type of

20. Law 53/2011 of 14 October reduced severance pay for new hires (Article 366-A); Law 23/2012 extended the reduction to all employees (Article 366).

21. The new regime includes transitory arrangements for reducing severance pay, whose value depends on type of contract, length and when it started (Law 69/2013 of 30 August, Art. 5 and 6).

22. Acordo Tripartido para a Competitividade e Emprego (Tripartite Agreement for Competitiveness and Growth), 22 March 2011.

dismissal should be possible even when this was not associated with the introduction of new technology or other changes in the workplace (Art. 375). The worker not achieving previously agreed objectives was introduced as a new reason for dismissal on grounds of unsuitability (Art. 5). Moreover, when job extinction affected a number of posts, there was no longer the requirement to observe the previous criteria of seniority and the new law established that it was up to the employer to set objective alternative criteria (Law 23/2012, Art. 368, No. 2). In both types of dismissal – job extinction and worker unsuitability – the employer would no longer be required to attempt to find an alternative suitable position within the firm (Law 23/2012 of 25 June). In contrast with what had been the case with the changes to severance pay, the tripartite agreement of March 2011 had not included any changes to the definition of dismissal. The situation changed after the entry of the Troika. Considering the crisis circumstances and the commitments made to the Troika the social partners – including UGT (but not CGTP, which opposed the changes more strongly) – signed another tripartite agreement in January 2012 (Compromise on Growth, Competitiveness and Employment) (CES 2012) that integrated most of the MoU requirements facilitating dismissals.

After one year of these reforms being in place, the Constitutional Court partly revoked the changes facilitating worker dismissal on grounds of unsuitability and job extinction.²³ The Constitutional Court determined that exempting the employer from the obligation of attempting to find an alternative suitable position of workers in situations of job extinction and unsuitability violated the constitutional right to employment security. In addition, the Court determined that allowing the definition of the criteria for selection of workers for dismissal (which was previously based on seniority) to be made solely by the employer was one-sided and inappropriate. Following this decision of the Constitutional Court, the government proposed five new criteria to be observed in case of job extinction to replace the previous seniority-based ones: (i) worse performance appraisal, (ii) lowest educational and professional qualifications, (iii) highest cost of maintaining the employment contract, (iv) seniority in the job and (v) seniority in the firm. These criteria were highly contested and negotiations with the social partners soon broke down. The two union confederations opposed the criteria and on the employer side CIP, the largest confederation, also failed to support

23. Acórdão do Tribunal Constitucional n.º 602/2013, 22/10/2013.

the proposal.²⁴ Nevertheless, the government moved ahead and, having gained parliamentary approval, the new rules came into force at the beginning of June 2014 (Law 27/2014 of 8 May). However, the opposition parties, the unions and several analysts have observed that the criteria – especially performance appraisal – raise constitutional issues due to their subjectivity, but also inadequacy, considering that most Portuguese employers do not have formal performance appraisal systems.²⁵ Under these circumstances, there is a significant chance that the new criteria will ultimately be rejected by the Constitutional Court, which may well, yet again, revoke these new legal rules.

The rules governing fixed-term contracts have also been the object of transitory measures that allowed their exceptional renewal beyond their maximum legal duration. Law 3/2012 of 10 January allowed the extraordinary renewal of contracts reaching their maximum duration until the end of July 2013, whereas law 76/2013 allowed further renewals of contracts reaching their maximum duration until 7 November 2015.

Another area of change was the regime for reducing or suspending work in situations of industrial crisis, often referred to as ‘temporary lay-offs’. In accordance to the MoU and in line with what had been determined in the March 2011 tripartite agreement, the new Labour Code (Law 23/2012) introduced a number of changes to this regime. Articles 300 and 301 reduce the period of time necessary for implementing temporary measures after an agreement or decision is reached and communicated to the workers affected. Moreover, the renewal of employment suspension or short-time working needs to be communicated to the workers’ representative structures but does not require their agreement (Art. 301, No. 3), as it did previously. However, on the positive side, the 2012 revision of the Labour Code also includes positive measures that were not prescribed by the MoU. This includes measures that increase the employment protection of the workers affected, imposing restrictions on their dismissal and under the new regime the employer is not allowed to dismiss workers during this period or up to 60 days afterwards (Art. 303, Law 23/2012).

24. Governo aprova critérios para os despedimentos sem acordo da UGT e da CIP, *Jornal Publico* 06/02/2014.

25. CIP quer reabrir discussão sobre férias e trabalho extraordinário, *Jornal Publico*, 29/01/2014.

3.2 Working time flexibility and overtime pay

The revision of the Labour Code of Law 23/2012 introduced several changes to working time regimes and overtime pay aligned to what had been prescribed by the MoU. Some of these had long been demanded by the employers, but had been contested by the unions. Trade unions opposed the changes because they had the potential to significantly reduce workers' total earnings but also because their formulation in the new law also challenged and reduced the scope for collective bargaining on these matters. Nevertheless, most of the changes to working time arrangements were included in the tripartite agreement 'Compromise for Growth, Competitiveness' 2012.

The MoU required a review and an increase in the scope for existing working time flexibility arrangements to be negotiated at the workplace level between employers and employees and consistently, the 2012 revision of the Labour Code (Law No. 23/2012) created the possibility of individual and group time banks (Law No 23/2012, Art. 208-A and 208-B). The 'time bank' regime already existed in the 2009 Labour Code (Law No. 7/2009, revision of Art. 208) and allowed working schedules to vary throughout the year to cope with fluctuations in demand. The main innovation is that the 2009 Labour Code dispositions required time banks to be regulated by collective agreement, whereas the new Labour Code creates the possibility for these regimes to be negotiated at the firm level directly between the management and individual workers without the involvement of trade unions. Therefore, the new individual and group time bank regimes made it possible to decentralise matters of working time flexibility to the firm level and increase managerial prerogative on these issues.

Even though these new flexibility arrangements may reduce the need for overtime work and workers' opportunities to top up wages with overtime pay, the same Labour Code revision halved the pay premium for overtime work (revision of Art. 268) and abolished the entitlement to compensatory rest (revision of Art. 229). In addition, Article 7 overruled dispositions in collective agreements setting compensatory rest periods for overtime work and suspended for two years collectively agreed rules setting more favourable conditions for overtime pay. Moreover, it determined that after this two-year period, the pay for overtime work established in previous collective agreements should be reduced by half.

This was not a requirement of the MoU, which specifically indicated that these norms could be revised upwards or downward by collective agreements.

In addition to the measures required by the MoU, Law 23/2012 also eliminated four national public holidays (revision of Art. 234) and the extra annual leave entitlements rewarding workers with low absenteeism (revision of Art. 238). Article 7 also restricts dispositions in collective agreements regarding extra entitlements to annual leave.

However, the dispositions in Article 7 of Law 23/2012 that restricted the scope for collective bargaining setting more favourable conditions on matters of working time and compensation of overtime pay were also partly overturned by the Constitutional Tribunal, which determined that they violated the constitutional principle of free collective bargaining. The ruling of the Constitutional Court revoked the suspension of more favourable collectively agreed rules for compensatory rest and for extra holiday entitlements, but not those concerning overtime pay. This decision was justified by the temporary character of the measure (suspension for two years of dispositions in collective agreements setting higher pay rates than laid down in the Labour Code) on the ground that, despite restricting the workers' rights to collective bargaining and to pay according to quantity, nature and quality, it was a temporary measure that safeguarded 'constitutionally relevant interests' of the current need to increase firms' competitiveness and productivity and to meet international commitments, in a reference to the MoU and the loan agreement. Consistently, it ruled against the restrictions to collectively agreed pay rates for overtime work after the duration of the two-year temporary period, which was due to end on 31 July 2014. Responding to employers' calls, the government approved a new law (48-A/2014) extending the suspension period till the end of that year. This was highly contested and opposed by the unions, with both confederations protesting that the proposal of law challenges the previous decision of the Constitutional Tribunal to allow the suspension only for the period of the crisis and the adjustment programme and not beyond it (CGTP 2014; UGT 2014).

3.3 Wage setting and collective bargaining

There have been very significant labour market reforms during the crisis. However, the reform of the rules on collective bargaining started well before the crisis, with the 2003 Labour Code (Law 99/2003), which created the possibility of expiration of collective agreements that had not been renegotiated.²⁶ These reforms have been strongly opposed by the unions, who have protested that they severely damage labour's position in collective bargaining, arguing that the possibility of expiration reduced employers' incentives to engage in meaningful negotiation and to reach a new agreement (Quintas e Cristovam 2002; CGTP no date). The Labour Code revision of 2009 continued these reforms, clarifying the legal after-effect period during which collective agreements remain valid in different situations and enabling the expiration of agreements that contained clauses establishing that they would remain valid until their renewal. This period corresponds to the time during which conciliation, mediation and arbitration are taking place or a minimum of 18 months after any of the parties requested cessation for collective agreements that do not include an expiration clause. Collective agreements with an expiration clause can also expire but only after a five-year period.²⁷ The 2009 revision of the Labour Code also creates the possibility of 'necessary arbitration' (in addition to voluntary and compulsory arbitration), which can be requested by any of the parties when they fail to reach a new agreement 12 months after the expiration of the previous agreement (Law 7/2009 of 12 February, Art. 510 and 511). Moreover, the 2009 Labour Code specified a number of areas that could not be the object of less favourable dispositions in collective agreements.²⁸ In addition, the 2009 revision of the Labour Code grants collective bargaining powers to non-union representative structures of workers in companies with

26. Article 557, 558 and 559 of Law 99/2003 of 27 August and changes in Law 9/2006 (art. 557).

27. Law 7/2009 of 12 February, Art. 501. For collective agreements that contain an expiration clause, this clause will expire five years after one of the following has taken place: (i) the last full publication of the agreement; (ii) a request by one of the parties to end the contract; (iii) a proposal of a new agreement containing a revision of this expiration clause. After this period, the expiration period for the collective agreement, the rule is the same as for contracts without this clause.

28. According to Art. 3 of Law 7/2009 of 12 February, collective agreements cannot set less favourable conditions with regard to: equality and non-discrimination; the protection of parenthood; labour by minors; workers with reduced working ability due to disability or chronic disease; workers who are students; employers' duty of information; limits on daily and weekly working time; minimum rest times and annual leave periods; night workers' maximum work duration; compensation guarantees; prevention of work accidents and work-related diseases; transfer of companies; worker elected representatives.

more than 500 workers, even though this role still requires trade union delegation (Law 7/2009 of 12 February, Art. 491). Despite opposition from CGTP, the government and the other social partners signed a tripartite agreement that supported the reforms of the 2009 Labour Code.²⁹

Subsequent changes to collective bargaining during the crisis were to a great extent a continuation of these reforms. The MoU envisaged the alignment of wage developments with productivity at the firm level through ‘organised decentralisation’ of collective bargaining and, with that purpose, it required a number of measures, most of which were adopted through a revision of the Labour Code in 2012 (Law 23/2012 of 25 June). These included a lowering of the company size threshold required for non-union bodies of workers in the firm to be granted bargaining powers from 500 to 150 workers, even though they still need a mandate from the trade union (Art. 491) and encouraging the inclusion of articulation clauses between levels of bargaining, particularly on matters of functional and geographical mobility, the organisation of working time and compensation (Art. 482).

The real novelty introduced during the crisis was the definition of criteria for extending sectoral collective agreements to workers and firms not affiliated to the negotiating associations. This was a requirement of the MoU and implemented through a Resolution of the Council of Ministers (90/2012) in October 2012, which introduced new representativeness criteria that were not previously required. Under the new rules, a collective agreement can be extended only if the firms represented by the employers’ association employ at least 50 per cent of the workers in the industry, region and occupation to which the agreement applies. The process of enactment of the resolution defining these new rules marked a step away from social dialogue by the government. Although the MoU specifically indicated that any changes to labour market or social security measures should be subject to consultation with the social partners, these criteria were defined unilaterally by the government (Campos Lima 2013b). This also breached a government pledge in the tripartite agreements of January 2012 not to introduce further changes to labour market regulation without the approval of the social partners (see CES 2012). Both trade union confederations and the four

29. Acordo Tripartido para um Novo Sistema de regulação das Relações Laborais, das Políticas de Emprego e da Protecção social em Portugal (CES 2008).

employers' associations with a seat on the Standing Committee for Social Concertation opposed the resolution and considered that the changes undermined collective bargaining (Campos Lima 2013b). In a statement issued in November 2012 on its website, CIP (the largest employers' confederation) observes that the new resolution: 'undermines the possibility, in practice, of extending collective agreements and this in turn favours disloyal competition, desegregates employers and removes incentives for their affiliation, fosters informal economic activity and deadly hurts collective bargaining',³⁰ which it regards as 'an expression of social dialogue at the sectoral level, that enables adjustments of the legal framework to industry-specific needs, enables the improvement of working conditions and is also an indispensable condition for social peace, crucial for the competitiveness and productivity of our firms.'³¹

From the trade union side, CGTP – in a complaint to the *Provedor da Justiça* (a Portuguese watchdog to which any citizen can complain but which has relatively limited powers) – makes similar remarks but highlights the wage inequalities that the non-extension of collective agreements will generate between the workers who are covered and those who are not. The MoU justified the need for these criteria on the grounds that collective agreements negotiated by associations that do not represent the majority of the employers – to which these agreements apply after extension – might be against the economic interests of non-affiliated firms and damage their competitiveness. However, there is no consideration of its effects on fair competition, industrial conflict, employment conditions and labour market inequality. These labour law reforms appear to be contributing to blockages in collective bargaining (discussed in Part 2) and are likely to lead to a worsening of working conditions as fewer workers are covered by agreements that until recently were permitted to set only better wages and conditions than the legal minimum standards. However, these minimum standards have also been lowered, as in the case of overtime pay, as discussed above, or frozen, as in the case of the national minimum wage

30. Governo Inviabiliza Contratação Coletiva, 06/11/2012, available at <http://www.cip.org.pt/irj/servlet/prt/portal/prtroot/com.sap.km.cm.docs/cip/conteudos/areasestrategicas/assuntossociais/informacao/804d09ab-700a-3010-eca8-c971533a047a.xml>; see also 'Gregório da Rocha Novo afirma: Acórdão do Tribunal Constitucional pode dar machadada letal na contratação colectiva', *Vida Económica*, 17/01/2014.

31. *Idem*.

The MoU required the freezing of the national minimum wage ‘unless justified by economic and labour market developments and agreed by the programme of the framework review’ (Section 4.7). Accordingly, the national minimum wage was frozen at 485 euros in 2011, breaching a historical tripartite agreement with all the social partners (including CGTP, which rarely signs national tripartite agreements) to increase the national minimum wage to 500 euros in 2011. The freezing of the minimum wage in a context of higher taxes, particularly VAT, is likely to have a strong negative effect on the workers affected. Moreover, this measure is not neutral because different groups of workers are likely to be differently affected. As women are twice as likely as men to receive the national minimum wage – 12.3 per cent of working women (compared with 5.9 per cent of men) earn the minimum wage (Dornelas *et al.* 2011) – this measure is likely to have a disproportionately negative effect on women and contribute to increase gender wage inequalities. The freezing of the national minimum wage was lifted only in October 2014; four and a half months after the end of the assistance programme its value was increased from 485 euros to 505 euros.

Meanwhile, further changes to the rules on collective bargaining are under way. A new resolution of the Council of Ministers has been published that changes the criteria for extending collective agreements. The new criteria are that a collective agreement can be extended only if either: (i) the firms represented by the employers’ association employ at least 50 per cent of the workers in the industry, region and occupation to which the agreement applies; or (ii) 30 per cent of the affiliates of the employers’ association signing the agreement are micro, small or medium enterprises (*Resolução do Conselho de Ministros n.º 43/2014 de 27 de Junho*). Another legal change to collective bargaining was published at the end of August 2014 (*Lei n.º 55/2014*), further reducing all periods with regard to the expiry and ‘after-effect’ of collective agreements and creating the possibility of suspending collective agreements in cases such as an industrial crisis. This new proposal was subject to concertation with the social partners and, despite the opposition of CGTP, was agreed with UGT and the employers’ associations.

3.4 Equality and non-discrimination

The employment reforms discussed above were implemented without considering their impact on equality and work/life balance. As a result – and as discussed in the previous section – some of those measures are likely to have a disproportionate negative impact on certain social groups.

On the positive side, there were at least two legal reforms that are positive from an equality perspective. One concerns the changes made to the 2009 Labour Code, which specify the areas in which collective agreements can set only more favourable conditions than the law because many of these areas are related directly or indirectly to equality. The areas specified in Article 3 of Law 7/2009 include equality and non-discrimination, the protection of parenthood and the rights of workers with reduced working ability due to disability or chronic disease. Moreover, other areas that are ring-fenced with regard to work/life balance and, indirectly, gender equality are limits on daily and weekly working time, minimum rest times and annual leave periods. All these dispositions were maintained in the 2012 Labour Code (Law 23/2012). However, the latter also includes a significant substantive change of the legal rules governing collective bargaining in relation to equality and non-discrimination. The 2012 revision of the Labour Code stipulates that, within 30 days of their publication, the legality of the dispositions of collective agreements in matters of equality and non-discrimination is to be assessed by the competent service of the Labour Ministry (the Commission for Equality at Work and in Employment, CITE) (Law 23/2012, Art. 479 and *Decreto-Lei* No. 76/2012, Art. 3).

If any illegal dispositions are detected, the parties are notified and required to change those dispositions within 60 days. If this is not done, the process is sent to an employment tribunal, which may pronounce the collective agreement void within 15 days. The 2009 revision of the Labour Code had already initiated these reforms but did not include the possibility or requirement that the parties change the discriminatory elements of collective agreements. The 2012 legal reforms granted the Commission (CITE) a greater role in promoting equality in collective bargaining and the opportunity to raise equality awareness among the social partners.

4. Discussion

The sovereign debt crisis in Portugal has been a period of intense labour market reform to a degree not witnessed since the 1974 Revolution. These reforms were, to a great extent, induced by the perceived pressure of the financial markets and the European policy of budget consolidation and internal devaluation, but they were also consistent with the political ideology of the right-wing government coalition. While many of the changes to labour law and collective bargaining were already under way before the crisis, the worsening economic situation and the involvement of the Troika facilitated reforms that had so far been successfully resisted by the unions or had not even been put on the agenda.

The substantive measures prescribed by the MoU and subsequently adopted by the Portuguese government were aimed at achieving fiscal consolidation and internal devaluation, mainly by increasing labour market flexibility. While flexibility had been a central topic of social dialogue since the early 2000s, the focus on flexicurity was replaced, under the crisis, by a focus on reducing labour costs. Some labour market reforms, such as those facilitating and decreasing the cost of dismissals, had been on the employers' and government agenda for some time, but up to the crisis the trade unions had successfully opposed these changes. However, during the crisis, general strikes and demonstrations were no longer effective, particularly under the influence of international organisations that were scarcely affected by such actions (as also observed by Armingeon and Baccaro 2012). Other changes, particularly those affecting the rules of collective bargaining, may represent a clearer break with the previous reform path and do not appear to respond to the demands of social partners on either side. This is particularly the case with the introduction of representativeness criteria for extending collective agreements. This reform is contributing to the collapse of sectoral bargaining, a central feature of Portuguese industrial relations with which all the parties appeared to be comfortable. While this may appear at a first sight to represent a paradigmatic change induced by the crisis and externally imposed, it is important to note that significant changes to the rules of collective bargaining had already been taking place since 2003. These changes, particularly with regard to the expiry of collective agreements, may also have contributed to the blockages in bargaining and to the reduction in coverage observed during the crisis. Part 2 of this chapter, drawing mostly on interview data with the social partners and case study material, will enable us to shed more light on these issues.

The process of labour market reform also changed during the crisis. Until then, the systematic effort to involve the social partners had led to the achievement of important consensus and had enabled the accumulation of important trust capital between the social partners and the government. During the crisis there was also an initial effort to involve the social partners and two tripartite agreements were achieved that paved the way to reform. However, from then on, the government increasingly showed a disregard for social dialogue by failing to honour some of the commitments made in those agreements and by taking unilateral decisions when consensus proved difficult and negotiations time-consuming. This, coupled with what was seen as an over-zealous implementation of the MoU, also appeared to lead to a change in the dynamic of relationships between labour market actors at the national level. The tradition of hostility between social partners inherited from the dictatorship and the revolutionary period seemed to partly give way, throughout the crisis, (at the national level) to distrust of the government by the social partners on both sides. Both unions and employers seemed to share the view that exaggerated austerity and certain labour market policies could compromise social stability and industrial peace. Despite the fact that the two union confederations continued to take very different approaches to signing tripartite agreements, the government's stance brought together the labour movement in the opposition to the measures. In the four decades of democracy, only once had the two politically divided trade union confederations organised a joint general strike, 22 years before the crisis.

Indeed, the government's dutiful implementation of far-reaching labour market reforms and austerity policies has met with significant opposition and protest. A few measures have been successfully resisted by a variety of institutional and social actors, including trade union and employers' organisations, but also civil society, which organised spontaneously to hold mass demonstration. Also notably, the Constitutional Court, called on to assess the constitutionality of some of the measures, reversed a number of them. While trade unions protested fiercely and civil society at times revealed a surprising inclination to mobilise against government austerity policy and Troika intervention, the Constitutional Court emerged as a crucial institution in safeguarding fundamental rights as defined in the Portuguese Constitution and, indirectly, setting boundaries to external intervention on domestic matters. However, in fulfilling this role, the Constitutional Court has been subject to increasing pressure

from the government, backed by international organisations, and tension has escalated between these two Portuguese sovereign organs.

Part 2 The impact of the reforms of labour market policy and joint regulation

Part 2 examines the impact of the crisis and the associated labour market reforms on collective bargaining in manufacturing. Following the examination of the process and substance of the changes introduced in labour law during the crisis in Part 1, in Part 2 we consider their practical effects on the process, character, content and outcome of collective bargaining at the sectoral and firm level.

1. The research strategy

This part is based mainly on primary research conducted between May and August of 2014, complemented with secondary data from official sources. The empirical study draws on in-depth interviews at national and sectoral level with key social partners from both the employer and union side and a three-hour workshop with state officials and representatives of manufacturing trade unions and employers' associations that involved a total of 20 participants. The interviews at national level included persons with direct responsibility for the collective bargaining policy of their respective organisations (CGTP, UGT and CIP). At the sectoral level the research involved interviewees from employers' and union organisations in leadership roles and/or directly involved in collective bargaining. In addition, ten case studies of firms (see Table 1) were conducted in three manufacturing sectors: (i) metal and automobiles, (ii) textiles, clothing and footwear and (iii) food and drinks manufacturing. A total of 30 interviews were conducted at the national, sectoral and firm levels; the data were complemented by sectoral and firm collective agreements, where they existed and were made available.

We shall start with a brief overview of the manufacturing sector in Portugal and the industries studied. We focus in the following sections on analysing the impact of the crisis and the labour market reforms on, first, the process and character of collective bargaining and second, its outcome and content.

Table 1 Case study firms

Case studies	Employers' association membership	Workforce size	Worker structure	Impact of the crisis	Company agreement	Interviewees
Large car manufacturer 1	ACAP (Car production, repair and trade)	4500	Trade union Workers' committee	Significant	Yes	Management Trade unions Workers' committee
Large car manufacturer 2	ACAP	810	Trade union Workers' committee	Significant	No	Management
Large car components manufacturer	AIMMAP (Metal)	350	No	Significant	No	Management
Medium car components manufacturer	AIMMAP (Metal)	200	Non-union Workers' committee	Significant	No	Management Workers' committee
Large home textiles manufacturer	ATP	660	Trade union	Initially considerable	No	Management Trade union
Large clothing manufacturer	ANIVEC	600	No	Minimal	No	Management Individual workers
Small clothing manufacturer	ANIVEC	70	No	Minimal	No	Management Individual workers
Large shoe manufacturer	APICCAPS	1200	Trade union	Initially considerable	No	Management
Large food/drinks manufacturer	Not for bargaining purposes	1000	Trade union Workers' committee	Considerable	Yes	Management Trade union/ workers' committee
Medium food/drinks manufacturer	ANICP	180	No	Minimal	No	Management

2. The context of industrial relations in manufacturing

Manufacturing in Portugal is a relatively important economic sector compared with other European countries, with a share in total employment of 16.7 per cent compared with the 15.6 per cent average in the European Union in 2013 (Eurostat 2013). The figure in 2008 had been 18 per cent and the decline was sharper in manufacturing than in total employment (19.1 per cent compared with 13 per cent). Textiles, clothing and leather taken together are the largest sub-sector, with a 29 per cent share of manufacturing employment, followed by food (14 per cent), metal (12 per cent) and automotive (8 per cent).³²

When the crisis started, textiles, clothing and footwear had just been through a process of adjustment in response to the opening up of European markets to international competition between the mid-1990s and the mid-2000s. As highlighted in the interviews, this involved the relocation of a number of multinationals and the restructuring of the sector, in a process that involved significant job losses.³³ However, partly due also to strategic repositioning, these industries survived and after this process they were in a better position to face the challenges of the international crisis that started in 2008. While 2008 and 2009 were difficult years, since 2010 there have been signs of recovery and exports have been growing steadily since 2011 (INE 2013b). While these industries are highly export-oriented, there is substantial variation in the share of exports in total sales by sub-sector: 85 per cent in clothing, 75.7 per cent in leather and footwear, and 62.4 per cent in textiles (INE 2013b).

The metal and, especially, automotive industries have been more directly affected by the current international crisis. Some signs of recovery started to appear already in 2010 in the metal sector (see INE 2013a and PORDATA), but only became evident in car production in 2014, with ACAP, the employers' association for the car industry, reporting that production had increased by 6.4 per cent in July 2014.³⁴ The car industry is highly export-oriented with a share of exports in total sales of 82.9 per cent in 2012 (INE 2013b).

32. All data in this paragraph are from Eurostat's online database, accessed between 15 September 2014 and 10 October 2014.

33. About a third of jobs were lost between 1995 and 2008, according to PORDATA.

34. <http://www.acap.pt/pt/pagina/36/estatisticas/>, accessed 10.10.2014.

Food and beverages is a very heterogeneous sector and overall much more oriented to the domestic market, which had a share of 83.2 per cent and 66.9 per cent, respectively, in food and beverage manufacturing in 2012 (INE 2013b). Production in this sector slowed down after 2010 closely linked to the decline in household disposable income and consequent fall in consumption.

Collective bargaining in manufacturing in Portugal is characterised by the dominance of industry-level bargaining but low levels of coordination and articulation (Dornelas 2004; European Commission 2004). Although most bargaining takes place at the sectoral level, collective bargaining in Portugal is not considered to have a high level of centralisation (European Commission 2004) because of the fragmentation of unions and employers' associations, which results in bargaining authority being distributed among multiple organisations in each sector. Articulation between levels of bargaining has remained very low despite being legally possible since 2003 (Art. 536, Law 99/2003; see also Dornelas 2006).

In the metal and car industries there are three employers' associations and three union organisations involved in industry-level bargaining. On the union side the three main organisations are CGTP-affiliated FIEQUIMETAL, UGT-affiliated SINDEL and independent SIMA. However, due to blockages in bargaining and the expiry of the agreements with CGTP, the agreements concluded by UGT's SINDEL are now the main framework for these industries, even though CGTP has stronger representativeness in manufacturing (Dornelas 2006).

In textiles, clothing and leather, the main organisation on the union side is CGTP-affiliated FESETE, which negotiates all the agreements with the five employers' associations in the sector. UGT union organisations in these sectors generally subscribe to the industry agreements negotiated by FESETE.

In food and drinks manufacturing the employers' associations are organised in multiple industry branches and workers are represented mainly by CGTP's SINTAB, which also represents workers in agriculture. In turn, this union is affiliated to FESAHT, which is a federation of unions representing mainly workers in hospitality.

Box 1 Employee representation in the workplace – two company case studies

Large car manufacturer 1 is considered the paradigmatic but atypical case of good industrial relations and firm-level bargaining in Portugal. The atypical character of industrial relations in the firm lies not only in their unusually collaborative nature but also in the fact that the negotiating party on the workers' side is the workers' committee, which signs company agreements without the mandate of the sectoral union. For this reason, these agreements are not legally enforceable but they have effectively regulated the organisation of work, and the terms and conditions of employment in the firm since 1994, while contributing to industrial peace. The character of industrial relations in this company is strongly influenced by the German parent company. Under that influence, management is highly supportive of the regular communication and transparent sharing of information that support a culture of cooperation and trust. Although the workers' committee is the negotiating party, there is also union representation in the company, with union delegates from CGTP, UGT and SIMA. The workers' committee is also composed of union delegates from CGTP and the coordinator is a well-known member of CGTP, but his negotiation-oriented approach contrasts with the generally confrontational approach of his union. Union density in the firm has been decreasing but elections for the workers' committee involve 80 to 90 per cent of the employees. There has never been an internal strike in large car manufacturer 1. This is due partly to a written agreement to follow specified procedures to solve disputes as soon as they arise, partly to a tacit understanding between management and workers. The lack of industrial action in the company is also due to the 'discipline' and influence of the European works council, which rarely supports local internal strikes and helps to resolve local disputes through the parent company. There are also written commitments on the company side to avoid job losses and instead engage with the workers' committee in seeking alternative solutions whenever circumstances require. Therefore, Large car manufacturer 1 is also atypical in manufacturing in Portugal for the emphasis it puts on dialogue with workers as a main driver of efficiency.

At the **Large food and drinks manufacturer** there is a long tradition of union representation and company collective bargaining that results in regular formal company agreements. The union committee is traditionally strong and confrontational and its branch secretary reported in the interview that the level of unionisation of production workers is around 90 per cent. There is also a workers' committee composed of three union delegates and four independent workers. The coordinator of both committees is the same person, the interviewee. In his view, both structures are important because the workers' committee is seen as more neutral (without political connections), representing the views of the firm's workers, but as it does not have the same resources and therefore the same bargaining power, the union's committee is also necessary. From the HR manager's perspective, the workers' committee is the workers' representation structure for day-to-day communication; it is closer to the workers without the political influences and connotations associated with the union, a view that was expressed in a number of interviews with managers of other firms.

One of the food and drink subsectors studied is a particular case in Portugal because there is currently no industry agreement. This is because the industry is dominated by two large companies, each of which has its own agreement. As company bargaining is relatively rare in manufacturing in Portugal, the large food and drinks manufacturer we studied was regarded as a particularly interesting case as it could provide insights into responses to the crisis negotiated at firm level.

At the workplace level the main channels of employee representation are trade union delegates and committees and workers' committees (a works council-type body). Both are democratically elected by the workers and protected by the Constitution. The 2009 Labour Code introduced the possibility of workers' committees signing company agreements, but this requires a mandate from the trade union. Of the companies studied only two had company agreements, one of which – in car manufacturing – is celebrated with the workers' committee and the other, in food and drinks manufacturing, is a regular formal agreement with the trade union (see Box 1).

3. The implications of reforms for the process and character of collective bargaining

The period of crisis in Portugal witnessed significant changes in the process and character of collective bargaining. However, these changes were largely the result of reforms to the regulatory framework that were initiated before the crisis. The interviews with the social partners at the national and sectoral level revealed that it was mainly the introduction of the possibility of expiration of collective agreements in the Labour Code in 2003 that initiated the trends observed during the crisis. These led, even before the crisis, to increasing blockages to bargaining at the sectoral level, as well as the weakening of trade unions in collective bargaining and of workers in the employment relationship. The reforms were taken further during the economic crisis and the combined effect of both increased the pressures on the system. The underlying objectives of the changes were, at least at the level of discourse, to make collective bargaining more dynamic and to enable the organised decentralisation of collective bargaining. The sections below examine the extent to which these objectives were achieved.

3.1 The pressures of collective bargaining at the sectoral level

The changes made to the legal framework in 2003 introducing the possibility of expiration of collective agreements resulted from the widespread view, particularly among employers, that the collective agreements in place were not fit for purpose and that trade union intransigence was preventing the modernisation of employment relations and of the organisation of work. According to interviewees from both the employers' and the union side (mainly UGT), even though collective agreements were formally renewed and republished, the main changes introduced had long been mainly wage updates and other matters of a pecuniary nature. Most of the content remained the same, in many cases since the 1970s and 1980s. A number of interviewees from employers' associations noted that the political instability and climate of the post-revolutionary period was highly favourable to labour and these circumstances enabled the introduction in sectoral collective agreements of a number of 'rights' that the trade unions have since then refused to forgo. Nevertheless, some areas became increasingly outdated, namely with regard to occupational categories, partly because many of these referred to jobs that no longer existed and partly because occupations were very narrowly defined and thus provided no scope – in the employers' perspective – for functional flexibility. Moreover, some norms were outdated because they had been either surpassed by legislation or outstripped by workplace practice. Nevertheless, the most contentious issues were working time flexibility and the pay rates for overtime work. The latter had reached very high levels (in many cases, three times the rate for normal working hours), which the unions had been able to secure on the understanding that overtime should be discouraged and used only in very exceptional situations. The underlying reasoning was that workers' rest and leisure time should be protected. However, being one of the relatively few flexibility strategies available to employers to adjust to demand fluctuations, in the context of very low manufacturing wages, overtime work in manufacturing had gradually become a widespread regular practice and overtime pay had come to be a significant share of workers' earnings. Therefore, lowering the rates for overtime or introducing working time flexibility that would reduce opportunities for overtime work would both lead to a cut in the earnings of the workers affected and this explains the union's resistance to any changes unless, from the UGT interviewee's perspective, these were compensated with wage increases.

The national-level interviewee from CGTP – who is responsible for the collective bargaining policy of this union confederation – challenges the view that the collective agreements remained unchanged and considers that there has always been a degree of flexibility both in sectoral agreements and in the workplace – namely with regard to working-time and functional flexibility. The sectoral agreement has never, according to this view, prevented local adjustments in the workplace that met the firm’s specific needs, but this flexibility needed boundaries. In this perspective, employers’ claims that there had been no change in collective agreements for decades and their demands for greater flexibility are fallacious and the employers’ real purpose has always been to reduce labour costs. From this point of view, the Portuguese production model of low added value that competes on the basis of cost is not desirable and no longer sustainable considering the international competition of developing countries with much lower labour costs and standards. Instead, this union confederation aims to negotiate measures that enable the development of a production model based on added value, innovation and product diversification. In this perspective, union concessions on matters of overtime pay and flexibility, as demanded by employers, would only contribute to reinforce a model that it is not in the national interest to maintain.

Consistently, the interviews with employers’ associations provided no evidence that employers have ever seriously considered, in negotiations, providing wage increases or other pecuniary benefits that would compensate workers for the potential earnings loss that introducing working time flexibility would entail. Indeed, the legal reforms and then the crisis enabled employers to negotiate flexibility into the collective agreement without having to offer much in return. The 2003 Labour Code and subsequent 2009 revision that created the possibility of expiration of existing agreements gave employers the upper hand in collective bargaining. The crisis that started in 2008 further contributed to weaken the trade union position. As the economic situation deteriorated, the union concern with protecting workers’ pay started to lose ground in relation to the need to secure the survival of businesses and protect jobs. The interviewee from CIP, the national confederation for manufacturing employers, explains that, after a long effort to try to introduce greater flexibility in sectoral agreements, firms met the crisis under increasing pressure to respond flexibly in order to avoid bankruptcies and job losses and did not have the means to offer unions any cash compensation for working time flexibility:

When the crisis hit, that was the time when we most needed these flexibility figures in order to avoid more firms closing down, more layoffs and more job losses ... and we did not have the means to offer ... If unions say 'no deal' then I also cannot [do more] ... So you ask 'What did we offer in return' [for flexibility]? Employment did not drop further because in certain sectors – important sectors – firms made good use of these alterations and new tools ... It is not a matter of two sides across the table: 'Do you want 50? I offer 8....' No, in collective bargaining many people are involved, in sectors that are fundamental to our economy in which unemployment reached the levels it did. So this cannot be looked at in terms of direct and immediate exchange...

Trade union responses to the new reality varied. In the metal and automobile industry, where there had been blockages in bargaining (and no updates of wage tables) for a decade, industrial relations had become highly adversarial. The interviewees from employers' associations attribute the responsibility for the blockages in collective bargaining to the intransigence and lack of willingness to negotiate in particular of CGTP-affiliated FIEQUIMETAL. However, as reported by the employers' association for car manufacturing (and repair and trade) ACAP, the existing blockages involved not only the more radical CGTP-affiliated union but also the more moderate UGT union SINDEL and independent SIMA. The issues under dispute were mainly that employers wanted to introduce working time flexibility and lower overtime pay rates. These changes have always been considered unacceptable by CGTP negotiators from FIEQUIMETAL. While CGTP's FIEQUIMETAL had previously been the main bargaining partner due to its greater representativeness in manufacturing, employers started to envisage better prospects for negotiations with UGT's SINDEL. Eventually, an agreement was reached in 2010 with SINDEL, which introduced time banks and lowered overtime rates. The economic circumstances were not favourable to the union side but SINDEL secured some concessions from employers regarding significant boundaries to time banks and time compensation for work done on weekends. The agreement also involved wage increases of around 10 per cent, but as this was designed to update wages that had not been increased since 2001 this increase cannot be regarded as compensation for the introduction of working time flexibility (as noted by the ACAP interviewee). The new agreement also introduced significant changes to occupational categories. The

CGTP unions never agreed to any of ACAP's proposals and, after all the legal timelines and requirements, including mediation and conciliation procedures, the negotiations failed and the agreement with the CGTP unions expired in 2009. SINDEL's agreement was extended to the industry and is now the main framework for this subsector. A very similar process was described by another employers' association for the metal industry, AIMMAP, whose collective agreement with the CGTP unions also expired and a new one was reached with UGT's SINDEL, which has been in place since 2010. CGTP union members can opt out from the SINDEL agreement, which could potentially create some difficulties in companies with a significant number of unionised members. In practice, based on information provided by employers' associations and on the case studies, these problems rarely arise in the workplace and workers do not normally object to being covered by UGT agreements, even if they are members of a CGTP union. The situation in the metal sector seems to be representative of what is happening in many other manufacturing industries (though not in textiles), as reported by interviewees from unions affiliated to both UGT and CGTP and by the interviewee from CIP, the umbrella employers' association for manufacturing. These revealed that the blockages in most manufacturing sub-sectors are long standing and based on similar grounds and where agreements have been reached these have been signed with UGT, on the union side.

CGTP unions in the metal industry dispute that their collective agreements have expired and have submitted an appeal to the administrative court. While this process takes its course, in strict legal terms the CGTP collective agreements are not valid. Under these circumstances, the union's strategy has been to persuade individual employers to comply with it and if some employers continue to do so with regard to some of its core rules (and CGTP unions in the north gave a number of examples of firms that do so) this has the potential to restore the validity of those agreements. This is dismissed by the two employers' associations interviewed, however, who maintain that the only valid agreements in the sector are those signed with UGT's SINDEL.

The situation in textiles and footwear differs from what seems to be happening in most of manufacturing industry, where there are long-standing bargaining blockages with CGTP unions. FESETE, which is also a CGTP-affiliated union federation, negotiates all the agreements with employers' associations in the textiles, clothing and footwear industries.

This union organisation has adopted an approach that is rather different from most CGTP unions. After a comparatively short-lived blockage in bargaining after the publication of the 2003 Labour Code, FESETE reached new collective agreements with the employers' associations in 2006. These agreements introduced working time adaptability and other forms of flexibility and avoided the expiration of agreements (although according to CIP's interviewee, this dispute was resolved due to the direct intervention of the Minister of Labour). Even though industrial relations were relatively positive from then until the beginning of the crisis, there have been no agreements and/or wage updates negotiated since 2010/11 (except for ANIT-LAR and ANIL that at the time of the interview were about to reach new agreements with FESETE). One of the six employers' associations in these industries has recently requested the expiration of the existing agreement.

The blockages in collective bargaining observed during the crisis in textiles and footwear manufacturing appear to be at least partly caused by the suspension (in 2011) of the extension of collective agreements and the subsequent introduction of representativeness rules in 2012. Employers' associations claim that negotiating wage increases and favourable conditions for workers would result in firms that belong to the employers' associations facing unfair competition from non-member firms not bound to apply the same wages and terms and conditions. Moreover, they claim that this may encourage the disaffiliation of current members. This has been a key argument of employers' associations in textiles and footwear to justify their unwillingness to negotiate wage increases. The representatives of various employers' associations in textiles and footwear interviewed argued consistently that the pay table only sets minimums and that many of their members often pay more if they can. However, local unions argue that larger employers who can afford to pay their employees higher wages often do so while still benefiting from the very low wage rates negotiated for the sector. This is because these industries, concentrated in the north of Portugal, are organised in intricate subcontracting chains and networks. In many firms, the main flexibility strategy to deal with demand fluctuations is to subcontract a large proportion of production to smaller firms, over which they tend to have a high degree of control and impose very strong cost pressures. Thus these firms at the bottom end of the subcontracting chain have very small profit margins and little scope to offer higher wages and better conditions to their workers. Due to the nature of these inter-firm relations, local unions dispute the

justification provided by employers' associations based on potential unfair competition from non-affiliated firms because, as reported, small and large (or medium) firms do not compete with each other. Instead, these are subcontracting relations and so the lower the wages paid by the smaller firms, the greater the benefit for the subcontracting firms. If this is the case, the non-extension of collective agreements would be irrelevant or if anything, larger firms who belong to the employers' association might still feel obliged to encourage the firms they work with to pay the collectively agreed rates for the sector, which in turn would increase their charges. This, from this perspective, is the real reason why employers' associations have refused to negotiate pay increases since 2010/2011. Somewhat contradicting that perspective, soon after the new change in the representativeness rule that made extensions viable, one of the employers' associations in textiles concluded a new agreement with FESETE and updated wage tables. Even in this case, however, and similar to what has been the rule in these sectors, wages in the main occupational categories are very low, close to the national minimum wage. Nevertheless, it is clear that there are multiple circumstances within and between these sub-industries that add to the complexity of firm relations and interest representation at the sectoral level.

In the metal industry, the changes to the extension rules appear to have had a lower impact and the main change affecting industrial relations has been the changes that enabled agreements to expire. The changes to extension rules did not prevent wage updates between AIMMAP and SINDEL in 2013. Even though ACAP has not negotiated a wage increase since 2012, this is justified on the basis of the economic situation of smaller repair and commercial firms, which are also represented by this association. According to the interviewee from ACAP's representative, the changes to the extension rules did not affect this decision.

The views of social partners with regard to extensions were heterogeneous, especially among employers, but one CGTP union leader also argued that extensions may not be beneficial for unions because they do not encourage workers to unionise and only high levels of unionisation enable a strong bargaining position. On the employers' side, all employers' association interviewees reported being in favour of extensions as a basis for industry bargaining that propitiates fair competition but this view is not necessarily shared by all firms. The managers interviewed from the medium car component manufacturer expressed the view that

companies make their own internal management decisions and for that reason it would be better not to be bound by an industry agreement. The manager of the large car component manufacturer and the large shoe manufacturer also expressed reservations.

3.2 Decentralisation trends

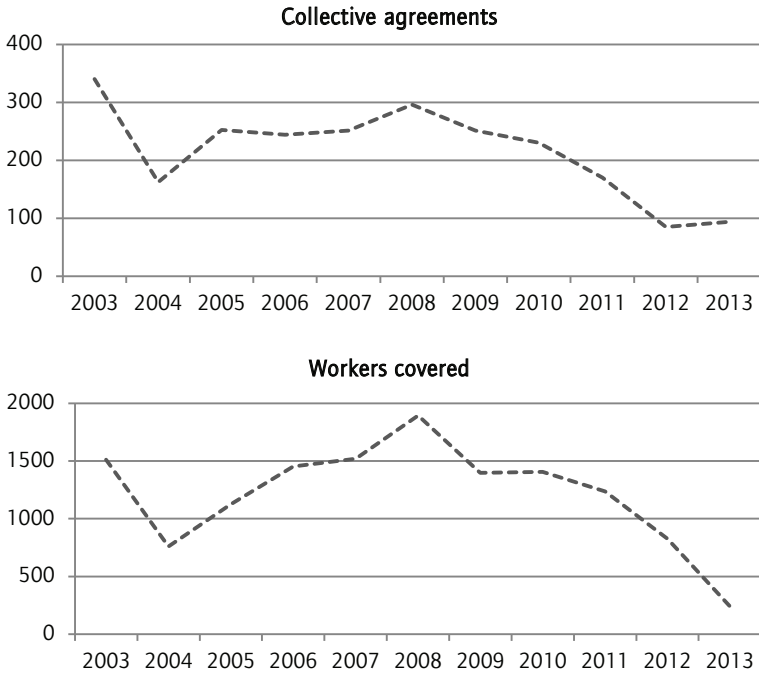
A number of changes in labour law were introduced with the explicit objective of promoting organised decentralisation that would facilitate flexibility and aligning wage developments with productivity at the firm level. Formal changes have been introduced in the law for this purpose, namely, encouraging the inclusion in sectoral agreements of articulation clauses between levels of bargaining and making it possible for workers' committees in firms to conclude company agreements, mainly by first introducing this possibility in 2009 in firms with at least 500 workers and then by reducing this threshold. The interviews with actors at different levels reveal that articulation clauses have hardly ever been used and that, as workers' committees still require a union mandate to be allowed to conclude agreements and as this is rarely granted, these changes have had little impact.

Although the introduction of the possibility of expiration of collective agreements from 2003 was introduced with the objective of making collective bargaining more dynamic, its initial effect was the opposite. Indeed, it appeared to have the effect, at least initially, of reducing collective bargaining activity, although after a sharp decrease the levels of collective bargaining were partially resumed up to 2008 (see Figure 3). However, the number of collective agreements and workers covered decreased again from 2009 until 2012. Since 2012 the number of collective agreements has been growing but the number of workers covered has continued to decrease. This may be because as sectoral agreements were not extended they covered fewer workers but also because as the changes in extension rules led to blockages in sectoral bargaining, the relative proportion of firm agreements increased in 2012 and 2013. As the latter apply only to the firm's employees this trend also contributes to lower numbers of workers covered by collective bargaining.

The unions that contributed to this study generally expressed the consensual view that the changes introduced in 2003 and consolidated

in the 2009 Labour Code revision enabling and facilitating the expiration of agreements, contributed greatly to the decline in collective bargaining activity observed during the crisis. The negative effect of the suspension and subsequent creation of representativeness rules for the extension of industry agreements is also consensual. This trend continued throughout the crisis, at least until 2013.

Figure 3 Collective agreements concluded in Portugal, by year and workers covered



Source: UGT (2014), Relatório Anual da Negociação Coletiva, 2013.

Table 2 shows that the relative importance of company agreements has increased, even though its total number has also decreased since 2008. However, an inversion of the declining trend of industry agreements was also noticeable in 2014. Of the 41 agreements published until August 2014 (by the time of writing), almost half were published in July and August,

following a regulation change³⁵ that added a new criterion for the extension of industry agreements, namely that 30 per cent of the members of signatory employers' associations should be SMEs. Several of the social partners interviewed expressed the view that the new rules are more appropriate because most employers' associations have at least that proportion of SME members and therefore the agreements signed would meet the extension requirements. Thus, employers' associations may now be more inclined to sign collective agreements and to update wage tables for the industry if they know that these will be extended to all firms. Therefore, while the increase in the relative proportion of company agreements in 2012 and 2013 could be interpreted as a trend towards decentralisation, in absolute terms company agreements have also decreased until 2012 and are still at much lower levels than they were before the crisis. Data for 2014 and the most recent change to the extension rules suggest a degree of resilience on the part of the industry-based system of bargaining.

Table 2 **Number of collective agreements* and extensions in selected years**

	2003	2008	2009	2010	2011	2012	2013	2014**
Total collective agreements	343	295	251	230	170	85	94	115
Company agreements (AE)	81	95	87	64	55	39	48	57
Multi-employer agreements (ACT)	30	27	22	25	22	10	19	17
Sectoral agreements (CCT)	232	173	142	141	93	36	27	41
Extensions (industry agreements)	n.a.	134	n.a.	n.a.	n.a.	n.a.	9	n.a.

Notes: * New agreements and revisions of existing agreements; n.a. – not available;

** January–August.

Source: UGT (2014), Relatório Anual da Negociação Coletiva – 2013 and data provided by DGERT upon request (regarding extensions 2008 and 2013 and all data for 2014).

However, it is important to keep in mind that the data displayed in the figure and table only refer to the workers covered by *new collective agreements*. This has important implications, the most important of which is that the total number of workers covered by new and existing valid agreements is unknown. The interviews with both sides, as well

35. Resolução do Conselho de Ministros n.º 43/2014, 27 June.

as documents provided in the process, indicate that in practice, the number of agreements that have expired is not that significant. Between the publication of the 2003 Labour Code and the end of 2013 only 34 collective agreements expired and some of these were parallel agreements that differed only in one of the signatory parties – for example, the same employers’ association signed two agreements with the same text with different unions – so the number of *effectively different* agreements that actually expired was just 23, of which 18 were sectoral and five were company agreements (UGT 2013). No data are available on how many workers are affected but, according to both sides, it is not a significant number. Interviewees from unions and employers’ associations tended to agree that in most cases employers are not interested in letting agreements expire, but use the new provision to obtain concessions from unions in negotiations. However, the weakened trade union position in the bargaining of new agreements and the low implementation levels of old agreements imply that, even if formal coverage remains high, the relevance of the effects of sectoral bargaining may have decreased.

Sectoral agreements have traditionally determined better pay and conditions than those in the general law, while at the same time allowing for sector-specific arrangements that would also benefit employers and promote industrial peace. The interviews revealed that both unions and employers’ associations support industry bargaining. In the run up to the changes introduced in the 2003 Labour Code, it was the employers who maintained that the existing sectoral agreements were no longer serving their competitiveness and adaptability needs; in their view due to union intransigence. However, the changes introduced from 2003 onwards clearly changed the balance of power in favour of employers and severely constrained the trade unions’ bargaining position. Those unions who have concluded industry agreements have had to make relevant concessions. Unions fear that as the new expiration rules can be used by employers to pressure them to make concessions in every bargaining round, this will lead to the progressive deterioration of workers’ terms and conditions. In this case, unions may lose an important part of their capacity to shape industry bargaining, which may become less relevant over time, even if it remains formally the dominant level.

The situation may be different at the firm level in cases where unions are strong or where management is supportive of worker participation, both conditions that are relatively rare in manufacturing in Portugal. The two

cases of firms with company agreements that we studied correspond to these situations and therefore are highly atypical. In these two cases, collective bargaining was based on strong representation of the company workers by the negotiating body and this made it possible to conclude agreements that were considered satisfactory by both parties. From the workers' side, it protected their interests and avoided the deterioration of working conditions and pay, and from the company's side it made it possible to achieve flexibility, a degree of wage restraint during the crisis and industrial peace. However, these cases are not typical and will be further discussed below.

CGTP union interviewees also reported a firm-level union strategy outside formal bargaining, so-called '*caderno reivindicativo*'. This strategy appeared to have gained in importance during the crisis, in the context of bargaining blockages at the industry level. The *caderno reivindicativo* simply consists of local trade unions meeting with the workers of a firm and on their behalf approaching their employer without any formalities with the purpose of negotiating wage increases (and in some cases other terms of employment). Union interviewees from CGTP operating in the metal and car industries in the Porto region reported that they had been able to secure wage increases in this way in a number of companies. The national CGTP interviewee also reported the case of a car component manufacturing cluster based in a region south of Lisbon around a large multinational company (large car manufacturer 1). These firms were not able to provide annual wage increases in the early stages of the crisis, unlike large car manufacturer 1, but trade unions have recently approached them individually with *caderno reivindicativo*. Having obtained positive results in one or two firms and as these results became known this facilitated negotiations in other firms, having a spillover effect, and similar wage increases were generalised to most firms in the cluster, according to the CGTP national interviewee.

Despite the recent success of these decentralised strategies in some firms in the metal industry, we found no evidence of formal decentralisation in the three sectors studied. The employers' associations and union interviewees reported no decentralisation trends or any stronger inclination on the part of affiliated firms to conclude company agreements, which remain virtually non-existent in metal (with the notable exception of large car manufacturer 1, even though this agreement with the workers' committee – in the absence of a union mandate – is not legally

binding) and textiles and leather. One employers' association for clothing (ANIVEC) reported that while before the crisis a few large companies had company agreements, these proved ineffective in managing labour in the context of dynamic industry bargaining that since 2005–2006 had provided flexibility tools that met firms' needs. In food manufacturing, there are a small number of (formal) company agreements but there is no evidence that these have increased.

While national-level figures indicate an initial increase in the proportion of company agreements in relation to sectoral agreements, recent figures show a degree of increase in bargaining activity at the industry level, suggesting some resilience in the system. It is also clear that company agreements are not supplanting sectoral agreements. Nevertheless, the values in Figure 3 and the interview data suggest a decrease in bargaining coverage during the crisis and a shift towards greater individualisation of employment relations. This indicates a trend towards disorganised, rather than organised decentralisation. The disorganised character of decentralisation is also evidenced by the lack of vertical articulation, the informal bargaining strategies of local unions at the firm level and the reduced ability of sectoral union confederations to influence wages and employment conditions.

3.3 The impact of the crisis on the climate of employment relations

The crisis and the changes in legislation appear to have reinforced the existing character of industrial relations in each sector.

In the metal and automobile industries, the climate of industrial relations was already very adversarial between employers and the CGTP unions. This was intensified during the crisis, which led to the expiration of CGTP agreements in these industries. Relations between employers and UGT unions were less adversarial and, although partly due to the weakened position in the context of the crisis and the new legal framework, new agreements signed with UGT SINDEL led these to become the dominant framework for wages, as well as employment terms and conditions in the sector. However, antagonism was not limited to employer/union relations. The interviews in these sectors also revealed profound cleavages, competition and hostility between CGTP- and UGT-affiliated unions.

In textiles, clothing and footwear after a period of blockages following the 2003 Labour Code, industrial relations became relatively collaborative, according to the interviewees. Although there were no wage increases during the crisis, industrial relations continue to be described as relatively peaceful and collaborative by the actors, although this may be at least partly due to the greater vulnerability of workers in the context of economic crisis, sectoral restructuring and growing unemployment. An employers' association interviewee in the clothing industry explains:

Nowadays people understand, there is cooperation, even the trade unions have played a very constructive role [in collaborating with the employer's association in helping to resolve internal conflicts in firms] – this did not used to be possible. And why is this? It's the crisis. The crisis makes people become closer. I realise that when the crisis is over, there will be some demands ... but at the moment people understand.

Although the industrial relations situation in clothing and textiles appeared relatively peaceful during the crisis at the level of employers' associations, the hostility of some employers towards unions was evident in a number of interviews, although the extent to which this was aggravated during the crisis is unclear. While in textiles and footwear this hostility was expressed mainly by individual employers, in the metal industry employers' negative attitudes towards unions was also noticeable in the interviews with employers' associations. Employers – both associations and individuals – often seek to justify this hostility in terms of what they describe as trade unions' confrontational approach and lack of sensitivity to the economic pressures faced by firms. This is directed mainly towards CGTP unions. Employers' associations in the metal and car industries also argued that the action of CGTP-affiliated organisations tends to be guided by ideological motives and political links to the Communist Party and that these do not always serve workers' interests in practice or help to resolve disputes. This alleged lack of pragmatism and low transparency of their motives is evidenced – according to an ACAP interviewee – by the fact that FIEQUIMETAL failed to engage in voluntary arbitration that might have prevented the expiration of the collective agreement.

However, union politicisation may not be exclusive to CGTP unions, at least at the central level. As noted by the CGTP interviewee, when the (right-wing) coalition government showed a receptiveness to discussing an

increase in the national minimum wage in April 2014 in the run-up to the European elections, UGT refused to engage in concertation on the grounds that it refused to allow the national minimum wage be used as ‘electoral folklore’ in favour of or against the government or any political parties.³⁶ Although the secretary general justified this position on the grounds of political impartiality, an increase in the national minimum wage earlier in the year – irrespective of whether or not it benefited the coalition parties in the elections – would surely have favoured low-paid workers, particularly in manufacturing sectors such as textiles and footwear. Nevertheless, regardless of the political motives and consequences of that particular decision of the secretary general, UGT interviewees argue that at local and sectoral level UGT has a more independent and pragmatic approach to bargaining and to resolving disputes with employers by reaching compromises that protect workers’ interests.

In summary, during the crisis, industrial relations remained highly adversarial in metal manufacturing with, if anything, a reinforcement of antagonism between the employers and CGTP unions and between the two union organisations, which remain politicised. An increase in conflict at the firm level is also linked to changes to overtime pay rates, which will be further discussed in the next section.

4. The implications of the reforms for the content and outcome of collective bargaining

4.1 Shifting the boundaries between statutory and joint regulation

There has been a significant move from joint to statutory regulation in ways that have clearly shifted the balance of power towards management, thereby increasing managerial discretion in the workplace. This shift occurred first through creating the possibility of expiration of agreements and shortening the duration of their ‘after-effect’ and the introduction of representativeness rules for extensions, which potentially leaves some workers uncovered by collective bargaining. However, data are not yet available that would allow us to determine the extent to which this has happened.

36. SMN: UGT indisponível para ‘folclore eleitoral’, CGTP recusa negociar como ‘moeda de troca’, TSF, 09/04/2014. http://www.tsf.pt/PaginaInicial/Economia/Interior.aspx?content_id=3803615

This shift has also taken place in more direct ways. The government has regulated directly in areas of legislation that were traditionally under the scope of collective bargaining, namely the organisation of working time and overtime pay. As the Labour Code revision of 2012 made it possible to implement individual time banks in firms, even if these are not regulated by sectoral collective agreements, workers may still be required to work in that regime. Moreover, under the threat of expiration of agreements and the pressures of the economic crisis, many unions made concessions with regard to time banks and other forms of flexibility long demanded by employers. Time banks now exist in the three collective agreements regulating metal workers. Interestingly, individual employers and employers' associations and also trade unions consistently mentioned that time banks have long been used by firms, based on informal agreements with workers or their representatives (see Box 2). This was particularly the case in the metal industry, but the HR manager and union delegate of a textiles firm also reported the use of time banks in the firm. The interviewee from the automobile employers' association explains:

At the time companies were allowed to have a time bank only if this was covered by the collective agreement. That is also why for us it was essential to have it in the sectoral agreement: because we knew that firms were already doing it, with the risk of having problems with the labour inspectorate.

Indeed, in the four firms studied in the metal industry, three had their own time bank regimes before these were covered by the sectoral collective agreement. In the fourth case, the company agreed a different working time regime with the workers in which, in addition to the three shifts per day during the week, a weekend shift was created. According to the workers' committee of the medium car component manufacturer, this weekend shift consists of 24 hours at the weekend and the workers involved receive the same pay as those working the normal 40-hour shift during the week. Time banks have not been formally introduced in textile and footwear agreements, but since 2006 there has been a system of working time adjustment. Moreover, the interviews in the three textile companies revealed that all three had either regular or occasional informal time banks. This was also the case of the medium food and drinks manufacturer.

Box 2 Time banks in Portugal

Large car manufacturer 1 is often cited as the company that first started using time banks in Portugal. In this firm, the system was first introduced in 2003. Due to a fall in demand that year, the management and the workers' committee negotiated a solution that would avoid job losses and consisted of exchanging wage increases for 12 'down days' that year and 10 further days in the following year. These 22 days thus became a permanent allowance and workers only work if needed and are entitled to be paid for those days if they reach a positive credit of 22 days in each two-year period. Weekend work is not included in the time bank. This solution was seen as a satisfactory solution for the situation faced by the company at the time from the perspective of both workers and management. It also served the company well in the early years of the current crisis. However, as the economic outlook improved, it became clear that the system was effective for responding to periods of low demand but less so for responding to periods of higher than usual demand. Under these circumstances, management has been keen to renegotiate working time flexibility to allow it to deal with peaks in demand, namely by redesigning the time bank system to include work on Saturdays. However, the last attempt failed to secure workers' support.

Despite that drawback, the system is regarded as a successful case of negotiated working time flexibility and large car manufacturer 1 established a template for time banks in the industry. The HR manager of large car manufacturer 2 reported that he had visited large car manufacturer 1 before proposing a time bank in his company and it was reported by the employers' associations that on the example of large car manufacturer 1, the concept and practice of time banks was widespread in the industry and was subsequently included in the sectoral agreements. Arguably, it may have influenced its inclusion in the Labour Code in 2009 (if collectively agreed in a formal process) and in 2012 (individual and group time banks).

However, the time banks that were subsequently regulated by the industry agreements are not as favourable to workers as that implemented in large car manufacturer 1. In most cases, time banks are designed in a way that does not compensate workers for flexibility, while at the same time reducing opportunities for overtime pay.

With regard to overtime pay, which has been a source of long-term conflict in industry bargaining in many manufacturing branches, notably metal, the government reduced the legal rates by half and in the 2012 Labour Code introduced provisions that suspend collective agreement clauses that set higher rates. These provisions, which were meant to be temporary for a period of two years up to the end of July 2014, have in the meantime been extended until the end of the year in response to employers' claims that they would not be able to pay the much higher collectively agreed rates.

In the cases in which overtime work is used, firms have in most cases seized the opportunity to reduce overtime pay. The managers interviewed tend to argue that they did so in order to comply with the law, conveying an interpretation of the legal provision that failing to apply the new reduced rates would be illegal. However, as some union interviewees observed, the Labour Code only suspends collectively agreed pay rates and does not include any provisions restricting individual employers' decisions to pay above the legal minimum.

Of all the regulations introduced during the crisis, the suspension of collectively agreed extra pay rates has had the most negative impact on industrial relations and has become a source of conflict in the workplace. This is because, first, workers and unions regard the reduction of overtime as a breach of industry or company agreements and second, in some cases this reduction constituted a substantial component of workers' pay and so represents a significant cut in total earnings. Trade unions have called strikes on overtime, with variable results. Calls for strike action also protect workers in cases in which they do not want to work overtime under rates that, unions argue, do not compensate the ensuing problems for work/family reconciliation and reduced rest time. Both unions and a number of managers have also observed that increased income tax has also contributed to reducing the value of take-home pay accruing for the extra hours worked.

While in metal work the employers' response appeared relatively uniform, in textiles the situation is somewhat more heterogeneous. While the large home textiles manufacturer used to pay the rates set by the industry agreement and after the change reduced the rates to those set by the 2012 Labour Code, the large clothing manufacturer paid overtime work as normal hours before and after the regulatory change, in breach of both the collective agreement and the law. In turn, the small clothing manufacturer paid the collectively agreed rates before and after the change, but did not declare this payment, with the justification that if overtime pay is taxed it does not compensate the workers' effort. In fact, the interviews with the workers in this company suggest that the firm generally tends to make informal use of working time flexibility regimes and overtime pay in a way that is favourable to workers. In this firm, time banks are used mostly for absences: workers who need to be off work are allowed to work extra hours at other times instead of losing pay, whereas if it is management who requires overtime, workers are compensated with the collectively agreed rates.

Box 3 Overtime pay in three company case studies

Even the best employers, such as large car manufacturer 1 reduced overtime pay rates, thereby breaching the company agreement, which already set lower rates than those in the industry agreement. Despite workers' discontent and disapproval of the move, due to a tacit understanding between management and the workers' committee and between them and the European Workers' Council, this firm's workers do not strike. Therefore, the workers reluctantly collaborated by working overtime on two out of five Saturdays. However, after that, the workers decided that it did not pay and the coordinator of the workers' committee told management that workers were unwilling to continue working overtime and management made alternative arrangements (using a temporary work agency). The manager interviewed initially justified the move with the need to comply with the law. Confronted with the fact that the previous rates paid by the company for overtime work were also illegal because they breached the industry agreement, the manager added that the company needed to be internationally cost-competitive to win orders and investment from the parent company.

The large home textile manufacturer is also considered a good employer. It follows the industry agreement and improves on some of the terms, paying higher wages complemented with a system of bonuses linked to attendance and productivity. Both sides consider that there are good industrial relations in the company, even during the crisis, except with regard to the payment of overtime work. The application by management of the lower rate determined by the Labour Code constitutes, from the trade union perspective, a breach of the industry collective agreement. This led to conflict and a call for workers to strike in protest. Due to the strike, and because, after taxes, it does not pay with the new rates to work weekends, a proportion of workers refuse to do so. This proportion is very high according to the union, but relatively low according to management.

The large food and drinks manufacturer has a long tradition of firm-level unionisation and collective bargaining. The firm union is affiliated to CGTP and although it is negotiation-oriented it is also quite prepared to take a confrontational approach. It derives its strength from its very high membership among production workers, estimated at 90 per cent by the branch secretary in the interview. The changes in the law associated with the crisis led to substantial tensions in industrial relations, particularly when the firm decided to apply the new reduced rates for overtime pay, resulting in a decrease from 175 per cent to 50 per cent on weekends. For workers who regularly worked weekends and relied on regular overtime pay as a stable component of their earnings, this represented a substantial loss. Therefore, when the new rules were implemented, the workers and the union felt this breached the company agreement and initiated a strike on overtime pay that lasted five months. As worker participation in the strike was 100 per cent and the company relied significantly on overtime work, the management and the union reached a new agreement that compensated the extra effort associated with the overtime work. In practice, this 'effort subsidy' reinstated the previous rates but a new designation protected the company from the supposed risk of breaching the Labour Code rule.

In exchange, the union agreed to a three-year programme of relatively low wage increases (flat rate of 25, 20 and 15 euros) linked to overtime and productivity. Overtime work was also reorganised so that a greater proportion of workers were involved and so avoided excessive working hours for individual workers. Both the union and management assess this solution as satisfactory. From the union side, this is a rare case in which a union was able to maintain collectively agreed rates for overtime work during the crisis. For management, despite that concession, the agreement achieved wage restraint and secured workers' cooperation in overtime work and industrial peace in the following three years.

These cases point to the high incidence of informal arrangements at the firm level, often in breach of the collective agreement and/or legal provisions. In the metal and automobile industries, the interview evidence seems to suggest that the changes contributed to formalise arrangements that were already in place in the case of time banks, although in the case of overtime pay the imposed rates contributed to increase tensions in the workplace. As reported, with or without industrial action, there is some evidence that a number of workers in these industries may be reluctant to work overtime at the new legal rates, which calls into question the effectiveness of the measure. The situation appears to be different in the clothing and textile industries, where the evidence suggests that management discretion in adopting informal arrangements at the firm level may be more widespread and less affected by the regulatory changes. Nevertheless, the managers interviewed in both sectors made several references to informal arrangements and understandings at the firm level at the margin (and in some cases in breach) of the sectoral agreements.

4.2 Patterns of wage bargaining

In addition to the changes to overtime pay rates, a combination of factors has affected pay developments in manufacturing, particularly in the industries studied. Statutory minimum standards play a major role in developments in earnings, particularly in low paid sectors and occupations. In sectors such as textiles and clothing and the subsector of the medium food and drinks manufacturer, collectively agreed rates for the occupations of most workers tend to be set just a little above the national minimum wage. Therefore, when there are blockages in bargaining, these rates are regularly surpassed by the minimum wage,

which becomes their actual wage (Távora and Rubery 2013). Between 2011 and the summer of 2014, the national minimum wage was frozen at 485 euros and bargaining was blocked in textiles, clothing and shoe manufacturing. Consequently, the wages of most workers in these industries were frozen at very low rates in the same period. In the two case study firms in clothing manufacturing, there had not been wage increases since 2011 and the monthly pay of most production workers varied between the national minimum wage or 485 euros and 505 euros a month. While the sector has been affected by the crisis, the large and the small clothing manufacturers were not severely affected and appear to have been in good health in recent years, having required most workers to work overtime regularly in the past year and reporting good results, despite some uncertainty. Interestingly, the workers in these two companies – who are not generally unionised – while aggrieved about not having received wage increases, do not direct their grievances towards their employer and instead tend to blame the government for not increasing the national minimum wage. Despite not having increased wages, the small clothing company gave annual bonuses during the crisis, which was the existing practice, but the total amount has increased in recent years, according to the workers interviewed. The large home textiles firm has awarded wage increases only to lower grades throughout the crisis, although this year as the economic and firm situation has improved, the pay increase has affected all grades. The lowest wage paid by the company, according to the HR manager, is 507.5 euros, therefore above the collectively agreed rate for the grade at which most workers work in the industry (488 euros). Recent developments include the conclusion of a new agreement between FESETE ANIT-LAR (the employers' association for home textiles) and ANIL (the employers' association for wool) in June 2014, which introduced a number of changes and updated the wage tables for these subsectors. Interestingly but not surprisingly, those wage tables became outdated four months after they were agreed as the value of the national minimum wage was increased in October 2014 to 505 euros, surpassing the collectively agreed rates for the grades of most production workers.³⁷

The reforms of collective bargaining affected the capacity of unions to negotiate wage increases at the sectoral level. In textiles and footwear the threat of expiration of agreements has put unions in a weaker bargaining

37. The wage tables negotiated in this collective agreement can be found on the FESETE website, available at <http://fesete.pt/portal/docs/pdf/acordotexteislar2014.pdf>

position and the representativeness requirements for extensions have, in the perspective of employers' associations, prevented employers from increasing wages. In the car industry, while the economic situation was dramatic at the beginning of the crisis, previously conflictual industrial relations were also crucial in explaining blockages. As negotiations had been blocked, there had been no updates of sectoral wage tables since 2001. In the agreement negotiated in 2010 between SINDEL and ACAP enabled a significant update of wage rates for the sector but companies were not required to implement the new rates until 2012. There have been no wage updates in this agreement since then and the interviewee from the employers' associations stated that the industry was not yet prepared to provide a further update. However, AIMMAP (metal including car manufacturing) agreed revisions to the collective agreement with SINDEL and increased wages in 2013 and 2014 (2 per cent). Nevertheless, union action at the company level by means of *caderno reivindicativo* (see above) may also have contributed to wage increases in metal and car manufacturing.

Reforms of legislation on working time flexibility and overtime pay may have resulted in major losses for some workers. In the context of low manufacturing wages, well paid overtime work provided a chance for workers to top up their wages. In some sectors and firms overtime pay constituted an important component of workers' total earnings. The introduction of working time flexibility regimes, with increasing scope for management to set it unilaterally at the firm level, may have replaced and decreased firms' need for overtime work, thereby reducing workers' opportunities for overtime pay. On the other hand, the imposition of a legal standard that prevails over collectively agreed rates reduced pay for overtime work very significantly (and therefore also the incentive for workers to do it). Moreover, the case of the large food and drinks manufacturer also illustrates how in the rare cases in which unions were able to keep the collectively agreed higher overtime pay rates they often had to make concessions with regard to pay increases.

The cases of large car manufacturers 1 and 2 suggest that the type of company also matters. Although strongly affected by the economic situation, these companies – which are large European multinationals – awarded wage increases throughout the crisis. Despite the different character of industrial relations in the two firms – highly cooperative in 1 and adversarial in 2 – the fact that the companies are unionised

and have effective channels of worker representation may also have contributed to the wage increases. However, the importance of union representativeness is more evident in the case of the large food and drinks manufacturer. In this company – also owned by a large multinational – the trade union, despite having had to agree to wage moderation to secure the agreed higher rates for overtime pay, was still able to secure annual wage increases throughout the crisis. In 2012 the wage increase had been 3.5 per cent and, according to the union, this was achieved only with a strike threat. This case illustrates that high levels of worker membership, participation and support for the union can be a key factor influencing unions' ability to protect workers' interests and to secure wage increases.

While in large car manufacturer 1 the workers' committee benefitted from high levels of worker support, this structure seemed to derive its power resources to a great extent from management support for worker participation. The size of this multinational and the supportive approach of its management meant that workers did not need to struggle to obtain a wage increase and so the non-union status of the workers' body (and the lack of legal options that go with that, particularly the right to strike) did not affect the outcomes of bargaining as much as it might have if management had been less supportive and less inclined to provide good working conditions. Nevertheless, the adoption of the new reduced overtime pay rates in this firm shows that management retains the discretion to decide unilaterally when agreements prove difficult and suggests that the bargaining position of the workers' committee may be more fragile than it appears.

In summary, wage developments were affected by multiple factors and, while it is evident that the economic crisis increased cost pressures on firms, labour-intensive industries were more reluctant to increase wages even when the business prospects improved. The case of textiles and footwear manufacturing shows the importance of the national minimum wage in providing floors for wages – most workers' pay was frozen from 2011 and only increased in October 2014 due to the increase of the national minimum wage, which surpassed the rates of most workers in the old agreements and even those set in the collective agreement for home textiles and wool reached four months earlier. The changes in the rules of collective bargaining also contributed to the wage freeze in low pay sectors. Large multinational companies were naturally in a better

position to increase wages, even during the worse years of the crisis, although employee voice and union presence in these companies may also have contributed to better outcomes for workers. The new systems of working time flexibility and lower overtime pay rates, as reported by unions, resulted in lower total earnings to a significant proportion of workers.

4.3 Firm-level responses to the crisis and the impact of labour market reforms

To some extent, the reforms contributed to firms responding to the crisis by being able to reduce costs and to react flexibly to demand fluctuations, particularly in the case of the introduction of time banks and the reduction of overtime pay. However, as reported by the managers and employers' associations interviewed, time banks – especially in the metal industry – were already in use before they were inserted in collective agreements and even before they were introduced in legislation. In the textile sector, as highlighted above, two of the three companies visited continued paying the same overtime rates before and after the reforms; one below the collective agreement and the legal rate, while the other continued to follow the collective agreement even though it was not legally required to do so.

None of the firms visited reported that they had made use of the new regulations facilitating individual dismissals, even though some may have benefited from the lower cost of compensation for dismissals. Although a number of companies have made workers redundant, they have usually used the traditional path of voluntary redundancy and not renewing temporary contracts. Two companies imposed collective dismissals: the large shoe manufacturer dismissed 500 workers in 2009 and the large car component manufacturer dismissed 100 workers in 2012. A number of companies mentioned that they had made use of the temporary provisions for renewing fixed-term contracts.

According to the interviews with employers' associations and firms the responses to the crisis have varied from sector to sector. In clothing and shoe manufacturing, the key response has been mainly to keep costs low, mostly by freezing wages, using working time flexibility, overtime work and subcontracting to respond to variations in demand. The change to extension rules gave employers' associations an opportunity to pass on to the government the responsibility for keeping wages low in the

industry. The interviewee from APICCAPS, after discussing the problems of unfair competition between firms that the new rules raise, explains that the ability of the association to negotiate wage increases will depend on ‘what the government and the partners in social concertation decide’ and that the industry trade union federation needs to understand that ‘we need to wait until the government and the higher authorities change their vision of the problem’.

In the home textile subsector, in which firms are larger, according to the employers’ association there have been a number of important company restructuring measures that involved collective redundancies up to the beginning of the crisis. However, these processes appeared to be mainly the outcome of the opening up of European markets to Asian countries rather than directly associated with the current crisis and ultimately led the firms that survived to become healthier and more competitive. In his perspective, the European crisis was actually positive to the industry because, with the reduction of consumption in Europe, the size of orders became smaller and therefore less attractive to Asian producers. In contrast, smaller orders were just the right size for Portuguese producers, who consolidated their position as a proximity industry with very short delivery times. Nevertheless, after a phase of restructuring, the industry kept wages low partly due to the uncertainty of the economic prospects, partly due to the extension rules. However, at the time of the interview the employers’ association was about to sign a collective agreement with FESETE but stated that this would be published only when the extension rules changed, which eventually happened in June 2014.

In the automobile industry, which was sharply affected at the beginning of the crisis, the responses tended to involve more encompassing change and/or more creative solutions. The extent to which these changes were negotiated also varied. In all cases in this industry except large car manufacturer 1, cost reduction was central to firms’ responses (summarised in Box 4).

These cases (Box 4) illustrate the pattern that was typical in metal and in the automotive segment of using working time flexibility to offset the initial impact of the recession. However, they are also illustrative of the fact that these adjustments – irrespective of the extent to which they were negotiated with workers’ representative structures – were not always sufficient to prevent job losses.

Box 4 Firms' responses to the crisis in car manufacturing

When the effects of the international crisis started to be felt, the management of large car manufacturer 1 engaged with the workers' committee in order to devise a response that would be effective and satisfactory to both sides and thus avoided job losses. The solution agreed involved three components: the use of time bank 'down days', vocational training (109 workers were placed in vocational training programmes, although in the meantime they have been recalled because they were needed in production and will resume the programme in January 2015) and posting 207 workers to temporary assignments in the parent company in Germany. According to the workers' committee, management was persuaded to adopt these solutions to avoid losing workers and skills that might be needed in the future and because, comparing that cost against that of training new workers, the difference would be minimal. Still, the good climate of industrial relations and the usually participative decision-making style of management did not prevent it from taking advantage of the new legislation to reduce overtime pay rates, breaching the existing company agreement.

Large car manufacturer 2 had operated until 2008 as a complement to another (larger) subsidiary in the north of Spain. Until then, wherever there was variation in demand it was usually the Spanish plant that adjusted. However, in 2008 the Portuguese subsidiary was allocated the responsibility for full assembly of a car model, independent of the Spanish factory. This required a rethinking of processes because until then the company had been prepared to increase production through overtime but not to reduce production when demand decreased. That was when management decided to create a time bank that made it possible to reduce working time by 20 days or increase it by 10 days per year without varying pay. This was negotiated with the workers' committee. However, immediately after the time bank was introduced in October 2008, there was an abrupt fall in demand and the 20 non-worked days were used in the remainder of that year; thus the workers finished the year with 20 negative days in the time bank. In February 2009, 10 days of annual leave were used and after that, management decided to eliminate one of the three shifts. This was achieved by not renewing fixed-term contracts, halting the use of temporary agency workers (affecting more than 300 workers) and reorganising permanent workers into two shifts. In May the company started a temporary layoff of 6 months involving 16 days' suspension of production, of which five were used to provide training to workers. This was done in close collaboration with social security and employment authorities, but the company opted not to receive financial support from the government for the lay-offs – although this was available – because it required safeguards that the firm could not provide, namely that there would be no job losses during or after the lay-off. Since then the company has used the third shift to respond to fluctuations of demand. The night shift was re-hired in 2010 for one and a half years and again at the beginning of 2013 until summer 2014. Not surprisingly, industrial relations became adversarial at the beginning of the crisis. The firm has a workers' committee that up to 2008 was not unionised. The time bank was negotiated and 86 per cent of workers agreed. However, the new workers' committee elected that year was 100 per cent unionised.

With the dismissals and lay-offs relations became extremely tense. Since then, according to management, industrial relations have improved and relations between management and the workers' committee and the unions (CGTP's SITE Norte and independent SIMA) have been increasingly communicative and collaborative. From the HR manager's perspective, improved relations were due to improved communication efforts and an increasing understanding on the workers' and union side of the cost pressures facing the company in an extremely competitive market.

The medium car component manufacturer suffered a 50 per cent reduction in orders between September and December 2008. The main two responses were job cuts affecting 80 workers who were on temporary contracts and the use of lay-offs, temporary suspension/reduction of production for a year. During that period the workers experienced a 20 per cent reduction in wages and were offered vocational training partly supported by government funds. These strategies were at least discussed with the workers' committee. There is no union presence in the company and the company has a non-union approach to participation, which management justifies with what it sees as the confrontational approach of CGTP unions. The workers' committee is cooperative, defines relationships with management as positive and collaborative based on trust that mostly emerges from the fact that management successfully led the company through the crisis, moving from near bankruptcy to the present healthy state. Local CGTP unions, however, have a more negative view of the company's labour practices and attempted to persuade management to increase wages in 2014 through *caderno reivindicativo*, which in this case was unsuccessful.

4.4 The impact of the reforms on equality

While many of the reforms were implemented without regard to their equality impact, there were also reforms that were positive from an equality and gender perspective.

On the negative side, the freezing of the minimum wage in a context of blockages in collective bargaining is likely to have a strong negative effect on the workers concerned. This measure is not neutral because different groups of workers are likely to be differently affected. As women are twice as likely as men to receive the national minimum wage – with 12.3 per cent of working women (compared with 5.9 per cent of men) earning the minimum wage (Dornelas *et al.* 2011) – this measure will have a disproportionately negative effect on women and may contribute to increase gender inequalities in pay. Indeed, Eurostat online data show that the gender pay gap in Portugal has increased, from 9.2 per cent in 2009 to 15.7 per cent in 2012.

On the positive side, the new provision of the 2009 and 2012 Labour Codes allocating to the Commission for Equality at Work and in Employment (CITE) the role of inspecting the compliance of collective agreements with equality legislation appears to be leading to positive outcomes. Indeed, the new collective agreement in textiles between FESETE and ANIT-LAR extended to fathers childcare benefits that were previously available only to mothers. Additional evidence of the preliminary positive effects of this measure comes from a report recently published by CITE (Ferreira and Monteiro 2013). It is reported that in 2012 this commission produced 15 recommendations concerning 45 clauses of collective agreements that were considered inadequate in relation to the equality and non-discrimination legal framework, and consequently all those clauses were declared invalid by the labour court. The same document also reports that, in the same year, CITE started sending to the bargaining parties ‘prior appreciations’ of collective agreements. The 12 amendments proposed by CITE on the basis that certain clauses were not consistent with equal opportunities law were mostly accepted by the social partners and the agreements were amended accordingly. The clauses in question included issues such as the use of non-inclusive language leading to certain rights being recognised solely for workers of one gender; the use of language that was not consistent with the new gender-neutral language of leaves for parents; provisions that violated the law on paternity leave; provisions on the mode and duration of leave for working mothers and fathers; and non-recognition of the right to working time reductions for breastfeeding (and bottle-feeding) for mothers and fathers (Ferreira and Monteiro 2013). The document assesses favourably the preliminary work initiated in this domain. In addition, in our study the interviewee from UGT observed that equal opportunities legislation and policy is one area that has been safeguarded against the government’s austerity and labour market reform agenda during the crisis.

5. Conclusion: General trends and possible scenarios for industrial relations in Portugal

While systemic changes to collective bargaining were already clearly under way in Portugal, the crisis has had a revealing and accelerating effect on this process. In the face of cost minimisation, employers’ strategies and union resistance to flexibility systems that would further reduce workers’ earnings, in 2003 the government initiated a process

of regulatory change that favoured the employers' side in collective bargaining. The economic crisis and the entry of the Troika further contributed to weakening the bargaining position of unions and created opportunities to take these reforms further.

The objectives of those reforms had been to make collective bargaining more dynamic and to promote organised decentralisation. However, to some extent the reforms contributed to creating or intensifying blockages in bargaining. In metal and car manufacturing these blockages were only (partly) overcome because the economic crisis and the fresh regulatory changes introduced during the crisis further weakened the workers' side and increased the risks of expiration of agreements. This led to a repositioning of bargaining actors in a process that favoured cooperative unions, but that in some sectors led to the exclusion of the most representative union organisations. In textiles and footwear, the suspension of extensions and subsequent introduction of representativeness criteria actually contributed to create blockages in the sector despite the previous cooperative relations between labour market actors. In both sectors, the changes led to the introduction of flexible arrangements that met employers' longstanding demands. The weakened position of the unions meant that they were not able to negotiate conditions that would compensate for the potential negative consequences of these arrangements for workers. In turn, the pressures of the crisis also constrained any commitments to employment security from the employer side, except in very atypical company cases.

The analysis of the bargaining structure and process during the crisis also indicates that any decentralisation trends observed are of the disorganised rather than the organised kind. The industry level continues to be formally dominant despite bargaining blockages and recent data heralding a growth of sectoral bargaining activity, particularly after the most recent change to extension rules. While these developments point to the resilience of the system, the lower ability of sector-level unions to influence wages and conditions reduces the relevance of bargaining at this level. Moreover, reduced bargaining coverage and therefore a move towards individualisation of the employment relationship, the lack of articulation between levels of bargaining and the informal firm-by-firm wage bargaining strategies reported by local unions are also signs of disorganised decentralisation.

The character of bargaining remained adversarial in the metal and automobile industries. If anything, the reforms contributed to increase conflict in the workplace, particularly the restrictions on collective bargaining on overtime pay. As employers took advantage of the new provisions that lowered overtime pay and suspended jointly agreed rates, trade unions regarded this move as a breach of the collective agreements and responded with a call for a strike to overtime pay. Even in companies with cooperative industrial relations, this reform created tensions that damaged the collaborative climate.

Working time flexibility and lower overtime pay rates had been longstanding demands of employers but these had been successfully resisted by most unions until the crisis at the sectoral level. Under the new circumstances of less favourable collective bargaining rules and the pressures of the economic crisis, some unions reached agreements to introduce these and other forms of flexibility, which became the main framework for the respective sectors. However, a number of firms already had flexibility arrangements in place – particularly time banks, which had been implemented in the workplace on informal workplace agreements or understandings (with worker representative structures or individual workers). Indeed, the research suggests that informal ‘understandings’ in the workplace were widely used by firms in response to the crisis but it does not clearly indicate the extent to which these were negotiated or imposed by employers.

While the reforms mostly had a negative impact on workers – particularly in terms of wages and earnings – the extent to which they contributed to firms’ increased adaptability and competitiveness beyond lowering labour costs is unclear. Employers and managers reported that different forms of flexibility, including time banks, were implemented in firms before they were included in the collective agreement or in legislation in what was described as ‘an understanding’ with the workers by management and in some cases in breach of the sectoral agreement. In addition, none of the firms studied made use of the new dismissal rules despite benefiting from lower costs with regard to severance pay.

While systemic change with regard to collective bargaining is visible in the weakening of the union side and the trend of disorganised centralisation, the system’s resilience is evidenced by the persistent importance of the sectoral level of bargaining, at least in formal terms. However, there

are also some key features of the system of collective bargaining that were maintained if not reinforced during the crisis. These were, however, mostly the weaknesses of the system, including the strong divisions and politicisation of the labour movement, the fragmentation of collective bargaining and low levels of coordination and vertical articulation. The government reinforced its intervention in collective bargaining by successively restricting the after-effect of collective agreements, by setting limits to bargaining outcomes and autonomy (namely with regard to rates of overtime pay) and by (temporarily) withdrawing support for industry bargaining through the suspension and subsequent introduction of criteria for extension that severely constrained bargaining at that level. While the new provisions to promote equality in/through collective agreements are welcome, it is unfortunate that these come at a time when collective bargaining is being challenged in its role of regulating employment relations.

As the economic outlook improved slightly, some employers' associations and individual firms appeared more willing to negotiate wage increases and conclude new collective agreements. On the government side, however, new legislation issued after the end of the adjustment programme further decreasing the after-effect periods of collective agreements, introducing the possibility of suspension of collective agreements in case of industrial crisis and further facilitating individual dismissals indicated a persistence of a post-Troika deregulation path. It is to be seen whether a change of government will bring about a change of path.

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All links were checked on 4.12.2015.

Chapter 6

Social dialogue during the economic crisis: the survival of collective bargaining in the manufacturing sector in Romania

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1. Reform of joint regulation and labour market policy

1.1 Introduction

In their seminal book on the models of eastern European capitalism, Bohle and Greskovits (2012) argue that Romania has a special type of neoliberal society with weak state institutions, a high degree of centralisation and collective bargaining coverage and relatively high mobilisation power on the part of the trade unions. Before the 2008 crisis, Romania had a comprehensive system of industrial relations with widespread collective bargaining at national, sectoral and establishment levels. The legal system supported the development of bipartite and tripartite consultation and negotiation between trade unions, employers and the government (Trif 2010). However, this system was radically altered by the government after the crisis, despite opposition from trade unions and the largest employers' associations (Ciutacu 2012). The legal changes led to the implosion of trade unions' fundamental rights to bargain collectively, to form trade unions and to take industrial action. As a result, cross-sectoral collective agreements ceased to exist and very few multi-employer collective agreements were concluded after the new labour code was adopted in 2011. The crisis was used as a pretext by the centre-right government to reform the industrial relations system, with the support of the 'Troika', comprising the European Union (EU), the International Monetary Fund (IMF) and the European Central Bank (ECB).

1. This chapter is based on the findings of the research project number VS/2013/0409 financed by the European Commission and Dublin City University. I want to thank the respondents for providing extremely valuable insights into the topic.

1.2 Collective bargaining before the 2008 crisis

Romania had relatively protectionist labour legislation with high centralisation and collective bargaining coverage before 2008 (Bohle and Greskovits 2012; Trif 2008). The Romanian legal system has a strong French influence, being broadly based on the Napoleonic Code. Post-1989 legislation entitled the social partners to bargain collectively and gave unions the right to strike (Hayter *et al.* 2013). Collective agreements could be concluded at national, industry (or other subdivisions) and company levels. Comparable only to Slovenia among the new EU member states, there was automatic extension of collective agreements to cover all employees in the bargaining unit. In Romania, all employees were covered by a cross-sectoral national agreement before the 2008 crisis. Additionally, employees were covered at industry level by collective agreements in 20 out of the 32 branches eligible for collective bargaining. Collective agreements existed in the main manufacturing sectors, namely extractive industry, the metal industry, the white goods industry, the automobile industry, the food industry, the textile industry and the wood industry (Preda 2006: 13). Collective agreements concluded at national and sectoral levels set the minimum terms and conditions of employment. Thus, they were used as minimum standards for the negotiation of collective agreements at company level in unionised companies. Nevertheless, it was difficult to enforce the provisions of collective agreements (and the statutory labour legislation), particularly for the lowest paid employees (Trif 2008).

Romanian law requires employers to initiate collective bargaining annually in any company with more than 20 employees (Hayter *et al.* 2013). In large unionised companies, wages, social benefits, holidays and working conditions are generally negotiated between trade unions, employers and, sometimes, the state (Trif 2008). In most non-unionised companies, employers unilaterally imposed terms and conditions. In contrast to Slovenia and Slovakia, in Romania the company was the most important level for establishing the terms and conditions of employment, even before the crisis (Carley *et al.* 2007).

The EU accession process led to legislative change that affected collective bargaining. In order to harmonise Labour Code provisions with the EU social *acquis*, the restrictions on concluding individual fixed-term employment contracts were relaxed in countries that had relatively

protectionist labour legislation, such as Romania and Slovenia (Carley *et al.* 2007). However, when the Council of Foreign Investors tried to remove the legal obligation on employers to bargain with trade unions or employee representatives during the 2005 Labour Code revision, Romanian trade union officials managed to preserve the collective bargaining mechanism with the support of the European Trade Union Congress and the International Labour Organization (Trif 2008).

Although the formal Romanian labour market regulation before 2008 was considered protectionist, particularly by foreign investors, in practice, the issues with the enforcement of the labour legislation and collective agreements made it fairly flexible (Bohle and Greskovits 2012). Furthermore, low wages were one of the key factors that led to massive labour migration before (and after) the crisis and low labour force participation (Stoiciu 2012; Trif 2014). Thus, labour market regulations were not perceived as hindering Romania's competitiveness. Furthermore, labour market regulations could have been used to address the labour market issues of massive emigration and low labour force participation (Stoiciu 2012; Trif 2013).

Trade unions before the 2008 crisis

After 1989, the organisation and functioning of trade unions were regulated primarily by the Constitution, the Labour Code and the Law on Trade Unions. The law allowed a minimum of 15 employees to form a union. Two unions from the same industry can form a union federation if their combined membership is at least 60, and two federations can form a confederation. This legal framework contributed to the development of a decentralised and fragmented trade union movement.

Trade union fragmentation is common in central and eastern Europe, particularly due to the division between the old reformed unions and newly established organisations. In Romania, however, the reformed and the largest new union organisations merged in 1993 to create the largest confederation, the National Free Trade Union Confederation of Romania – Fratia (CNSRL-Fratia). There are four additional nationally representative union confederations in Romania: the National Trade Union Block (BNS); the National Democratic Trade Union Confederation of Romania (created in 1994 as result of a split from CNSRL-Fratia); the National Trade Union Confederation Cartel Alfa; and Meridian. Despite a widely publicised proposed merger of four of these five

confederations in February 2007, CNSRL-Fratia, BNS and Meridian only formed a loose alliance and maintained their independent status. Similar to all central and eastern European countries, the reformed union remained the strongest organisation after 1990. Most Romanian union confederations (except Meridian) are members of the European Trade Union Confederation (ETUC).

The period of transition from a centrally planned economy to a market-based economy has been very difficult for trade unions. They had to protect workers' interests during the transition, but also to support the move towards a more efficient economic system that would (hopefully) improve working conditions in the long term. By and large, Romanian unions did not obstruct the transformation process, although restructuring led to a massive decline in their membership. However, unlike the Polish Solidarity union they did not support shock therapy reform. Trade union density in Romania fell from 90 per cent at the beginning of the 1990s to around 35 per cent in 2006 but was still twice as high as in Poland (Trif 2008). Romanian and Slovenian trade unions were amongst the strongest in central and eastern Europe in terms of union density and influence over labour legislation before the crisis (Carley *et al.* 2007).

The manufacturing sector had the highest trade union density in Romania, although unions were fairly fragmented. In 2002, trade union density in heavy industry was over 75 per cent, while in the food and textile sectors it was around 50 per cent (Preda 2006: 13–15). The highest union density was in the metal industry (83 per cent). Ten union federations were operating in the metal sector, five of which were representative at the sectoral level (Preda 2006: 44). In the chemical sector, there were five union federations and 76 per cent union density in 2002. Eight union federations operated in the textile industry and four in the food, beverage and tobacco sector. Nevertheless, in each manufacturing branch the representative unions cooperated regularly to negotiate collective agreements, which covered all employees in the sector before the crisis.

Employers' associations before the crisis

In most new EU member states, employers' associations had a limited role in the development of industrial relations after 1989 compared with trade unions. The lack of experience and the slow pace of privatisation

were the main factors that resulted in the very weak consolidation of Romanian employers' associations. Additionally, foreign investors were not willing to join such associations. They preferred to join a trade association called the Council of Foreign Investors (Chivu 2005).

The fragmentation of employers' associations is common in the new member states (Kohl and Platzer 2004), but Romanian associations are amongst the most divided in the region. The number of nationally representative employers' associations increased from five prior to 2001 to 13 by 2008. A first attempt to merge the five largest confederations was made in December 1995 with support from the International Organization of Employers. An agreement to form Patronatul Roman was signed but conflict between the divergent interests of private and state-owned enterprises led to separation in 1996. In 1999, there was a second attempt to unify employers' organisations in an Employers' Confederation of Romania but this disbanded in 2003.

In 2004, the two largest member organisations of the former Employers' Confederation of Romania, together with four other employers' associations, established an umbrella organisation, the Alliance of Employers' Confederations of Romania, covering primarily large domestically owned companies. By May 2006, seven employers' confederations were members of this organisation, with four others announcing their intention to create a new alliance (Chivu 2007). The Alliance of Employers' Confederations of Romania was established primarily to represent members' interests at the international level, particularly in EU institutions. Moreover, the merger of these fragmented associations was a pre-condition for membership of the European employers' confederation, Business Europe. Employers started to combine their strength at the national level but there were still 13 nationally representative employers' associations in 2008, as the members of the umbrella organisations retained their representative status. In 2007, all 13 employers' associations signed the last cross-sectoral collective agreement valid from 2007 to 2010.

Sectoral employers' associations also remained fragmented. Before the crisis, there were 15 employers' associations in the food, beverage and tobacco sector, six employers' associations in the chemical sector and two in the metal industry (Preda 2006). Similar to union federations, the employers' federations in the manufacturing sectors managed to cooperate during the process of negotiating sectoral collective agreements.

1.3 The crisis and social partners' responses to it

Socio-economic developments since the crisis

The international financial crisis severely affected economic and social developments in Romania after 2008. GDP fell by 6.6 per cent in 2009, followed by a further reduction of 1.6 per cent in 2010, indicating a more severe economic downturn than in Bulgaria, which had a similar level of economic growth before the crisis, and the EU average (Eurostat 2014). The construction sector was the worst affected, dropping 14 per cent as a percentage of GDP in 2009, followed by agriculture (−7.8 per cent) and services (−5.9 per cent) (Zaman and Georgescu 2009: 618). After 2008, the average wage increases were below the level of inflation (Trif 2013). Also, wage earnings in Romania are among the lowest in the EU (Hayter *et al.* 2013), which indicates that the trade unions did not manage to safeguard employees' purchasing power.

Nevertheless, Romania has one of the lowest unemployment rates in the EU. Although the crisis led to massive lay-offs in manufacturing, construction, retail and the public sector (Stoiciu 2012: 2), unemployment has increased by less than 2 per cent since 2008 to a high of 7.5 per cent in 2013 (Eurostat 2014). While the government took measures to encourage employment, such as exempting companies from paying tax on reinvested profit and social security contributions for six months if they hired unemployed people (Stoiciu 2012: 2), it appears that the main reason for the low unemployment rate is the fact that Romanian workers used individual 'exit' either into the informal economy or by emigrating abroad (Stan and Erne 2014). The size of the informal economy increased from around 22 per cent in 2007 to 29 per cent in 2012 (European Commission 2013: 5). Eurobarometer data from 2007 indicate that the main reason for working in the informal economy is the low wages in regular businesses. These data also show that only 27 per cent of the Romanian population trust trade unions, which suggests that the majority of workers do not believe that unions can improve their working conditions.

Although reliable statistics on emigration since 2008 are not available, trade union officials have suggested that wage cuts in the public sector in 2009 and 2010 boosted the emigration of public sector employees. A senior official interviewed in 2013 indicated that around 2,700 doctors have emigrated every year in recent years and their number increased

by 400 in 2011, after the implementation of the austerity measures. The total number of Romanian emigrants from 1990 to 2012 is 2.4 million (Institutul National de Statistica 2014: 9). Unlike in the other EU countries severely affected by the crisis, such as Greece and Spain, unemployment and labour market regulation have not been a major issue during the crisis or considered a cause of the crisis in Romania.

There are three sets of interrelated causes of the economic downturn in Romania. First, despite the limited proportion of toxic assets in its banking system, Romania has been exposed to the adverse effects of the global financial crisis primarily due to its openness to foreign capital (Ban 2014). For instance, foreign stakeholders account for over 85 per cent of total banking assets (Trif 2013). The second set of factors is related to the reduction of external and internal demand for goods and services. Romanian exports to the EU shrank by 25 per cent in 2009 (Trif 2013). The manufacturing sector was among the first affected by the crisis, suffering a 7.7 per cent contraction in the last quarter of 2008, due to a decline in domestic and external demand (Constantin *et al.* 2011: 7). Wage cuts for many workers, coupled with declining remittances from abroad, reduced private consumption by 9.2 per cent (Constantin *et al.* 2011). The third set of factors is related to the economic weaknesses and imbalances that existed before 2008 (Ban 2014). Economic growth before 2008 was based primarily on the consumption of imported goods and real estate sales. Despite economic growth between 2000 and 2008 (approximately 6 per cent per annum on average), the budget deficit increased continuously, reaching 9 per cent of GDP in 2009 (Stoiciu 2012: 2).

In order to deal with the budget deficit, Romania borrowed 20 billion euros from the Troika in 2010. Additionally, Romania signed a Precautionary Agreement with the IMF in 2011. The conditions set by the two international agreements for financial assistance had a great influence on the way in which Romanian governments responded to the crisis (Hayter *et al.* 2013; Trif 2013).

Government response to crisis: austerity measures and structural reforms

A combination of international pressure from the Troika, the ideology of the centre-right coalition and lobbying by foreign investors led to two main sets of government response to the 2008 crisis: (i) 'austerity' measures aimed at reducing public debt and (ii) structural reforms aimed at addressing macroeconomic imbalances through structural

reforms (Ban 2014; Stoiciu 2012). From 2009, the government started to introduce fiscal consolidation measures, seeking to reduce the budget deficit by reducing the wage bill for public sector employees, cutting pensions and limiting welfare benefits (Stoiciu 2012; Ministry of Public Finance 2014). In 2009, a new public wage law was introduced by the government (as part of their negotiations with the Troika) which reduced public wages (Hayter *et al.* 2013). Apart from changing wage grids by tying all public sector employees to a wage scale defined in terms multiples of a base wage of 700 RON (165 euros), the provisions of the new law obliged the management of public institutions to reduce personnel expenditure by 15 per cent in 2009. This forced employees to take ten days of unpaid leave. In addition, pensioners were forbidden to obtain additional income on top of their pensions by working in paid employment.

In 2010, the centre-right coalition introduced some of the most restrictive austerity measures in the EU, cutting the wages of public sector employees by 25 per cent, reducing numerous social benefits by 15 per cent and increasing VAT from 19 per cent to 25 per cent (Trif 2010). These measures (which were part of the conditions attached to the Troika's financial assistance) reduced the budget deficit from 9 per cent of GDP in 2009 to 3 per cent of GDP in 2012 (Eurostat 2014). They helped the government to achieve financial consolidation, but the budget savings were made at the expense of living standards (Hayter *et al.* 2013).

Since 2011, Romanian governments have focused on structural reforms, such as 'restructuring' the public sector – in other words, cutting jobs and privatising public hospitals and public companies – and the 'flexibilisation' of the labour market and industrial relations institutions (Ban 2014; Ministry of Public Finance 2014). Labour market reforms were considered important for addressing the issues of low labour force participation and migration (Romania has one of the lowest labour force participation levels in the EU and around a third of the active labour force has immigrated since 1990s) (Stoiciu 2012). Although labour market 'rigidities' are not considered a cause of the recession in Romania (Ban 2014), the Troika pushed for a radical decentralisation of collective bargaining and more restrictive criteria for extending collective bargaining (Schulten and Müller 2013: 6). In 2011, the centre-right government took the opportunity to dismantle the existing collective bargaining institutions and reduce the trade unions' role and influence

by means of legal changes (see Appendix). It unilaterally introduced a new Social Dialogue Act, which abolished all the previous laws governing employees' collective rights (Trif 2013; see further discussion of the effects of the Social Dialogue Act in Section 4).

The government also adopted a new Labour Code in 2011, which primarily affected individual employee rights (Stoiciu 2012). First, the probation period was extended from 30 to 90 days for workers and from 90 to 120 days for managers (Clauwaert and Schömann 2013). Second, it made it easier for employers to use non-standard employment contracts by extending the maximum length of fixed-term employment contracts from 24 to 36 months and by relaxing the conditions for utilising temporary agency workers. Also, employers are allowed to unilaterally reduce the working week – and the corresponding wages – from five to four days. Furthermore, it made it possible for employers to grant free days in advance and to order employees to work overtime (Clauwaert and Schömann 2013). The period of time off as compensation for overtime has increased from three to four months. Finally, it reduced dismissal protection, particularly by diminishing protection for union leaders. The new provisions of the Labour Code make it easier for employers to hire and fire employees and to utilise flexible forms of employment contract.

The austerity measures and the arbitrary way of pushing the reforms through without social dialogue led to a substantial decline in the popularity of the centre-right coalition in power between 2008 and 2012 (Daborowski 2012). Although the government increased wages for public sector employees by 15 per cent in January 2011, the controversial privatisation of companies that extract natural resources and the attempt to privatise the health-care system led to growing social resistance and contributed to the collapse of the government in February 2012. A new government was put in place by the centre-right political coalition, but it collapsed after less than three months.

In May 2012, a new centre-left coalition came to power. The centre-left government decided to take measures to enhance its social support, such as increasing wages in the public sector by 8 per cent from June 2012 and by 7 per cent from December 2012 to restore public sector base wages to their 2008 level (Trif 2013). However, wage increases were not negotiated with the unions. Furthermore, the centre-left government had neither reversed the legal changes made by the previous government,

nor restored the other benefits (meal and holiday vouchers) and pay cuts for public sector employees (thirteenth month salary) by 2014 (Ministry of Finance 2014). The government also does not pay for overtime worked by public sector employees. For instance, the embargo on public sector employment and massive emigration of medical staff has led to staff shortages, which in turn requires nurses and doctors to work overtime in public hospitals to ensure patients' well-being (Trif 2013). Furthermore, all the main changes in labour laws since 2008 have been introduced unilaterally by the centre-right and centre-left governments by means of emergency ordinances (without public or parliamentary debate), which indicates a return to authoritarian decision-making.

Trade union responses to the crisis: militancy against austerity measures

Trade unions opposed the austerity measures in 2009 and 2010, but they did not manage to resist the centre-right government's attack on employees' rights and the deterioration of employment conditions for public sector employees. Although the five union confederations consulted with the government on public sector pay reform, unions were dissatisfied with its provisions. They organised local meetings, marches and a one-day national strike of public transport employees in May 2009 against wage cuts, lay-offs and compulsory unpaid leave. Also, unions picketed two-thirds of the county prefectures in June 2009 and threatened a general strike to force the government to consider their proposals with regard to the public wage law. These included a reduction of the existing ratio of 1:70 between the highest paid to the lowest paid to 1:15 by freezing wages for five years for high earners and accelerating increases for the lowest paid employees (Ciutacu 2010). Despite talks between government representatives and unions in June 2009 and further mass protests and picketing of the Parliament in September 2009, the labour unrest has had no tangible result for employees.

Furthermore, the reform of the public sector pay aggravated the divisions between union confederations and federations. The sectoral unions in education, health care and public administration were unhappy with the provisions of the new law and the fact that there was no scope for them to participate in negotiations with the government (Ciutacu 2010). Consequently, 11 union federations from the public sector formed a new organisation, the Alliance of Budgetary Employees. Their aim was to fight against austerity measures and modify the proposed reforms of public sector pay (Trif 2010). The Alliance organised a series of national

protests in 2009, culminating in a one-day general strike on 5 October 2009. Around 750,000 public sector employees (out of a total of 1.35 million public sector workers) were involved in the biggest strike since 1990. The strike's main goals were to renegotiate the public sector wage law, which reduced their incomes, to get the lay-off plans scrapped and to prevent changes to the Labour Code. Despite talks between the Alliance and government representatives, the strike failed to achieve its main goals and the wage law remained unchanged. As the government had the support of the EU and the IMF, this law was passed unilaterally without parliamentary debate or consideration of the key principles negotiated by the unions (no reduction of existing wages) in November 2009 (Ciutacu 2010). This defeat made the centre-right government more confident that it could introduce further austerity measures.

In 2009, the five national union confederations set up a crisis committee to protest against the austerity measures. First, they asked the Romanian President to reject the austerity measures agreed by the Prime Minister with the Troika, but the President endorsed them. Second, the union confederations filed a complaint with the ILO in June 2010, claiming that the government was breaching union rights and freedoms. They also alerted EU bodies that the government was shifting the burden of the economic crisis onto employees and other vulnerable sections of the population (Trif 2010). Third, the unions identified over 400 measures to deal with the crisis. However, their proposals were largely ignored. As a result, unions withdrew from most tripartite bodies. Finally, the unions organised a series of protests against austerity measures in May 2010, demanding that the government make no unilateral decisions on austerity measures, ensure implementation of collective agreements and eliminate restrictions on free collective bargaining from legislation. As unions did not get much support from the international bodies or the public (63 per cent of Romanians distrust unions, 15 per cent more than in 2007, according to Eurobarometer 2010), they did not manage to safeguard the employment conditions of their members and their own right to have meaningful involvement in collective bargaining and social dialogue. The failure of the protests against austerity measures in 2009 and 2010 ultimately weakened the unions' capacity to mobilise.

Furthermore, during the crisis, union officials suggested that there had been an organised campaign to intimidate and discredit the leaders of the five main confederations. The most notorious case was the arrest

of Marius Petcu in 2011 (the leader of the largest union confederation, CNSRL-Fratia), following an argument with President Basescu about the health-care budget, according to a senior union official. Nevertheless, many commentators have stated that certain union leaders are corrupt. Petcu was arrested for allegedly accepting a bribe from a businessman who was supposed to carry out construction work at a union centre (Barbuceanu 2012). The media reports about the alleged corruption of union leaders damaged their legitimacy and led to a decline in union membership (Trif 2013). The corruption allegations and unsuccessful strike action against the austerity measures greatly weakened trade union capacities to mobilise against the centre-right government's attack on unions' fundamental rights through legal changes in 2011.

Employers' divergent responses to the crisis

In contrast to the unions, employers' organisations did not have a unified response to the crisis and the labour law changes. In 2009 and 2010, the Council of Foreign Investors and the American Chamber of Commerce were involved in drafting the new labour laws and they were satisfied with the employment deregulation brought in by the new Labour Code and the Social Dialogue Act. In contrast, the four largest employers' organisations (out of 13 confederations), covering almost two-thirds of the active labour force, joined the five trade union confederations in their protest against the Social Dialogue Act by withdrawing from the national tripartite institutions in September 2011 (Ciutacu 2012). It appears that the largest four employers' confederations were against the Social Dialogue Act, primarily because its provisions brought to an end their main role as representatives of employers in national collective bargaining. Also, the national collective agreements maintained social peace and set minimum labour standards to ensure fair competition between their members. A senior official representing one of the largest employers' associations considered that the suppression of national-level collective bargaining and the new requirements for the extension of sectoral collective bargaining had a negative effect on the capacity of their members to deal with the economic crisis, while the increased flexibility of labour relations had a positive effect (Hayter *et al.* 2013: 48–49). Many employers appear to be happy with their boosted prerogative to set the terms of conditions of employment at the company level.

1.4 The impact of the crisis on collective bargaining

The substantive and procedural austerity measures introduced by the government with the support of the Troika during the recent crisis led to the dismantling of the multi-level collective bargaining system which operated in Romania before the crisis. The Social Dialogue Act makes it far more difficult to negotiate collective agreements at all levels due to the implosion of fundamental trade union rights (see Appendix).

First, the Social Dialogue Act forbids collective bargaining across sectors. Before 2011, the five union confederations and their employers' counterparts negotiated a single national collective agreement each year. This agreement stipulated minimum rights and obligations for the entire labour force in Romania. Only five (out of the 13) employers' associations are still nationally representative, while all five union confederations maintain their representative status (Hayter *et al.* 2013). Nevertheless, four union confederations lost a considerable number of members (CNSRL-Fratia has 306,486 members compared with 850,000 in 2008; CNS Cartel Alfa has 301,785 compared with 1 million in 2008; BNS has 254,527 compared with 375,000 in 2008), while membership of CSN Meridian has increased from 17,000 to 32,000 (Hayter *et al.* 2013: 13). Overall, the data suggest that trade union density has declined a great deal, from approximately 33 per cent in 2008, but there is no reliable information concerning trade union density or membership since the crisis (there is no information about CSDR membership) (Barbuceanu 2014). Also, there are no recent data about employers' organisation density, which in 2007 was 60 per cent (Barbuceanu 2014: 11). Since 2011, the four largest employers' confederations (Employers' Confederation of Romanian Industry - CONPIROM, Patronatul Roman, Uniunea Nationala a Patronatului Roman and UGIR-1903), together with the five union confederations have been militating for the modification of the Social Dialogue Act to allow them to negotiate cross-sectoral agreements and to have meaningful involvement in the tripartite bodies.

Second, the provisions of the Social Dialogue Act made it very difficult to negotiate collective agreements at sectoral level. Previously, the social partners that met the representativeness criteria could negotiate collective agreements that covered all employees and employers in a specific branch. In 2011, the social partners agreed to have 32 branches eligible for collective bargaining, out of which 20 had collective agreements (Trif

2013). The new law redefined 29 industrial sectors eligible for collective bargaining according to NACE activity codes. It requires the social partners to restructure and re-register with local courts and prove that they are representative of the redefined sectors. Trade union federations were keen to re-register to regain representativeness in this way (see Barbuceanu 2014: 13–15 for a list of union federations that reapplied to become representative, including those in manufacturing) to enable them to bargain collectively on behalf of their members. A total of 57 union federations demanded the restoration of their representative status, while only seven employers' federations had reapplied to become representative at the sectoral level by the end of 2012 (Hayter *et al.* 2013: 56–59). There is a disincentive for employers' associations to become representative, as the new sectoral agreements apply only to employers who are members of the employers' organisations that signed the collective agreement, unless those organisations cover more than 50 per cent of the labour force in the sector (see Appendix). As trade union federations had no counterparts to negotiate sectoral collective agreements in most sectors in 2012 and 2013, no new agreements were concluded in the private sector after 2011 (Barbuceanu 2014). Very few collective agreements were concluded for groups of hospitals or other public-sector sub-sectors, such as education, research and public water supply and sewage (Hayter *et al.* 2013).

Third, the Social Dialogue Act makes it more difficult for trade unions to negotiate agreements at the company level, due to major procedural changes (see Appendix). Local unions had to re-register with local courts to be entitled to negotiate collective agreements. Many local unions lost their representative status as the new law stipulates that union density needs to be at least 51 per cent of the total labour force, compared with one-third under the previous law (if union density is lower or there is no union representation in a company, elected representatives of employees are allowed to negotiate collective agreements). Also, the new law requires a minimum of 15 workers from the same company to form a union, while previously 15 employees working in the same profession could form a union. The Social Dialogue Act makes it impossible for unions to bargain collectively in over 90 per cent of Romanian companies with fewer than 15 employees (Barbuceanu 2012). Not surprisingly, the number of collective agreements at company level has declined (Hayter *et al.* 2013: 23).

Finally, the Social Dialogue Act makes it more difficult for unions to take industrial action. Employees are no longer allowed to go on strike if the provisions of a collective agreement are not implemented by the employer. Also, it is obligatory for the parties in conflict to undertake conciliation before taking industrial action under the current law, which was not the case before 2011. During a strike, the workers involved lose all their employment rights, except their health-care insurance, while previously they lost only their wages. Furthermore, union officials were protected for two years after their mandate had expired under the old laws, while an employer can fire them immediately after their mandate expires under the provisions of the current Labour Code. Additionally, employees and their representatives are not allowed to organise industrial action if their demands require a legal solution to solve the conflict, which makes it almost impossible to organise protests against legal changes. By 2011, unions had a very weak capacity to mobilise against the centre-right government's attack on fundamental trade union rights, following unsuccessful mass demonstrations and strike action against austerity measures in 2009 and 2010 and the corruption allegations concerning national union leaders.

Nevertheless, the union leaders of the five confederations signed a protocol in 2011 with the opposition. This promised to reverse the employment regulations introduced by the centre-right coalition in exchange for unions' support for the 2012 elections. The centre-left coalition came to power in 2012, but the new government made virtually no legal changes to the Social Dialogue Act until March 2014. The ILO representatives held discussions with the centre-left government as well as representatives of the Troika about the need to amend the current labour laws to comply with ILO Conventions (Hayter *et al.* 2013). However, the EU and the IMF opposed most changes proposed by the social partners. While the Troika endorsed legal changes adopted unilaterally by the centre-right government (without parliamentary debate or consultation with unions and employers' representatives) which reduced the protection of employees in 2011 (Trif 2013), in their joint comments, the EU and the IMF objected to the use of a slightly more democratic process to modify the Social Dialogue Act (Law 62/2011) to comply with the ILO Conventions:

We understand that the present draft was prepared by trade union confederations that are representative at the national level and by

only four employer confederations. Given the importance of Law 62/2011 for labor relations in Romania, which embodies a key reform, we think it is inappropriate to amend this law through an emergency ordinance and consider it of the utmost importance to go through the normal legislative process which ensures a thorough preparation and proper consultation of all social partners, including all employer organisations representative at the national level ... we strongly urge the authorities to limit any amendments to Law 62/2011 to revisions necessary to bring the law into compliance with core ILO Conventions. (European Commission and IMF 2012: 1)

The European Commission and the IMF opposed proposed changes concerning the extension of national and sectoral collective agreements. Specifically, they were against changes that would make it easier for employees to take industrial action and also asked for a further reduction in trade union influence by limiting the legal protection of local employee representatives involved in collective bargaining. However, they agreed with the proposed changes in the local union representativeness criteria from over 50 per cent to 35 per cent and a reduction of the number of members required to form a union from 15 to five. In contrast with the expectation that joining the EU would support workers' rights (Kohl and Platzer 2004), the EU has played a crucial role in *reducing* employment rights and the capacity of trade unions to negotiate collective agreements during the recent crisis.

1.5 Concluding remarks

The first section of this chapter examines the main changes in collective bargaining since 2008 based on secondary data. It argues that the centre-right governments had a primarily ideological motivation for dismantling the multi-level collective bargaining system in place prior to the 2008 crisis, with the support of the Troika. There was a need for structural reforms to redress economic imbalances, but the labour market regulations were not among the key factors requiring substantial modifications (Ban 2014). The centre-right governments offered a 'technical' justification to introduce certain structural reforms, particularly those required by the Troika to provide the promised loan (Stoiciu 2012). However, there was an ideological motivation for privatising public utilities, reducing social and welfare provisions

and diminishing the role and influence of trade unions in collective bargaining (Stoiciu 2012; Trif 2013).

Although both the austerity measures and the structural reforms have affected collective bargaining, labour law changes (associated with structural reforms) have led to a radical transformation of the industrial relations system and will damage collective bargaining mechanisms in the long run. The biggest change in collective bargaining is at the national level, with the Social Dialogue Act making it impossible for the social partners to negotiate cross-sectoral collective agreements. Moreover, the Act had made it very difficult to negotiate new sectoral agreements, due to the new legal requirements for the social partners. As a result, no new sectoral collective agreements were concluded in the private sector between 2012 and March 2014. There has also been a massive decline in the number of collective agreements at the company level since 2008 (Hayter *et al.* 2013). Thus, the scope for the joint regulation of terms and conditions of employment has decreased significantly, while there has been an increase in employers' (and managers') prerogatives at the company level due to the erosion of collective and individual employees' rights.

Nevertheless, the extent to which employers are using these new prerogatives is unclear. Although national-level data indicate that labour costs as a proportion of GDP have declined since 2008 (Hayter *et al.* 2013: 36), the available studies provide limited evidence concerning the outcomes of the collapse on national and sectoral-level collective bargaining for employees, particularly for those working in the manufacturing sector. Previous studies focus primarily on the impact of the austerity measures on the terms and conditions of public sector employees (Hayter *et al.* 2013; Trif 2013). No study was found to investigate the scope and the quality of the company-level agreements after the collapse of national and sectoral-level collective agreements. It could be expected that local unions in large manufacturing companies would be the most likely to maintain or improve the terms and conditions of employment of their members, as manufacturing sectors had the highest union density in the country. The second part of this chapter examines the actual impact of labour market reforms on collective bargaining in manufacturing and their implications for continuity and change in Romanian industrial relations, based on primary data.

2. The impact of the reforms of joint regulation and labour market policy on collective bargaining in manufacturing

2.1 Introduction

The recent crisis led to different levels of change in industrial relations in the EU member states (Marginson 2015); Romania is an extreme case of disorganised decentralisation of collective bargaining. The deregulation of the labour market by the centre-right government with the support of the Troika has affected both the individual and collective rights of employees.

The Labour Code amendments made it easier for employers to hire and fire employees and to use flexible working time arrangements, while the Social Dialogue Act (SDA), adopted in 2011, diminished employees' fundamental rights to organise, strike and bargain collectively (Trif 2013). This 'frontal assault' on multi-employer collective bargaining (Marginson 2015) led to a transformation of the regulatory framework from a statutory system that supported collective bargaining at the national, sectoral and company levels to a so-called 'voluntary' system (interview, state official, 2014). Nevertheless, the extent to which these legal changes have affected company-level collective bargaining is not known, particularly in the private sector.

This study investigates the impact of the labour market reforms on collective bargaining in the manufacturing sector, in which trade unions are relatively strong. It focuses on the effects of the labour law changes on collective bargaining in six companies operating in the metal and food sectors, where trade unions have managed to prolong the sectoral collective agreements negotiated before the adoption of the Social Dialogue Act until 2015. The selection of the six case studies aimed to cover a wide range of developments in collective bargaining. While in all six cases, the recent legal changes made collective bargaining far more difficult for trade unions, the degree of change in the terms and conditions of employment varied from radical changes in Food 4 (the worst case scenario) to a large degree of continuity in the Metal 5 case (the best case scenario), with the other cases being between these two extremes. The findings suggest that the degree of change and continuity in the terms and conditions of employment at company level is contingent on three

sets of inter-related factors: (i) the attitude of the employer (and senior management) towards employees and their representatives, (ii) the local labour market and (iii) the mobilisation capacity of the company trade union.

2.2 Methodology

As this study seeks to examine the impact of labour market reforms on collective bargaining in manufacturing and their implications for continuity and change in Romanian industrial relations, it is based on in-depth interviews with 25 key informants at the national, sectoral and company levels. At the national level, two trade union officials, an employers' association official and two government officials were interviewed. At the sectoral level, five trade union officials were interviewed, three from the metal sector and two from the food sector. Finally, 15 interviews were conducted in five metal companies and a food company; in four companies, both union officials and managers were interviewed, while in two metal companies only trade union officials were interviewed (see Table 1).

The selection of the companies was based on recommendations by sectoral trade union officials, aiming to cover a wide range of companies in relation to the level of change and continuity in their terms and conditions of employment and collective bargaining developments since 2008. All six companies are subsidiaries of multinational corporations; two of them have more than 1,000 employees (Metal 1 and Metal 5), two of them have between 500 and 1,000 employees, while the other two have between 200 and 500 employees (see Table 1). Apart from Food 4, employees are covered by a company collective agreement concluded by a representative union (which means that union density is over 50 per cent).

The preliminary findings were presented at a one-day workshop attended by six trade union officials and an expert in Romanian industrial relations. The participants provided feedback on the preliminary findings, as well as additional information regarding the degree of change and continuity in Romanian industrial relations.

Table 1 Profile of the case studies

Case studies	Number of employees (approx.)	Main products	Interviews			Degree of deterioration of terms and conditions of employment since 2011	
			Total	Trade unions	Employer/HRM/Line managers	Collective bargaining (SDA)	Individual rights (Labour Code)
Metal 1	>3000	Automotive cables	5	✓	✓	Moderate	High 50 per cent of labour force on fixed-term contracts
Metal 2	700	Auto components	2	✓	✓	Small	High 4 (instead of 5) day working week
Metal 3	300	White goods	3	✓	✓	Small	High Labour force reduced by 40 per cent
Food 4	>800	Mill and bread	3	✓	✓	No change (no company collective agreement)	Very high Change from paternalistic to autocratic management style
Metal 5	1 500	Steel pipes	1	✓	No	Small	Small
Metal 6	500	Electric and electronic equipment	1	✓	No	High	Moderate

2.3 Implications of the reforms for the *process and character* of collective bargaining

Frontal assault on national and sectoral collective bargaining

Empirical findings indicated that the labour market reforms led to the destruction of national and sectoral collective bargaining. It was suggested that post-communist legacies rather than the crisis led to these reforms. According to state officials, the government had to change the statutory system that supported collective bargaining into a so-called 'voluntary' system (interviews, 2014), due to ownership changes linked to the privatisation of state-owned enterprises. It was argued that most employment laws were passed before the mid-1990s, when the majority of companies were state-owned. In that context, the national trade unions managed to establish a regulatory framework in favour of employees and trade unions. Additionally, 'there was a cascading increase in the obligations imposed on employers by collective agreements concluded at national, sectoral and company levels' (interview, government official, 2014). Consequently, the government sought to develop a 'voluntary' collective bargaining system by abolishing the legal obligations of the representative employers' associations and trade unions to get involved in collective bargaining at cross-sectoral and sectoral levels. According to government officials, the main aim of the labour market reforms was to get collective bargaining at the company level to reflect the new economic and social circumstances of private companies.

Most respondents (except government officials) indicated that labour market reforms were initiated by the American Chamber of Commerce and other foreign investors in Romania. Respondents indicated that there was an informal government committee which consulted the representatives of foreign investors, while the government ignored the official channels of consultation with the trade unions and employers' associations. Also, specific large multinational corporations, such as Arcelor Mittal Galati – which employs around 8,000 employees – influenced the provisions in the Social Dialogue Act. Following a two-day strike in 2008 – workers asked for a 30 per cent pay increase but the strike was declared illegal by a local court – Arcelor Mittal made a complaint that the provision of the trade union law (Law 54/2003) that required employers to provide up to five days paid time off per month to local union officials for union activities is unconstitutional. This case was sent to the Constitutional Court, which upheld Arcelor Mittal's claim.

This decision was incorporated into the new labour law (SDA). Thus, there is no longer a statutory requirement for employers to provide paid time off for union activities.

Although all employers held the view that the former labour laws favoured employees and needed to be reformed to re-establish a balance of power between employers and employees, their views varied in terms of the degree of change needed. The employers' associations official (representing one of the four employers' confederations which was against the adoption of the Social Dialogue Act) argued that national and sectoral collective agreements were needed to ensure social peace, to avoid social dumping and to set the national minimum wage. Additionally, this respondent made reference to the broader consequences of unilateral decision-making by the government:

In fact, Law 62 [SDA] has divided and significantly reduced the influence of both social partners, employers' associations and trade unions. ... This is very convenient for the government, as it allows it to impose any decisions very easily. (Employers' association official 2014)

In a similar vein, the CEO of Metal 3 indicated that multi-employer collective bargaining is needed to avoid social dumping and, more broadly, he considered that trade unions should have the right to bargain collectively at different levels. The view of this CEO is fairly exceptional, which seems to be linked to his extensive work experience in France. According to the employers' association official, many members opted out of employers' organisations (or threatened to opt out) in order to avoid the implementation of the provisions of multi-employer collective agreements. Findings suggest that the vast majority of employers and senior managers welcomed the labour law reforms that led to the decentralisation of collective bargaining.

Nevertheless, the extent to which labour law reforms damaged the employers' associations was rather surprising; only five (out of 13) representative employers' associations in 2010 were still representative in 2014. Furthermore, representative employers' associations seem to have only a perfunctory role in bi- and tripartite institutions, as they are no longer involved in collective bargaining. The fact that employers'

associations have a very limited role and influence at the national and sectoral levels seems to be the main reason for the refusal of other employers' association officials to be interviewed or to participate in the workshop related to this project.

Similar to employers' associations, the role and influence of the national and sectoral union organisations in collective bargaining has decreased considerably since the adoption of the SDA in 2011. The recommendations and the support of the Troika of the European Union, IMF and ECB for labour market deregulation made it almost impossible for the unions to defend against the destruction of the multi-employer collective bargaining institutions (Trif 2014). Nevertheless, union officials mentioned that the attack on employment rights and fundamental union rights did not lead to an increase in the internal cohesion and solidarity of the union movement. As statutory employment rights had been achieved primarily through national tripartite consultation in the 1990s, the national unions found it very difficult to mobilise workers and local unions, as they are not used to fighting for their legal rights.

Although national union confederations and federations have not been able to negotiate new collective agreements that cover all employees at national or sectoral levels since 2011, a number of sectoral unions negotiated multi-employer collective agreements. According to the data provided by a trade union confederation (CSDR), 24 multi-employer collective agreements were valid in 2014. Out of those, seven are labelled sectoral collective agreements but they cover solely employees in companies in which the employer is a member of the employers' association that signed the collective agreement. The unions in the health care sector are seeking to extend the current multi-employer collective agreement to the entire health care sector using the provisions of the Social Dialogue Act. Although the quantitative requirements for extension are fulfilled in this sector – the employers who signed the collective agreement cover more than 50 per cent of the sectoral labour force – the new procedures for extending sectoral collective agreements are ambiguous and allow a minority of private employers to block extension. Union officials mentioned that this is a very important case (a rule-maker), as it is likely to be used as a reference for further requests to extend sectoral collective agreements.

Out of the seven sectoral collective agreements² three are in the private sector. All three are in manufacturing and were negotiated under the old labour laws (before 2011) and extended through additional acts until 2015. The collective agreement in the glass and ceramic products sector covers 39 companies. It provides a higher sectoral minimum wage (an additional 25 RON – 5.6 euros – to the national minimum wage per month). The collective agreement in the food, beverage and tobacco sector covers 770 companies, but it does not cover Food 4, as the employer is not a member of the employers' association that negotiated this agreement. In contrast, Metal 5 case is covered by the collective agreement concluded for the electronics, electrical machinery and other equipment production sector, which applies to a total of 108 companies. Similar to most Romanian companies, the other four case studies are not covered by multi-employer collective agreements.

Although the number of sectoral agreements has decreased a great deal since the recession,³ the number of collective agreements for groups of companies has increased from four in 2008 to 16 in 2013 (Table 2). A trade union official who participated in the negotiation of a multi-employer collective agreement in the automotive industry indicated that there have been significant changes in the process of collective bargaining since 2008. In 2010, the two representative trade unions' federations for the automotive sector negotiated (under the old legislation) an addendum to the sectoral collective agreement for 2011–2012 with the Employers Federation of the Machine-Building Industry (FEPA). Ford Craiova joined the FEPA in 2010 to lead these negotiations.

Ford wanted to get a vague sectoral collective agreement to provide more scope for negotiations at the local level (that is, to get rid of wage scales, to decentralise the setting of working time, including lunch breaks and the payment for overtime and weekends at company level). Ford employed a consultancy law firm to negotiate the addendum on behalf of the FEPA. As this was the first time that the unions had to negotiate with a consultancy firm, union officials found the bargaining process very difficult. The lawyers based their negotiations on the minimum

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2. Similar to the agreements for a group of companies, the existing sectoral agreements cover only the members of the organisations that signed the agreement but the sectoral agreements have to be negotiated by representative trade unions and employers' associations at the sectoral level.
 3. There was a decline from 20 sectoral collective agreements in 2010 to seven in 2013.

legal provisions of labour laws, as well as other laws covered by the Romanian Civil Code. It took four months to negotiate the addendum in 2010, while the previous negotiations of the sectoral agreement took 30 days. Although this addendum provided more flexibility for individual employers (to set overtime payments and pensions for workers who had work accidents at company level), a third of employers (148) opted out of FEPA in 2011, including Dacia Renault, which is the largest employer in the sector. Thus, employers that do not want to be covered by multi-employer collective agreements opt out of the employers' associations.

In 2012, the two representative trade union federations negotiated another multi-employer collective agreement with the representatives of FEPA, to last for two years, which covers only 40 companies from the automotive sector, representing less than 10 per cent of the companies covered by the sectoral collective agreement in 2010. Although workers at Dacia Renault are no longer covered by a multi-employer agreement, they have the best employment terms and conditions in the sector, as the company continued to be profitable during the recession and it has a very strong local union (Interview, union federation official, 2014). All the respondents indicated that the company is the main level at which actual terms and conditions of employment are established. Although this was also the case before the crisis, the company-level negotiations used to start from the provisions negotiated at higher levels.

Table 2 Number of valid collective agreements between 2008 and 2013

Year	Group of companies	Company/workplace
2008	4	11 729
2009	9	10 569
2010	7	7 718
2011	8 (a new collective agreement plus seven additional articles to existing collective agreements)	8 317
2012	8	8 783
2013	16	8 726

Source: Ministry of Labour, Family and Social Protection (2014).

Increasing the imbalance of power in favour of employers at company level

The number of company-level collective agreements has also declined, from 11,729 in 2008 to 8,726 in 2013 (Ministry of Labour, Family and Social Protection 2014). There was a major decline of approximately 3,000 collective agreements between 2008 and 2010, while their number increased by around 1,000 in 2011 and 2012, again registering a slight decrease in 2013 (see Table 2). Overall the number of company-level agreements declined by 25 per cent between 2008 and 2013, while the biggest reduction took place before the adoption of the Social Dialogue Act in 2011.

The legal reforms made the collective bargaining process more difficult at the company level, although in the five cases which had a collective agreement (except Food 4) local unions were representative under the Social Dialogue Act (union density was over 50 per cent of the total labour force). In these companies, local union officials indicated that they start negotiations from 'zero', while before 2011 they started the negotiations from the provisions agreed at the sectoral level. Better provisions were negotiated at the sectoral level regarding minimum wages, wage increases linked to inflation, payment of overtime, holiday entitlements and so on, while wage scales were negotiated at the national level. Two local officials revealed that they almost took for granted the provisions of the national and sectoral agreements, while they realised their importance when those agreements ceased to exist.

According to the respondents, the main factor that affects the company collective bargaining process is the attitude of employers and senior management towards the local union. For instance, the senior managers have been fairly hostile towards trade unions since the 2000s at Metal 6, when the majority of the shares were bought by an investor. The relations between management and union were very good previously, when managers and employees owned the company (the company was initially privatised through the management and employee buy-out method in the 1990s). Immediately after the legal reforms, the management told unions that they were going to apply the new legal provisions. First, the company stopped collecting the union fees and encouraged supervisors and workers to leave the union. According to a union respondent, the senior management changed most of the middle managers (around 60–70 per cent) and asked the new managers to use both the 'carrot' ('bribe' supervisors – the respondent indicated that he has seen lump

sums on their payroll) and the 'stick', by threatening to fire them. These tactics led to a decline in union membership by 25 per cent in a couple of months. Second, the senior management made it far more difficult for unions to communicate with their members, prohibiting union officials from discussing with members during their hours of work or posting any information regarding union activities in the company. Third, the management divided the company into seven independent undertakings and made it far more difficult for unions to get relevant information for bargaining purposes. The union had to re-register with the local court and prove that they were representative for each undertaking in order to be able to negotiate a collective agreement for each unit. Overall, the process of collective bargaining has become more adversarial and more difficult for unions in the case of Metal 6 since the legal reforms.

In the other four case studies from the metal industry, the attitude of employers and senior managers towards unions was fairly cooperative. In Metal 1, the HR manager indicated that the company preferred not to take advantage of the new provisions of the legislation regarding collective bargaining, as the 'labour laws might change again' (interview, 2014). Nevertheless, the collective bargaining process has become far more difficult, as the union finds it difficult to organise and represent half of the labour force which is on fixed-term contracts. The company used the new provisions of the Labour Code, which makes it easier for employers to employ workers on fixed-term contracts and virtually all new employees were hired on this basis after 2011. In a similar vein, in Metal 3, the union has very good relations with senior management and their relationship has not changed since 2011. However, the union was unable to defend against the reduction of the labour force by 40 per cent due to the new provisions of the Labour Code, which makes it easier to hire and fire employees.

Similar developments took place in the case of Metal 2. The union has good relations with the current senior management team and there have been no changes in the process of collective bargaining, but the management reduced the working week from five to four days during the summer months, as permitted by the new provisions of the Labour Code. Somewhat surprisingly, the union official mentioned that the collective bargaining process was far more difficult before 2008, when there was a different main shareholder of the company, who was not very keen to negotiate with the union. In a context of decentralisation of

collective bargaining and legal reforms that provide more prerogatives to employers to decide the terms and conditions of employment, it is not surprising that the power of individual employers and senior managers, even in companies in which trade unions managed to negotiate collective agreements.

The large degree of continuity in the bargaining process in four (out of the five) case studies in which unions are relatively strong, as well as in the case of Dacia Pitesti (which has the strongest company union⁴ in Romania, according to national union officials), indicate that individual employers did not really need the new labour laws to redress the power balance in their favour. As these cases are among a minority of companies in which union density is over 50 per cent, the empirical findings support the unions' view that the legal reforms have further tilted the balance of power in favour of employers. According to a senior union official

the previous legal framework ensured a degree of equilibrium of power between the two parties [trade unions and employers]; the new laws are solely about the needs of employers. Trade unions do not count, even if they have 100 per cent union density. (Union confederation official, 2014)

In the next section we examine the impact of the reforms on the terms and conditions of employment.

2.4 Implications of the reforms for the content and outcome of collective bargaining at sectoral and company level, on wages and working time in particular

Impact of the reforms on workers

Although the legal reforms substantially reduced joint regulation of the terms and conditions of employment by the social partners,⁵ there are still three sectoral collective agreements in the manufacturing sector. As these agreements were negotiated before the major changes in the labour

4. It refer to a trade union representing workers in a specific company, site or undertaking (not a yellow union).

5. Until 2010, all legally employed workers were covered by the multi-employer collective agreements at the national level and many of them were also covered by sectoral agreements, while currently all employees working in companies with fewer than 20 employees are no longer covered by any joint regulations.

laws in 2011, there have been no marked alterations in their content and outcome. In the food, drinks and tobacco industry, the latest sectoral negotiations took place in 2010, when the 2006 collective agreement was prolonged until 2015 by means of an addendum. This addendum changed only an article in the sectoral agreement, increasing the sectoral minimum wage to 650 RON. The national minimum wage was increased to 670 RON in 2011 and thus the sectoral minimum wage has become the same as the national minimum wage, while in the previous sectoral agreement it was 20 per cent higher. A union official considered that they were rather lucky that they managed to prolong the 2006 sectoral agreement (which expired in 2010) before the legal reforms of 2011. Different from the automotive sector, where a collective agreement was negotiated after the legal changes in 2011,⁶ there were no changes regarding wage scales, payment of overtime and working time in the sectoral collective agreement in the food, drinks and tobacco industry.

The biggest change in the outcome of current sectoral agreements is the fact that they cover only employers that are members of the employers' association that signed them. According to the union officials interviewed, the new legislation is unclear regarding the extension mechanism for the agreements signed before the adoption of the Social Dialogue Act. Trade unions argued that those collective agreements should cover all companies in the sector. In 2012, the representative union federations from the food industry took this claim to the relevant court and got a decision in their favour, but this decision has been contested by government officials. They indicate that sectoral agreements should cover only those employers that signed the agreement, in accordance with the new labour legislation. Despite having a valid sectoral collective agreement in the food, drinks and tobacco industry, local unions affiliated to a representative federation (which negotiated the sectoral agreement) are unable to use it as a starting point for local negotiations if the employer is not part of the employers' association. In practice, it appears that all sectoral agreements are implemented according to the provisions of the Social Dialogue Act, as indicated by the case of the Food 4 company.

Unilateral management decision-making is well illustrated by the worst case scenario for employees found in the Food 4 case. This company, which has approximately 900 employees, is one of the leaders in the Romanian milling and bread manufacturing market. It was privatised

6. The automotive sector is no longer covered by a sectoral collective agreement.

in the late 1990s, bought by a Greek family business. The company had a strong company trade union before privatisation (interview, sectoral union official, 2014). In the early 2000s, when the company moved its main location to the outskirts of the city, the employer decided to improve the terms and conditions of employment unilaterally and encouraged workers to leave the union. In these circumstances, the company union was dissolved. Respondents indicated that the Greek employer and senior management team had a paternalistic approach to managing people, offering good wages and individual financial support to their workers (personal loans and financial help if somebody was sick in the family). Hence, employees were reasonably happy with their terms and conditions of employment.

The change of ownership led to major changes in management style. During the recent crisis, the Greek company sold its shares to an Austrian holding company, which obtained over 95 per cent of the Food 4 company shares in 2013. Respondents suggested that the holding group wished to restructure the company very quickly and sell it on after a couple of years. In order to do so, the new owner decided to change all the managers (a similar tactic to that used in Metal 4). The company initially employed a new senior management team on fixed-term contracts to make sure that the employer had control over them. Their first task was to replace virtually all middle managers. The management employed a new cohort of middle managers, initially by getting two managers for each middle/line manager position and then gradually firing the managers employed before 2013. According to a former HR manager, they initially fired the most vulnerable managers, such as single mothers, parents with small children and workers who had less than two years before they retired. The fired managers got a month's notice but they were prohibited from coming to work or visit their workplace during the notice period, which made it very difficult for those managers to talk to each other. The company provided the minimum redundancy compensation specified by law, not the seven months' wages indicated in the sectoral collective agreement. In this context, some line managers contacted a former HR director to ask for her advice.

A recently fired middle manager tried to bring in the former HR manager to help him negotiate with the new management to keep his job and/or get a better redundancy package but he was told in a very hostile manner 'if you don't like it, you can sue the company' (interview, 2014). The

respondents indicated that the employment climate in the company is very poor and most managers and workers are afraid that they will lose their jobs. The respondents did not know how many managers or non-managerial employees have already been fired. A middle manager, with the help of the union federation and the former HR director, approached other middle managers that had been fired and set up a company union to try to defend their rights. This new union had just registered with the relevant court when the interviews took place in 2014. The new union has asked the representative union federation in the sector to represent it for the purpose of collective bargaining at the company level, which is allowed under the provisions of the Social Dialogue Act. This was an extreme case of a non-unionised company in which a change of employer led to the alteration of the management's attitude towards employees, from a paternalistic management style to an autocratic one. These changes particularly affected job security and the employment climate.

In all case studies, respondents indicated that the attitude of the employer and local senior management team to employees and unions had the most important effect on the degree of change in the terms and conditions of employment. In Metal 6, the hostile attitude towards unions led to an increase in the number of conflicts, which were taken by the union to the relevant courts for resolution. In the other cases, the managers primarily used the new provisions of the Labour Code, which allow employers to make more flexible employment contracts and working time arrangements. In the case of Metal 1, the management changed full-time contracts to fixed-term employment contracts for half the labour force; in Metal 2, the management reduced the working week from five to four days when demand declined during the summer; finally, the management of Metal 5 reduced its labour force by 40 per cent, due to a reduction in demand. Overall, respondents indicated that managers use the flexible working time arrangements provided by the reformed laws to deal with the fluctuation in demand for their products.

The respondents also indicated that the influence of employers and senior management teams in setting wages has increased due to the major reduction of the coverage of multi-employer collective agreements, as well as specific legal reforms. The new Labour Code specifies that it is the management's prerogative to decide the targets for specific job categories unilaterally; previously, managers were obliged to negotiate those targets with unions. This prerogative makes it fairly easy for managers to increase

employees' workloads by raising the targets for specific jobs, without pay increases. In sectors in which there are multi-employer collective agreements, if employers are not willing to implement the relevant provisions, they can opt out of the employers' association. Previously, all employers in the sector had to implement collective agreements concluded at higher levels by representative social partners.

Also, the influence of local senior management over pay has increased, as in most companies they do not have to consider the provisions negotiated at the higher levels. For instance, in the case of Metal 1, an increase in wages in line with inflation applied automatically to all companies covered by the sectoral agreement until 2011; now, however, inflation is included in the percentage of wage increases negotiated at the company level. The wages for newly employed low-skilled employees were above the minimum wage before 2011, but currently they get only the minimum wage. All respondents indicated that the influence of employers and senior managers on determining wages has increased greatly since the recent legal reforms.

In addition, the decentralisation of collective bargaining has led to an increase in local benchmarking. Union officials (and other respondents) indicated that the local labour market and wage levels in similar companies in the area represented the main reference for wage bargaining. In the case of Metal 1, the union benchmarked their wages against those of Metal 2, which has the highest wages in the region. Union respondents at Metal 1 indicated that wages are currently higher in another factory, which is located in the same area as Dacia Renault, which has the highest wages in the manufacturing sector. As local benchmarking has become more important since the collapse of national and sectoral agreements, the unions from Metal 1 and Metal 2 decided to withdraw their affiliations with two different national federations and created a regional union federation to enable them to coordinate their local collective bargaining. Thus, the importance of wage developments in the local market has increased since the recession, while there have been no changes regarding the influence of firms' economic performance, labour productivity and the quality of goods produced on setting wages.

Finally, findings suggest that the ability of local unions to increase wages and defend against the deterioration of other terms and conditions of employment is contingent on their capacity to mobilise members to take

industrial action. The best-case scenario was found at Dacia Renault Pitesti, where workers' terms and conditions of employment have not deteriorated since the recession. Apart from having one of the largest company unions in terms of membership (over 13,000 members), the union at Dacia Renault Pitesti managed to increase the annual wage by 350 RON (80 euros), following a 16-day strike in 2008. In a similar vein, in the cases of Metal 5 and Metal 1, union officials indicated that the fact that they have proven to management that members are willing to go on strike to support the union's position during collective bargaining enabled them to increase wages after the 2011 labour reforms. In contrast, a union official indicated that his organisation has very limited influence during the collective bargaining process because the union is unable to mobilise workers who are worried about job insecurity, despite the fact that virtually all workers are union members (workshop discussion, 2014).

Summing up, in a context of disorganised decentralisation of collective bargaining, the case studies illustrate great variation concerning the impact of reforms on the terms and conditions of employment. The degree of change in such terms and conditions for employees varied from radical changes in Food 4 and Metal 6 to a large degree of continuity in Metal 5, with the other cases lying between those two extremes (Table 2). In the companies in which demand decreased since the recession, employers used the new provisions of the Labour Code to impose more flexible working time and atypical employment contracts (Metal 1, Metal 2 and Metal 3). While working time arrangements have been changed unilaterally by employers, wages and other terms and conditions of employment have been negotiated via collective bargaining in five cases which have representative unions. The ability of unions to maintain or improve the terms and conditions of employment through collective bargaining has been affected by three main interrelated factors, namely (i) the attitude of the employer and senior management to employees and their representatives, (ii) the local labour market and developments in collective bargaining in other large companies in a specific area and (iii) the union strength and the history of the relations between the local unions and management.

Implications of the reforms for the social partners

As the main purpose of the labour market reforms was to give more power to individual employers to set the terms and conditions of employment,

it is not surprising that the reforms have led to a reduction in the role and influence of trade unions and employers' associations. All respondents indicated that the national confederations and many federations have lost their main role in collective bargaining. Additionally, their role in the tripartite and/or bipartite bodies has been reduced substantially, while the government's role in industrial relations has increased. According to an employers' association official:

Law 62 [SDA] has fragmented unions and employers' associations in Romania and reduced their power. It is clear that having weak social partners is convenient for the Romanian government; without strong social partners, the government can easily impose its decisions. (Interview, 2014)

Representatives of both employers' associations and unions revealed that there is very limited dialogue between the social partners and the government. While prior to 2011 the minimum wage was negotiated by the social partners, currently it is decided unilaterally by the government. Also, a new National Tripartite Council was established under the provisions of the Social Dialogue Act, but it has largely a decorative function (interview, 2014). Apart from the fact that its administrative procedures are unclear, it currently comprises 30 government representatives, six employers' representatives and five union representatives, which makes it very easy for the government representatives to impose their views on any matter. Thus, state intervention in industrial relations has increased. Furthermore, since 2011 the state has supported employers' prerogative to set the terms and conditions of employment at company level, in contrast to its role prior 2010, when it primarily supported workers' rights.

The decentralisation of collective bargaining has led to the disorganisation of employers' associations. Only five (out of 13) employers' organisations are still representative at the national level. In a context of favourable regulations, employers do not need to be members of employers' organisations. By and large, individual employers are content with the provisions of the new Labour Code and the Social Dialogue Act. They have used the new provisions of the Labour Code, which allow more flexibility, to deal with fluctuations in demand for their products (Metal 1, Metal 2 and Metal 3). Most employers prefer to set terms and conditions at the company level, sometimes with the help of consultancy law firms. As a result, many employers opted out of employers' associations.

Furthermore, union officials revealed that employers often select representatives for multi-employer bargaining and/or bi- and tripartite institutions that do not have a mandate to take any decisions.

The Social Dialogue Act enhanced the influence not only of individual employers but also of local unions in relation to other echelons in the union movement. The tensions between the company-level unions and (con)federations have increased a great deal since 2011. As confederations and many federations are no longer negotiating collective agreements, the company unions (which collect the membership fees) are contesting the distribution of membership fees. Local unions have started to retain a higher percentage of the membership fees, which has led to financial difficulties for some federations and confederations. Also, it was revealed by respondents that some local unions report a lower number of members to reduce the amount of fees paid to federations and confederations.

According to national union officials, in many highly unionised large companies, local union officials use their position to obtain personal benefits:

The large majority of local leaders (not all of them) act like they are owners of the company unions. Very few of them consult their members and involve them in the decisions taken. With these 'ownership rights' over the union organisation, union leaders use their position to get involved in local politics, make money and to acquire high power status in the local community. (Interview, national union confederation, 2014)

This behaviour leads to a vicious circle; if federations and confederations try to do something about it, the local unions threaten withdrawal from federations and confederations, and the (con)federations lose their financial resources and their representative status.

Additionally, legal reforms and declining resources due to falling membership for many unions have led to tensions between federations and confederations. While confederations cooperated to fight austerity measures and the legal reforms in the first years of the recession (Trif 2014), there seems to have been less cooperation since the adoption of the legal reforms in 2011. For instance, it was revealed that the BNS initiative to change the new Labour Code had rather limited support

from the other union confederations. Although the Social Dialogue Act is a threat to the union movement in Romania, it has resulted in divisions within and among organisations rather than solidarity.

Nevertheless, some union federations have acquired a more active role in local bargaining since 2011, although their role and influence depend on the willingness of local unions to involve them. While the status of local unions within union hierarchies has been enhanced, their influence vis-à-vis employers has declined. In companies in which unions have more than 50 per cent density, local unions negotiate the collective agreements from a weaker position (lower legal labour standards, less legal protection for union officials, more difficulties in striking, reduction of union membership, such as in the cases of Metal 1 and Metal 6). In companies in which unions are no longer representative, the local unions need to cooperate with the 'elected' representatives of employees during the bargaining process. As employees' representatives are generally selected by the management team and have no collective bargaining experience, according to respondents, they often undermine unions during the negotiation process (interviews, 2014). Nevertheless, collective bargaining is still possible in unionised companies, particularly if the local union is affiliated to a representative federation, which can negotiate (if asked) on their behalf.

In contrast, companies with fewer than 20 employees (and the majority of larger non-unionised companies) are no longer covered by any joint regulations, and this has boosted the grey labour market. The number of workers without an employment contract or paid the national minimum wage plus cash in hand has increased due to the lack of national and sectoral agreements,⁷ particularly in small enterprises. This has negative consequences for all parties: for the state, it reduces the financial contributions of workers and employers to the budget; for employers, there is unfair competition from those who avoid paying payroll taxes; for unions, it reduces their capacity to organise vulnerable workers and makes it more difficult to improve wages for legally employed workers. The state officials indicated that the government has increased the number of labour inspectors and fines for illegal work, but they recognised that the new legal provisions have not yet managed to tackle this issue. According to some respondents, there are not enough labour inspectors and some of them are corrupt.

7. Reliable data are not available on changes in the grey/black labour market since the recession.

Representatives of both employers' associations and unions have fairly negative views of state intervention in industrial relations. They consider that Romania was used as a 'guinea pig' by foreign investors with the support of the IMF and the European Union to radically decentralise collective bargaining. According to a union official,

The Romanian government has been very weak. Romania is a case study, a 'guinea pig'. All the labour market reforms were initiated and adopted at the recommendation of two players; one is the American Chamber of Commerce and the other is the Foreign Investors Council. The Romanian model has been exported to other central and eastern European countries and foreign investors wish to extend it in western European countries. (Interview, union confederation official, 2014)

Romania is perceived by unions and Romanian employers to be a 'rule-maker' in terms of the decentralisation of collective bargaining in the EU.

Summing up, the labour market reforms led to three interrelated consequences for the social partners: (i) it resulted in a considerable decline in the role and influence of the union movement and employers' associations, while the influence of individual employers and the state in setting the terms and conditions of employment has increased; (ii) although the legal reforms threaten the existence of the employers' associations and unions, they led to divisions within both unions and employers' organisations rather than solidarity; and (iii) the reduction of joint regulation and the decentralisation of collective bargaining made it easier for employers not to implement labour laws and the provisions of collective agreements (Food 4), which led to an increase in the grey labour market.

2.5 Discussion and conclusion: general trends regarding change and continuity in industrial relations

This chapter examines the impact of labour market reforms on collective bargaining in strongly unionised manufacturing sectors, highlighting the main implications in terms of continuity and change in Romanian industrial relations. The empirical findings suggest that the legal reforms have led to a radical decentralisation of the Romanian industrial relations system, as the national confederations and many sectoral unions' and employers' organisations lost their main *raison*

d'être, namely to negotiate collective agreements. Although there are multi-employer collective agreements in the metal and food sectors, the empirical findings indicate a decentralisation and fragmentation of collective bargaining, even in these strongly unionised sectors.

The degree of change and continuity in the terms and conditions of employment at company level is contingent on three sets of inter-related factors:

- (i) The attitude of the employer (and senior management) to employees and their representatives; the attitude of the employer varied from fairly cooperative in Metal 5, Metal 2 and Metal 3, to hostile in Food 4 and Metal 6. Although this is not surprising, given the decentralisation of collective bargaining, it is interesting that some union respondents perceived that the attitude of the employer/senior management to employees affected developments in company collective bargaining more than the recent legal changes.
- (ii) It was somewhat unexpected that union officials, as well as managers interviewed, considered that the local labour market and developments in collective bargaining in other large companies in a specific area affect the provisions of collective agreements more than the strength of the company trade union (in terms of union membership, density and mobilisation capacity). In all five companies that had a collective agreement, both unions and managers considered that the outcomes of collective bargaining in other companies in the area affected the process and the outcomes of collective bargaining in their company; Metal 6 was considered by a union official to be a 'rule maker', in the sense that it was the first company in the area where the senior management implemented the new provisions of the Social Dialogue Act, despite having a fairly strong trade union.
- (iii) Finally, union strength and the history of relations between local unions and management have affected company collective bargaining, particularly in Metal 5 and Metal 1, where the unions have proven their capacity to mobilise their members in the past five years; also, the worst deterioration of the terms and conditions of employment was in Food 4, which was not unionised; the hostile attitude of the senior managers towards middle managers and employees in Food 4 led to the creation of a new trade union.

The reforms have led to a great increase in the influence of individual employers in setting the terms and conditions of employment, while the role and influence of national and sectoral unions and employers' organisations has decreased a great deal. While the reduction of the influence of unions' and employers' associations in industrial relations was expected, the extent of the decline and divisions within these organisations was surprising; many national level organisations, particularly employers' associations, appear to be on the verge of collapse, as they no longer have a role in collective bargaining and their role in tripartite institutions is minimal (if any). In this context, it could be expected that these organisations would seek solutions to survive.

One of the five union confederations, BNS, used this crisis as an opportunity to restructure itself and change its main role from collective bargaining to providing individual services for its members. The union did a survey of all its members to find out their current and future needs. Primarily based on the information collected through this survey, the union created an electronic platform which focuses on providing individual services, ranging from support in finding jobs and career progression, to health and safety regulations and support with individual negotiations and grievances. This system was established well before 2008 but it could not be implemented before the crisis due to resistance from local union leaders. The new system provides transparency regarding the activities of local unions and to some extent reduces the power of local union leaders, as it makes it easier for members to get access to services provided by union federations and confederations. Also, the platform makes it easier for members to communicate with union federations or confederations. Last but not least, it makes it easier for members to obtain union support when they change jobs, even if they decide to work abroad. Nevertheless, the new system was operating only on a pilot basis when the research was conducted in 2014. Therefore, it is not yet possible to assess its effectiveness.

Most respondents revealed that they want the state to 'rescue' and revive industrial relations institutions through labour law changes but this seems unlikely in the near future. None of the respondents were optimistic that the current centre-left government would provide more statutory support for employee and union rights. The view of the state officials interviewed was that Romania needs a decentralised 'voluntary' system, in which individual employers negotiate with unions

or representatives of workers at the company level. They indicated that the government would consider legal changes only if the employers and unions reach an agreement on specific modifications. As individual employers are happy with the current legal framework, it is unlikely that this will happen in the near future. Union officials mentioned that in some companies there have been unorganised protests by discontented workers in the past couple of years. If this trend continues, employers may wish to change the legal framework to ensure social peace.

The Romanian government changed the regulatory framework from a statutory system that supported collective bargaining at the national, sectoral and company levels to a so-called ‘voluntary’ system, which made it almost impossible to negotiate new national and sectoral collective agreements between 2011 to 2014. State officials argued that the main reason for those changes was the privatisation of companies, not necessarily the recent crisis. Findings indicate that ownership changes had a key role in triggering the transformation of the industrial system in Romania. Although these changes appear to be linked to the post-socialist legacies of the privatisation of the state-owned companies, representatives of both unions’ and employers’ organisations argued that the new legal framework was initiated by foreign investors. Moreover, a national union leader suggested that ‘the actual text of the labour laws was given to Boc’s government by foreign investors and transposed *verbatim* into legislation’ (interview, 2014). Thus, the deregulation of the Romanian labour market seems to be better explained by the rise of neoliberal policies and globalisation.

Similar to other southern European countries, especially Greece, the Romanian labour laws that supported collective bargaining have been changed radically since 2008, which has led to a rapid demolition of the collective bargaining institutions at national and sectoral levels (Koukiadaki and Kokkinou 2016; Marginson 2015). These changes have empowered employers to reduce employment rights and have weakened the influence of trade unions in many unionised companies. These developments in collective bargaining and industrial relations support the view that statutory labour laws are not sufficient to uphold employment rights (Hyman 2014).

In contrast to Bohle and Greskovits’ (2012) argument that Romania has a weak state that concedes to union demands, the recent changes

in collective bargaining point instead to a relatively strong state (due to the external support of the Troika) and weak unions. The government's disregard for the provisions of collective agreements, the legislative changes and the alleged intimidation of union leaders have led to a decline of union legitimacy and influence in collective bargaining. The recession was used as a pretext by the centre-right government to reform the industrial relations system. The Social Dialogue Act was passed unilaterally by the government without being debated in Parliament and without involving the social partners. Also, the government made statutory changes to the terms and conditions of employment agreed by the social partners. The non-democratic procedures used to alter industrial relations resemble the authoritarian rule before 1989. Evidence points to a large degree of continuity in terms of strong state intervention in industrial relations. This institutional arrangement seems to be a type of authoritarian neoliberalism (Trif 2013), as changes in industrial relations are driven by an interventionist state in the field of wage setting that, at the same time, is pushing forward labour market deregulation and dismantling workers' rights. Similar to other countries severely affected by the crisis, the Romanian government has managed to introduce these neoliberal policies with the strong support of the Troika.

Appendix

Key changes in fundamental unions' rights after the adoption of the Social Dialogue Act (SDA)

		Before SDA (until 2011)	Key changes after the adoption of SDA (since 2011)
Collective bargaining	National level	Unions negotiated annual national collective agreements at cross-sectoral level, which covered all employees.	Unions are not allowed to negotiate cross-sectoral collective agreements.
	Sectoral level	20 sectors (out of 32) were covered by collective agreements in 2011. There was statutory extension of collective agreements.	Unions unable to negotiate new sectoral collective agreements in the private sector until March 2014. Collective agreements can be extended only if the members of employers' associations that signed the agreement employ more than 50 per cent of the labour force in the sector.
	Company level	Unions were considered representative if their density was ≥ 33 per cent. Shop stewards could take up to five days of paid leave to deal with union issues.	Unions are representative if their density is ≥ 51 per cent. => Unions with less than 51 per cent density are not eligible to conclude collective agreements on their own Shop stewards can take up to five days of unpaid leave to deal with union issues.
Freedom of association		Minimum of 15 employees working in the same profession could form a union.	Minimum of 15 workers from the same company is required to form a union. => Unions cannot organise workers in over 90 per cent of Romanian companies, which have fewer than 15 employees (Barbuceanu 2012).
Industrial action		No obligatory conciliation before strikes. Unions were allowed to organise industrial action to enforce the implementation of collective agreements.	Obligatory conciliation before strike action. Workers are not allowed to go on strike if collective agreement provisions are not implemented. The solution to conflicts requires legal changes.

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All links were checked on 4.12.2015.

Chapter 7

Social dialogue during the economic crisis: The impact of industrial relations reforms on collective bargaining in the manufacturing sector in Slovenia

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1. Introduction

1.1 The Evolution and conceptualisation of the 'crisis' in Slovenia

In terms of Varieties of Capitalism theory (Hall and Soskice 2001), Slovenia established a coordinated market economy in the 1990s. In all other contemporary candidate 'post-communist' countries, the real change was moving more towards a deregulated, liberal market economy model (Bohle and Greskovits 2012; Feldmann 2006; 2014).

The Slovenian peculiarity was based on an untypical combination of factors not seen in other cases. The entire Slovenian transition – up to its formal inclusion in the EU in 2004 – was led by unstable, centre-left governments. Being unstable and focused on a smooth approach to the EU and EMU, these governments were in favour of cooperation with the social partners. In addition, the relatively favourable economic conditions enabled such cooperation: the transformational depression of the late 1980s and early 1990s was one of the least intensive within the group of 'post-communist' countries; the country's budget deficit and public debt were insignificant; the only problem to be resolved during the accession process was the relatively high inflation rate (Silva-Jáuregui 2004).

Due to the small budget deficit and low public debt, the sale of state-owned property was not necessary as it was, for instance, in the case of Hungary at that time (Toth *et al.* 2012). In these quite exceptional circumstances, the Slovenian privatisation launched in the mid-1990s took the form of distributional (certificate) privatisation (Simoneti *et*

al. 2004) which basically temporarily stabilised relationships among large social groups/categories and the corresponding key actors of the country's transition.

At that time, the main intermediary interest organisations were relatively strong. The Chamber of Commerce and Industry was based on obligatory membership; the trade union density rate was at 40 per cent (Toš 1999; 2009), which was above the average level in the old EU member states and significantly above that seen in contemporary candidate countries, i.e. future new EU member states (see: Visser 2010: 26).

The presence of these strong actors, especially the obligatory membership in the Chamber of Commerce and Industry, strongly influenced the formation of a centralised collective bargaining system. As the Chamber was involved in the collective bargaining procedures, the collective agreements reached a coverage rate of almost 100 per cent in the 1990s in Slovenia.

Given the outlined conditions and constellations, social dialogue, a neo-corporatist structure and, generally speaking, an unusual formation of the social market economy in 'post-communism' started to mark the Slovenian transition in the 1990s (Feldmann 2014).

Today, the crisis in Slovenia is an economic, political, institutional and long-lasting one. It was generated by a complex interplay of exogenous and internal, endogenous factors (and actors). Basically, the coordinated market economy system which had temporarily stabilised in Slovenia in the 1990s was faced with two big problems already at the start of its formation.

The first was a contextual one. The Keynesian order which had been established in developed Western capitalist societies after the Second World War encountered a serious crisis already in the 1970s (stagflation) and began, after the turning point in the late 1970s and early 1980s, to be substituted by the new globalising neoliberal order. The contemporary Slovenian neo-corporatist transition has obviously not fitted in with this general trend of change.

The second problem was more endogenous. The tripartite interest integration (i.e. the neo-corporatist consensus) ensured a significant

temporal advantage for the Slovenian economy in the 1990s. In essence, Slovenian neo-corporatism functioned as a sort of temporal competitive mechanism – ‘competitive corporatism’, a system of ‘competitive solidarity’ (Rhodes 1998; Streeck 1999). This system enabled Slovenia to approach the EU and the eurozone rapidly, but it simultaneously led to gradual internal self-exhaustion and, accordingly, a potential threat to its competitiveness in the post-EU and post-EMU period (Drenovec 2013; Stanojević 2010).

The pattern of ‘competitive corporatism’ was based on a combination of two key elements. The first was the systematic wage-restraint policy at the macro level that was in place for more than one decade (Stanojević 2010: 340). The second was the permanent intensification and flexibilisation of work at the micro level, within companies, during the same period (Svetlik and Ilič 2006). Both components were accepted on a consensual basis and in both cases the related supportive consensus stemmed from political exchanges. In exchange for supporting the wage-restraint policy, the trade unions were included in the processes of forming public policies (Stanojević and Krašovec 2011); in exchange for accepting the work intensification and greater flexibility, workers and their unions obtained, at least temporarily, guarantees of job security, i.e. full-time employment for the core workforce in the manufacturing industry.

Therefore, this system of ‘competitive corporatism’, which was chiefly focused on consensual accommodation to the standards defined in the Maastricht agreement, strongly stimulated/supported the national economy’s competitiveness in the middle term. As mentioned, after a decade or so, it started to show some signs of internal self-exhaustion.

In the middle of the last decade, the system’s self-exhaustion overlapped with the shock caused by preparation for and inclusion in the eurozone, along with the contemporary massive and growing indebtedness of companies and, related to that, the second wave of privatisation. The monetarist turn (the fixed exchange rate and then inclusion in the eurozone) led to a rapid further escalation of competitive pressures on the Slovenian economy, especially its export sector. Managers largely responded to this shock by introducing additional work intensification and tightening their control over workplaces (Svetlik and Ilič 2006). In addition, the new wave of mass indebtedness (and the corresponding privatisation) also implied more work for the same and/or lower

payment. Accordingly, in the second half of the last decade Slovenian workers faced completely new sources of pressure: more work for unchanged or reduced payment and, later, when a wave of bankruptcies in the context of the financial crisis occurred, in quite a few cases more work without any kind of payment at all.

The world financial crisis reached this overheated system in 2009. In that year, Slovenia's GDP dropped 8 per cent (OECD 2011). The repayment of the debt levels that had accumulated in the 'years of prosperity' before the crisis became extremely challenging overnight. Insolvency problems and then a chain of collapses were seen in the construction sector. These included the first bankruptcies connected to the second wave of privatisation. Simultaneously, the steep drop in demand from European markets hit the export sector of the economy.

It was in these circumstances — when the first anti-crisis measures were adopted — that the budget deficit and public debt started to grow. Within a few years, Slovenia had exceeded the Maastricht threshold concerning public debt; in February 2014 it exceeded 70 per cent of Slovenia's GDP. Similarly to other comparable cases, this rising debt has led to the growing role of financial markets and credit-rating agencies in the country's economy. The increasing debt has almost automatically increased the pressure of the financial markets.

In more recent times, the most accentuated attempts to resolve the crisis of the Slovenian economy have focused on the huge problems in the banking sector. The role of supranational factors — especially the EC, as will be outlined later in this report — was extraordinary.

International institutions (for instance the OECD) and both 'left' and 'right' leaning Slovenian governments under the influence of these institutions have agreed that the Slovenian market is rigid and overregulated. Accordingly, they are calling for its deregulation — basically the introduction of external (numerical) flexibility as a way to respond to the crisis.

Yet, contrary to this, some empirical surveys reveal that the Slovenian employment system has in fact been very flexible in the last two decades. Basically, the surveys confirm the high functional and numerical flexibility of employment relations in Slovenia. The high

level of employment security (i.e. the relative numerical 'rigidity' of the employment system) and the corresponding cooperation of workers and their representatives within companies enabled this high level of functional flexibility to develop. This was combined with the growing use of short-term employment (in the form of fixed-term contracts) as the main functional substitute for the 'missing' numerical flexibility in Slovenian companies (Stanojević *et al.* 2006).

The Slovenian industrial relations system began to change before the crisis emerged in the mid-2000s. The direction of the transformation, as announced by previous governments, corresponded to the main European trends of the time.

Coordination at the macro level was maintained in the form of social pacts, i.e. consensually accepted income policies. Accordingly, former general collective agreements (for the private and public sector) were consensually replaced by income policies. These were implemented by the sectoral agreements.

Despite this decentralisation, the new law on collective bargaining adopted in 2006 did not create any significant changes to this system. According to surveys (Visser 2011), the coverage rate was still extremely high (at about 90 per cent in 2008). In general terms, this 'new' system was a 'softer' version of the old one. Along with the moderate decentralisation, it has preserved a relatively high level of regulatory capacity (Visser 2011: 41) in the last decade.

Collective bargaining has been conducted fairly systematically at the company level. Trade unions were usually active in negotiating agreements with managers in large and medium-sized companies. In successful companies, such agreements typically improved on the standards laid down in the sectoral agreements.

Before the crisis emerged, the position of the Chamber of Commerce and Industry had changed: its former status of a compulsory organisation was abolished in 2006. A new law, adopted by the contemporary centre-right government, transformed the Chamber into a voluntary interest organisation. The Chamber's new status triggered an immediate decline in membership and forced it to compete for members. In other words, it was required to adopt new, more radically oriented policies closer to the

interests of its potential constituencies. Accordingly, the formerly modest employers' interest organisation, which once played an important role in negotiations on social pacts, significantly radicalised its stance.

Already before the crisis emerged, between 2005 and 2008 Slovenian trade unions had been exposed to probably the most dramatic membership decline and restructuring in recent history. This decline is comparable and even more intensive than that seen at the beginning of the 1990s when Slovenia was faced with the transformational depression and a large systemic change. Contrary to that, the more recent decline occurred during the years of economic prosperity and Slovenia's full integration into the EU and eurozone. From a density rate of 43.7 per cent in 2003 – which stabilised at that level in the second half of the 1990s – the rate plummeted to the level of 26.6 per cent in 2008 (Toš 1999; 2009). That represents a decline in the density rate of 17 per cent. Accordingly, the trade union leadership was forced to turn towards the demands of their members. The key result was the radicalisation of the trade unions' policies.

The radicalisation of these social partners occurred within the context of a significant political change which marked the country's political scene immediately after it joined the EU, i.e. in the years before the crises broke out. In 2004 – the same year Slovenia became a full member of the EU – the political right (centre) won the elections. This was a big change from the continuous domination of centre-left coalitions that had been in place for over a decade and it significantly influenced (or, at least, strongly shook up) Slovenia's developmental trajectory that had then been established.

At the outset of its 2004–2008 mandate, the new government launched a package of radical neoliberal reforms. In the centre of the reforms was a flat-tax rate; the second wave of privatisation was a less visible but an equal, if not even more important, part of that programme. The unions opposed these reforms and became embroiled in a conflict with the government. They articulated the mass mobilisation of workers and the wider public, which culminated in November 2005 in an enormous rally in Slovenia's capital.

Having already been exposed to growing pressure during the accession process, workers strongly supported the unions in their defence of the

Social Slovenia/Europe, relying on perceptions of the Social Europe which had underpinned their patience in the 1990s. The unions' opposition clearly hindered some of the intended changes (the flat-tax rate was not introduced). In the aftermath of the conflict, public support for the government nose-dived so dramatically that the government could not recover, leading to the defeat of the centre-right coalition at the 2008 elections.

The results of the transition and the accession process and, finally, of the mass mobilisation in 2005 were extremely disappointing for workers. They recognised that the mobilisation, i.e. the trade unions' political conflict with the government, had been insufficient to fulfil their basic expectations (compare: Meardi 2012). The unions, together with all major political players, paid a high price for this widespread disillusionment. Rapid de-unionisation was thus unavoidable.

1.2 The responses to the crisis

Since the crisis emerged in 2008 three governments in Slovenia have been replaced. The first one tried, within the context of early responses to the crisis, to carry out structural reforms. The second focused on radical fiscal consolidation, i.e. austerity measures in the public sector. The priority of the third has been to provide some sort of emergency response to the crisis in the banking sector.

The centre-left government formed after the general elections in (late) 2008 faced the crisis immediately at the outset of its mandate and started to respond to its first signs with a series of 'fire-extinguishing' measures. These primarily concentrated on the main export sector producers that had been the most seriously hit by the sudden steep drop in demand in European markets. A typical provision of this early intervention was to offer interim support for companies and redundant workers. The measures aimed at safeguarding existing jobs by decreasing the cost of labour that was broadly used as a partial government subsidy for companies by temporarily reducing working time by 4 to 8 hours weekly. The government provided a subsidy in the amount of €60/€120 per employee for reducing the working time by 4/8 hours. Undertakings were able to benefit from the measure for 6 months. The initial package of temporary measures (in effect until the end of 2010)

was preventive in nature and, like in other EU member states, aimed at the financial sector (such as loans, government guarantees and equity investments in financial institutions). The second package of measures proposed solutions in five areas: improvement of finance and liquidity of enterprises, increase in the working capital of industrial sectors in jeopardy, improvement of the labour market, life-long learning and social security (social entrepreneurship, a new scheme and co-financing of employees' training, preparation of graduation candidates for employment), development of infrastructure, energy and environment, and maximising the use of cohesion funds and increased efficiency.

In the autumn of 2009 a series of strikes erupted in certain major Slovenian companies. The workers' discontent was probably a decisive factor that influenced the then government's decision to significantly raise the minimum wage – by 23 per cent (OECD 2011: 41). Simultaneously, the government started to prepare a programme of structural reforms. With its Exit Strategy presented in early 2010 (*Slovenska izhodna strategija 2010-2013*, 2010), it basically tried to respond to the demands for anti-crisis policies defined by EU institutions (EC Recovery Plan). The strategy proposed measures and structural changes with long-term-oriented objectives that were to replace the short-term-oriented anti-crisis measures and enable the Slovenian economy to recovery and further develop. In this document, the government identified three basic developmental priorities for the 2010–2013 period (entrepreneurship and skills for development, secure flexibility and social cohesion and developmental, transport and energy infrastructure for an effective and stable environmental balance) in line with the 'Europe 2020' Strategy and its three priorities of smart, sustainable and inclusive growth. In the field of employment and work, the Slovenian Exit Strategy declared three basic principles: flexicurity (secure flexibility), security in old age and social fairness and cohesion. In order to achieve secure flexibility, the document envisages lowering labour costs (resulting from high security contributions), making social policies more effective, linking active employment policy measures to structural reforms and modernising labour market regulation. According to the Strategy, the government basically intended to reduce public sector expenditure, reform the market in terms of the 'workfare' approach, and implement the pension reform. It sought to exchange the minimum wage increase for the unions' support of the announced structural reforms.

However, the proposed exchange was ultimately unsuccessful: the increased minimum wage caused radical dissent and opposition on the employers' side and a corresponding blockage in the social dialogue. Further, despite receiving the minimum wage increase, the trade unions did not support the intended pension system and the other reforms.

Faced with the social partners' dissent, the government decided to unilaterally formulate and implement the intended reforms.

Yet this unilateral policy formation and corresponding side-stepping of the social dialogue had extremely destructive political implications. The weakened and radicalised unions, which had been pushed into opposition by the former right-centre government, and then kept at a distance by the 'centre-left' one, started to articulate their social and political discontent and demonstrated quite an unexpectedly high mobilising capacity. The subsequent political conflicts and referendums led to an escalation of the political crisis and, finally, to early elections. By insisting on its unilateral formulation and implementation of the structural reforms the centre-left government lost the support of trade unions, especially the support of employees in the public sector – the key segment of its electoral base.

The right-centre government that was formed after the early elections held in 2011 recognised the problems in the banking sector, announced preparations for a third wave of privatisation – which this time should imply radical internationalisation, but its real priority was to respond to the budget deficit problems. In line with its general ideological profile, this new government tried to implement an immediate radical cut in public sector spending. At the beginning, it intended to introduce a 15 per cent salary reduction in the public sector but, following a general strike by public sector employees in April 2012 and negotiations with the unions' representatives, the intended cut was reduced to 8 per cent. The cut was immediately adopted by parliament in the form of an extensive, almost revolutionary law on 'balancing public finances' (Uradni list RS, 40/2012).

After several years of debate on 4 December 2012 the Slovenian National Assembly passed the pension reform that has been in force since 1 January 2013. The financial savings in the first year are estimated at €150 million. After rejecting the pension reform that had been proposed by the previous government, after months of intensive social dialogue and

a referendum in June 2011 the reform was passed with the consensus of all political parties and social partners. The reform tightens retirement conditions by rising the retirement age for both men and women to 65 years or 60 years of age on the basis of 40 years of service. The period for calculating the pension basis from the current 18 years is extended to 24 years. Equalisation of the retirement age of women and men will be gradually reached in six years. Critiques raised before the reform was passed that women would carry the major part of the pension reform burden were answered by some changes to the reform proposal. Women will be able to retire earlier – at 56 years or 57 years of age if they started working before they 18 years old and if they had children that they took care of (6 months earlier for one child, 16 months for two, 26 months for three, 36 months for four and 48 months for five children). The proposed equalisation of the retirement conditions for men and women could further discriminate against women since many young women obtain regular jobs later due to statistical discrimination related to parenthood.

In late 2012 a mass civil society movement developed in Slovenia. Provoked by a ‘radar affair’, i.e. rigid traffic control in the country’s second largest city, practically overnight it turned against the current government, its austerity measures, and then the entire political elite. At the core of the movement were public sector employees along with numerous young educated and (often) unemployed people. In January 2013 public sector employees again joined in a new general strike.

Early in 2013 the conservative government, then under the pressure of the movement as well as an internal crisis triggered by corruption scandals, started to disintegrate.

The third, centre-left government which replaced the former one in 2013 – in the fifth year of the crisis – focused on the banking sector’s dramatically escalating problems. As mentioned, prior to the emergence of the crisis – in a period of the mass inflow of ‘cheap money’, Slovenia was marked by the growing, uncontrolled indebtedness of companies, new financial entrepreneurs and (state) banks. The crisis caused the breakdown of most of their pre-crisis financial arrangements. Given the extensiveness of the detected problems, the third ‘anti-crisis’ government did not seek to abandon cutting public sector expenditure, but – unlike the former government – it started to search for and create new forms

of taxation and, in addition, it announced it would sell off, i.e. privatise, some of the bigger companies still majority owned by the state.

At the start of this third government's work, in May 2013 the 'Golden fiscal Rule' was adopted by parliament. Referendums on all fiscal and financial issues were thereby essentially forbidden. A consensus among the otherwise sharply divided political scene was easily reached in this regard. The narrowing of possible subjects of referendums was warmly welcomed at the European level and noted by the financial markets to whom the message had been directed.

1.3 The process for the adoption of the reforms

International institutions already had a strong influence on the Slovenian economy before the crisis. The local political elite's experience with the EU influence (mostly via the 'soft' and 'hard' acquis) according to the economic growth and good functioning of the Slovenian economy in the 1990s was not at all negative at that time. During the 1990s Slovenia basically accommodated, like other candidate countries, the standards set out in the Maastricht Treaty.

In the first half of the last decade, in the period prior to the ten candidate countries joining the EU, when the policies of the EC and ECB had clearly turned in a neoliberal direction (Meardi 2012; Crouch 2011), the stances towards EU institutions and policies were basically still positive and unchanged during the economic boom before the crisis. Therefore, one can say that before the crisis the influence of EU institutions was strong, mostly indirect and more or less positively accepted in Slovenia despite the changes made to policies at the EU level.

In relation to the mentioned occurrence of three successive governments within five years, we can identify three different periods in the crisis that are marked by a different role of supranational institutions in Slovenia. Throughout the last five years, the influence of EU institutions, especially the EC, has been permanently present and strong. It was initially more indirect, but as the crisis escalated it transformed into a sort of direct intervention, i.e. the inclusion of EU institutions in the formation of the local anti-crisis policies and corresponding measures.

In the second year of the crisis, in 2010, the then centre-left government prepared the mentioned Exit Strategy in accordance with the EC Recovery Plan. Consistently following the EC guidelines, the Strategy defined a programme of structural reforms. As mentioned, the government's attempt to unilaterally formulate and implement reforms led to conflicts, a massive referendum campaign and, at the end, a serious political crisis and early elections.

The conservative government formed after the early elections in 2011 recognised the state's fiscal crisis as a priority of its anti-crisis efforts. The EU institutions explicitly supported the austerity measures the government had implemented. EC representatives frequently stated at the time that the reforms in Slovenia were 'going in the right direction'. The policy of radically cutting public sector expenditure (i.e. the salary cut) provoked massive protests and social conflicts in Slovenia. This policy was a key factor causing the emergence of the massive civil society movement – the Slovenian 'winter of discontent' of late 2012 and early 2013. This mass civil society resistance was followed by the government's downfall.

Starting its work in the fifth year of the crisis, the third government faced a growing budget deficit, rising public debt and a banking sector crisis. The worsening situation started to influence Slovenia's ratings in financial markets. Then the threat of intervention by the 'troika' emerged as an additional factor impacting the ratings as well as internal Slovenian politics and the Slovenian public generally. At the end, the need for the 'troika' was avoided and substituted by a series of direct EC interventions.

In the first half of last year (2013), the EC (and ECB) demanded that the banking system reform be accelerated. The focus was on the immediate formation of a 'bad bank' and its activation. Soon after that, the entire procedure of setting up the 'bad bank' was arbitrarily suspended by the EC. In the second half of last year (2013), the Slovenian public perceived that the Slovenian banking sector and, accordingly, the Slovenian economy and society had been the subject of experimentation connected to preparations for future reforms of the European banking system. As a result, Slovenian banks were exposed to stress tests based on a methodology not previously used anywhere else before being applied to Slovenia. This was quite a new experience for the Slovenian political

elite and wider Slovenian public alike. The Slovenian political public was shown a new face of 'Brussels'.

In an interview, Professor Jože Mencinger, an influential economist, a minister in the first Slovenian government and later the Rector of the University of Ljubljana, recently described the 'stress tests' problem in the following way:

Isn't it strange that the two 'banks' holes' (identified by) the stress tests are conducted in terms of two methodologies by respected foreign assessors that differ from each other by 1.5 billion euros, and then this larger one, which has nothing to do with the reality, is selected? They obviously defined the result in advance, the one they needed and which Slovenia is still able to bear, and they then accommodated the 'methodology' to this politically suitable result. (Mencinger 2014: 44)

In Slovenia's case, the escalation of the crisis therefore obviously overlapped with the direct involvement of the supranational institutions in the formation of its internal policies and measures aimed at helping the Slovenian government overcome the crisis. The effects of the supranational institutions' latest involvements are not yet clear, but the earlier reforms and measures inspired and demanded by EU policies definitely caused the powerful resistance of both citizens and interest organisations in Slovenia.

Slovenian coalition governments have been relatively weak and unstable. Accordingly, they are in principle prone to social dialogue as a potential source of further legitimisation. It was exactly this proneness of Slovenian governments that was strongly accentuated in the 1990s during the process of joining the EU. The key feature of that period was stable, moderate economic growth. In the new circumstances after 2008, when the growth had vanished and GDP had declined, all three mentioned governments proceeded with attempts to attract the social partners' support. However, in these new circumstances – regarding the pressures of the crisis, the radicalised stances of the social partners and the demands of the supranational institutions – they were and have been significantly less successful in attempts to (re)create meaningful social dialogue.

The instability and weakness of Slovenian governments is partly connected to the proportional electoral system. Attempts to put the issue on the agenda are therefore permanent. A renewed debate on the electoral system was recently started in Slovenia. Among the parties, the biggest right-centre party (SDS) in particular resolutely calls for the proportional system to be replaced by a majority one. Generally speaking, it is quite possible that introducing the majority system would lead to the greater stability of Slovenian governments. However, the main side-effect would be the reduced 'sensitivity' of governments to the demands and pressures of civil society. If we assume that the pressure of the external factor would remain unchanged, then introduction of the majority system would significantly change the ratio between external and internal influences on the government in favour of external factors.

The three mentioned Slovenian governments were and have been faced with an extremely narrowed space to formulate policies. Within the new, post-2008 context, essentially new coordinates of the policy formation space have been created: as the crisis has objectively deepened, on one hand the external pressures have escalated while, on the other, the stances of the social partners have become radicalised.

In these conditions, consensual decision making is extremely difficult, if not unachievable. As a result, faced with the crisis and supranational institutions' demands, in spite of the risk of rapid delegitimation, the three governments as a rule tried to narrow and/or avoid the social dialogue (with the now more obviously demanding partners) in the most critical phases of attempts to confine and/or resolve the crisis. The first, centre-left government decided to suspend the dialogue on pension reform and, accordingly, triggered referendums and the rejection of all reforms. The following right-centre government tried to apply radical austerity measures to the public sector, provoking employees in that sector to go on a general strike. The third centre-left government introduced the 'Golden fiscal Rule' to the Constitution and thereby put an end to referendums on vital (fiscal and financial) issues. During their short life-spans, all of these governments preserved some forms and topics of the social dialogue, but the results – with the exception of the adoption of the 'soft' pension reform during the period of the conservative government – have been more or less poor. Very recently, the Ministry of Labour, Family and Social Affairs launched an initiative to form a new social pact, but it was unsuccessful because it was

blocked by the employer's side. In the discussion concerning the pact (Social Agreement 2012–2016) the trade unions have been calling for a strengthening of the social dialogue, a change in what is in their view has been a prevalent neoliberal ideology and policies in recent years, while employers' representatives desire much greater flexibility and discretion for themselves, lowering the costs of labour and reducing what they see as the irresponsible power of labour representatives (Krašovec and Lužar 2013). In the latest discussion, the social partners are still expressing different and conflicting views regarding the necessary economic and social reforms. While the trade unions oppose measures such as a 'social cap' and a new reform of the labour market, the employers reject any measures that would place new burdens on the economy and call for measures that would make Slovenian companies more competitive in the global market.

Therefore, the main result of all of these attempts and avoidances is an implicit common finding that the room for consensual decision making has shrunk radically, i.e. a consensus concerning (the causes and modes of responses to) the crisis is almost unachievable.

These are the circumstances in which the unilateral formation and implementation of governmental policies – which by definition is incompatible with the social dialogue procedure – became the key implementing mechanism of policies defined at the European level. In this way, governments as well as 'European policies' are losing legitimacy and encountering the risk of escalating political instability. In the Slovenian case, such instability is clearly recognisable in the frequent changes in government, the growing passivity of the electoral body and the correspondingly unexpected forms of mobilisation of that body.

In Slovenia, the outlined circumstances mean that the formation of public policies is strongly politicised. 'Solving the crisis' is a motto of the political parties' power game. Yet, despite the inter-party competition, there are no key differences in the basic discourse used by the three post-2008 governments. All have announced the privatisation/internationalisation of the still predominantly publicly-owned companies. The only difference is that the conservatives have interpreted privatisation as a necessary condition for development, and those on the centre-left as a sort of 'emergency exit', which due to the intensity of the crisis is unavoidable. The three governments (have) uncritically adopted the view – which is

constantly repeated by representatives of international institutions – that the Slovenian labour market is highly rigid. Reducing the rigidity, i.e. reforming the labour market, permanently featured on the agenda of all these governments.

The key vehicle for reforming the labour market is legislation. So far, it has secured the numerical flexibility of companies through the institute that enables the wide use of short-term employment. The last, third government introduced some changes focused on limiting the use of short-term employment, although that was simultaneously combined with the increasing (external) flexibilisation of the ‘rigid’ forms of employment.

It was shown that the decline in the trade union density rate in the middle of the last decade, at a time of economic prosperity when the second wave of privatisation had started, was exceptionally intensive in Slovenia. The striking peculiarity of that decline, compared to the general trend of the more or less gradual, decades-long, shrinking unionisation seen in developed Western democracies (Sisson, 2013: 14), was that it happened within the span of just a few years. The first response of the trade unions’ leadership to this sudden drop in membership was logical and expected. They started to turn towards the membership environment (Streeck and Kenworthy 2005), i.e. towards the everyday interests and demands of ordinary workers. As the processes outlined above suggest, the demands of ordinary union members are radical and normally embedded in the particularities of their specific, narrow working conditions and corresponding workplace and sectoral interests. Therefore, the trade unions’ turn towards their membership environment implies, as has been the case everywhere that such a turn occurred, an almost ‘automatic’ radicalisation and the fragmentation of the trade unions’ stances. In terms of the social dialogue and the formation of consensual policies, these radical stances are obviously less functional.

In spite of the significant membership decline seen before the crisis emerged and despite the changes in the trade union environment, today Slovenian unions are still quite influential organisations. They are embedded in the (still) inclusive collective bargaining system, which is a vital instrument for regulating the labour market and, accordingly, of the entire neo-corporatist institutional arrangement. During the roughly described conflicts and referendum campaigns at the beginning of the crisis they in fact demonstrated exceptional mobilising capacity. It could

be that the first government, probably referring to findings concerning the decline in trade union membership, essentially underestimated the trade unions' power. The two successive governments tried to form more constructive relations with the unions: the second one included unions in the formation of the 'soft' pension reform, while the third one sought to launch the formation of a new social pact.

Similar processes happened on the employers' side where the main stances became radicalised in opposite directions. The status change of two chambers from obligatory to voluntary membership – in the case of the Chamber of Commerce and Industry in 2006 and the Chamber of Craft and Small Business in 2013, imply a radical turn towards potential members. Such members have argued more or less consistently for radical cuts to taxation, increases in labour market flexibilisation, and complementary institutional and regulatory changes. All of these empirical demands, which voluntary employers' organisations have to respect, are in terms of interests critically represented by unions outside the space where dialogue and consensus among the actors are at all possible.

The density rate of employer organisations decisively influences the regulative capacity of a collective bargaining system. A falling density rate of employer organisations indicates a shrinking collective bargaining coverage rate and, thus, a weakening of the main institutional infrastructure for developing social dialogue.

During the entire post-2008 period, the social partners have participated in the work of the tripartite Economic and Social Council (ESS) where they have been included in debates and decision making on some reforms (like the 'soft' pension reform). But the real influence of the partners, especially the unions, on the formation of policies is almost incomparable to the influence they once had in the 1990s.

It was mentioned that in late 2009 the first post-2008 government decided to increase the minimum wage in Slovenia (see: *Zakon o minimalni plači*, Uradni list RS, no. 13/2010). Unions supported the minimum wage increase, but the employers were firmly opposed to it and started to block the work of the ESC. Later, the government tried to win the social partners' support for the intended package of structural reforms, but – in light of the inflexible position of the government negotiators and the unions' opposition – the attempt was unsuccessful.

The central issue of the whole conflict was the pension reform. During the second post-2008 government, after the general strike in the public sector, ‘concession bargaining’ took place within the ESC. In the same institution under the same government the social partners adopted the mentioned ‘soft’ pension reform.

Slovenian employer organisations share the view (along with governments and international organisations) that the Slovenian labour market is too rigid and should be deregulated, i.e. made more flexible. On this point, all post-2008 governments have had strong support from employers. Yet the unions resolutely and systematically reject this view.

2. The content of the reforms

The key change strongly influencing the collective bargaining system in Slovenia was the abovementioned status change of the Chamber of Commerce and Industry in 2006. This may be combined with a similar recent change in the case of the Chamber of Craft and Small Business. As mentioned, both changes have had and will continue to have a profound influence on the collective bargaining coverage rate.

The second big change with a significant influence on power relations in Slovenian society did not occur in the labour law, but at the level of the Constitution. As mentioned, the third post-2008 government proposed and parliament almost unanimously adopted the ‘Golden fiscal Rule’. In terms of implementing EU policies which could hardly be consensually accepted, adoption of the ‘Golden Rule’, i.e. a ban on referendums on fiscal and financial issues, was a logical constitutional change unanimously accepted by the political elite.

The main problem is that this logical change has not improved levels of trust and the social dialogue in Slovenia. On the contrary, adoption of the ‘Golden Rule’ has changed the power relations between the social partners. In fact, it has strongly transformed the key parameters of Slovenia’s former, traditional neo-corporatist, consensual decision-making processes.

After long-lasting negotiations between the social partners, on 5 March 2013 the Slovenian parliament passed a new Employment Relationship Act. The main aim of the new law is to make the Slovenian labour market

more flexible while reducing its segmentation. Changes were mainly directed at a reduction of differences among employment contracts for fixed-term and open-ended contracts; a reduction of notice periods; simplification of dismissal procedures; prevention of the perpetuation of fixed-term agreements.

As already explained, the key starting reforms that caused a shock and strongly disturbed Slovenia's industrial relations system established in the 1990s were started before the crisis, in the middle of the last decade, during a period of economic prosperity.

First, the mass inflow of cheap money and corresponding growing indebtedness of companies clearly represented an exceptional shock. The inflow of cheap money influenced the formation of unrealistically expansive business strategies and enabled the privatisation of some key companies (and the corresponding emergence of 'tycoons' in certain key areas of the Slovenian economy, e.g. in the construction sector and the food industry). At the micro level, this shock led to the worsening of working conditions and changes in the distribution of power in favour of management and potential new owners.

Second, the country's admission to the eurozone was a sort of 'monetarist turn'. It also had a big impact on relations within companies as well as between companies and sectors of the national economy. The greatest, immediate impact of the turn, which implied introduction of a fixed exchange rate, was on labour and industrial relations in the export sector of the economy.

Third, the attempted radical neoliberal reform triggered in the middle of the last decade, prior to the emergence of the crisis, also had a shock effect which immediately caused the strong polarisation of society and the politicisation of the stances of all social partners. This polarisation and politicisation represents a historical turning point in the development of the industrial relations system in Slovenia. The conflicts from 2005 have strongly influenced all later perceptions and mutual relations of all actors during governmental reform attempts in the post-2008 period.

The scope for the joint regulation of the terms and conditions of employment has decreased in Slovenia in the post-2008 period. Notwithstanding the still relatively high collective bargaining coverage rate, it is continuing

to drop. Krašovec and Lužar (2013) report the following impacts of the crisis on industrial relations in Slovenia: increasing breaches of collective agreements on the part of employers, especially regarding bonus or holiday pay (non-payment of wages in accordance with the CA skyrocketed from an annual rate of 462 in 2007 to 2,596 in 2010); increasing workers' unrest and the number of strikes; and a rise in unilateral and hasty government interventions in public sector working conditions and the growing militancy of the trade unions. Accordingly, the regulative capacity of the collective bargaining system is lower than before. In addition, exposed to growing competitive pressures employers are tending to exit the system and/or avoid its standards. These tendencies are especially strongly emphasised in small and medium-sized companies.

At the macro level, the scope for the consensual formation of public policies on work and employment has narrowed significantly. The main cause of this change has been the fading conditions for the political exchanges which in the 1990s enabled this type of policy formation.

At the micro level, due to the pressures of the crisis and the growing unemployment, the power relations between employers and employees have been altered in favour of the former. As a result, the managerial prerogative and workforce flexibility have increased significantly.

The role of the state in its substantive, interventionist function has expanded considerably during the crisis. During the formation of the nation and accommodation to EU standards, this function of the Slovenian state was already strongly accentuated, and in the post-2008 period this has further increased.

During the crisis, in the context of the abovementioned rising unemployment, i.e. greater competition in the labour market, job security has been falling for all categories of workers. In these circumstances, there has been a dramatic escalation of the functional and time flexibility of workers employed under open-ended contracts. The rise in all forms of flexibility has especially hit employees on fixed-term contracts. Young people dominate this category of workers.

In 2009, the European Agency for Safety and Health at Work released the results of a Europe-wide survey on safety and health at work. According to the findings, Slovenian citizens are concerned that the economic

crisis may adversely affect workplace health and safety. Although the respondents feel they are well informed about health and safety at work, they believe that ill health is often caused by work and that health and safety have deteriorated in the past five years. The survey revealed gender differences regarding perceived bad influences on health: 52% of female survey participants in Slovenia responded that a great deal of ill health is caused by the job, compared with 42% of male respondents. Many more respondents in Slovenia (55%) than on average in the EU-27 (32%) think that workplace health and safety have deteriorated in the past five years. Again, men in Slovenia see the situation more positively than women: a significantly greater proportion of men (41%) than women (28%) believe that health and safety at work have improved in Slovenia over the past five years. Respondents in Slovenia (81% of them) also more often than respondents in the European Union on average (61%) expect that the global economic crisis will lead to a deterioration of health and safety conditions at work in their country. Again, more women (86%) than men (76%) in Slovenia think that health and safety conditions at work might further deteriorate due to the economic crisis.

Some analyses show that the fear and insecurity of employees during an economic crisis is often followed by a lower sick leave rate. Research by the Slovenian Institute of Public Health established a positive correlation between health absenteeism and a company in crisis. The research was performed in three companies (tobacco, textiles and leather sectors) and showed that planned downsizing and bankruptcy triggered an increase in the sick leave rate (Mrčela 2011).

A report of the Association of Free Trade Unions of Slovenia on migrant workers in the construction sector in 2010 disclosed: that is quite typical for employers not to give a work contract to foreign workers, thus diminishing their chances of protecting their rights or even learning about them in the first place; that foreign workers who have work permits and could be employed on an open-ended contract are often employed on a fixed-term contract basis; poor living facilities for migrant workers and the lack of formal regulation in this area; a rising number of breaches of labour laws governing the employment and working conditions of foreign workers (318 breaches recorded in 2008 and 340 in 2009) (Mrčela 2011a).

The crisis, the growing labour market competition and greater job insecurity represent a major threat to the quality of work in Slovenia.

Despite policies and measures focused on preserving the already reached standards concerning gender equality and the work-life balance, the position of women in terms of employment, working conditions and the work-life balance has worsened in the recent period. Based on data on the unequal gender distribution of unpaid work before the crisis (Kanjua Mrčela and Černigoj Sadar 2011), increasing burdens on household expenditures and increased insecurity of household incomes, one may expect additional pressure on women who traditionally perform more unpaid household and care work. OECD (2011a) data show that in Slovenia people perform more unpaid work compared to other countries. According to Eurostat data from before the crisis, in Slovenia greater gender inequality in the division of labour in the private sphere exists than in other EU countries (European Commission 2006) with the total working hours of women in Slovenia being longer (consisting of gainful and domestic work) than of men. Some of the latest analyses (Kanjua Mrčela and Ignjatović 2012; 2013) confirm that Slovenian women are more overburdened by paid and unpaid work, they report less autonomy in the workplace, are less satisfied with their working conditions and they report more physical and mental problems that are associated with work than men.

We estimate that the austerity measures passed by parliament in May 2012 that temporarily reduced compensation for post-natal childcare leave (a 10% reduction after three months) have negative consequences (reducing the possibility that men will use such leave; creating a value statement that caring for children is less valued than paid formal work). A recent study on the impact of the crisis and the austerity measures on the situation of women and men and gender equality in Slovenia (Humer and Roksandić 2013) shows that the government did not consider gender-specific consequences of its adoption of the anti-crisis measures. The analysis concludes that the austerity measures have had significantly greater negative effects on women than on men and threatened women's economic independence. A gender-sensitive analysis of the austerity measures is an important and necessary step for preventing short- and long-term negative consequences of those measures on gender equality.

The overview of the nature of the reforms during the crisis and their dynamics in Slovenia reveals a pattern of temporal, reactive, forced reform interventions that have generally been – especially very recently – in line with the priorities of the supranational institutions.

In Slovenia the reforms are most frequently justified by explicit reference to ‘Brussels’ demands’, recently also strongly by ‘financial market pressures’. These are the prevailing types of general justification arguments employed in discussions concerning all types of responses to the crisis. Such explicit justification of the reforms was especially strongly and frequently used in the debates and conflicts on the austerity measures in the public sector and the recent implementation of policies concerning the banking sector crisis.

In spite of the changing priorities, the reform attempts made so far in Slovenia have been paradigmatic. The main common denominator of all these attempts and partial changes is the deconstruction of Slovenia’s coordinated market economy that occurred in the 1990s and its reorganisation towards a system which is closer to the model of a liberal market economy.

3. General assessment of the reforms

The Slovenian neo-corporatism that was present in Slovenia in the 1990s has obviously encountered the powerful processes of its disorganisation over the last decade.

We have tried to show that the Slovenian neo-corporatist system has had some significant limitations. In the context of accommodation to the standards contained in the Maastricht Treaty it functioned as ‘competitive corporatism’. After a decade or so, this system started to manifest the first signs of its internal self-exhaustion.

We mentioned that the system’s self-exhaustion overlapped with Slovenia’s inclusion in the EU and then in the eurozone in the mid-2000s. The combination of the monetarist turn with the mass inflow of ‘cheap money’ and corresponding growing indebtedness of companies led to further rapidly increasing pressure on and within companies, especially those from the export sector of the economy.

All of these processes overlapped with a major change in Slovenia’s political scene. In 2004 the centre-right coalition tried to take advantage of the shock of the country’s inclusion in the monetary union and the mass inflow of cheap money to justify a radical neoliberal change to the

system. These policies provoked an open conflict with the trade unions. At that time, the status of the Chamber of Commerce and Industry was changed. Accordingly, the stances of the main interest organisations then underwent a rapid polarisation.

All of the outlined changes to the political scene as well as among the interest organisations in the years before the crisis emerged reveal that the Slovenian IR model had already been exposed to intensive, significant pressures and changes in that period.

Alongside these changes, the emergence of the crisis further undermined the key factors of the social dialogue in Slovenia. From 2008 until today, three different party coalitions have come to power. We revealed that their responses to the crisis differed significantly: the first government tried to implement structural reforms, the second focused on fiscal consolidation, while the third on the crisis in the banking sector. As the crisis escalated, the dependence on external, supranational institutions increased. After the crisis emerged, the factors and processes undermining the social dialogue obtained a significant impetus. The unilateral forms of anti-crisis policy formation gradually came to the forefront.

The Slovenian case clearly reveals that the rising public debt and, accordingly, increasing dependence on the supranational institutions and financial markets, are strongly correlated to the growing unilateral implementation of the demands and pressures of these institutions. In terms of these processes, the (still) relatively high share of the predominantly publicly-owned companies as well as the relatively high level of Slovenian labour market regulation, are dysfunctional. A permanent subject of the international institutions' criticism is thus the 'rigidity' of the Slovenian system in general, and especially the labour market's 'inflexibility'; with the main responses suggested to address these being privatisation and 'labour market reforms'. In fact, it seems that the third wave of privatisation, this time based on an inflow of foreign direct investment, of some still efficient and capital-intensive, state-owned companies, is unavoidable. The problem with this intended privatisation is, as the early inflow of FDI into Hungary suggests, that this response basically only postpones, i.e. temporarily and partially 'resolves', the local debt crisis.

We mentioned that very recently European institutions and local governmental policies have focused on the crisis in the Slovenian banking sector.

Suggested responses to that problem almost automatically deepen the other, already critical problem – the fiscal crisis of the state. All attempts to respond to this problem have caused open social conflicts in Slovenia. Especially the austerity measures in the public sector and the threatening marketisation and privatisation of that sector have caused growing discontent not only among employees within this sector. General resistance to the dismantling of the public sector is exceptionally strong in Slovenia.

4. Results of the field work

In order to assess the actual impact of the labour market reforms on collective bargaining and critically evaluate the implications for the role of the state and the social partners as well as the prospects for continuity and change in the national system of industrial relations in Slovenia, we analysed primary and secondary data collected during the second phase of the research work. Our research pointed to some issues that we think are specific for Slovenian post-socialist transition while others are probably more common and connected to the situation of the European economy in crisis.

The context of the analysed changes in social dialogue is characterised by the uneasy economic and turbulent political situation. During the crisis, real GDP growth in Slovenia decreased from 3.4% in 2008 to -1.1% in 2013. The unemployment rate increased from 4.4% in 2008 to 10.1% in 2012. After the downfall of the short-lived centre-right governing coalition and a year of the centre-left government of Alenka Bratušek, at the early parliamentary elections held on 13 July 2014 the winning Party of Miro Cerar (SMC) won 36 mandates in the Parliament and Miro Cerar formed a new centre-left government coalition.

4.1 Methodology and research design

The field work performed in order to collect relevant data concerning developments and changes in social dialogue in Slovenia during the crisis consisted of two phases. First, we conducted interviews with relevant stakeholders and analysed the obtained data. In the second phase, we organised a workshop with the interviewed stakeholders and

representatives of the social partners. The purpose of the workshop was to present the outcomes of the first phase of the analysis to the social partners and to obtain their feedback and verification of the research findings. In the following report, we will present the results of both phases of the work.

In May and June 2014 we contacted and conducted interviews with representatives of relevant stakeholders at the three levels – national, sectoral and company. To gain an overall insight into the situation regarding the social dialogue at the national level, we interviewed the high representatives of the government, the biggest Slovenian trade union confederation and three of the four most important Slovenian employers' organisations (the Minister for Labour, Family, Social Affairs and Equal Opportunities, the president of the biggest trade union confederation in Slovenia (Association of Free Trade Unions of Slovenia, *Zveza svobodnih sindikatov Slovenije – ZSSS*), general secretary of the Chamber of Commerce of Slovenia (*Gospodarska Zbornica Slovenije, GZS*), the president and director of the Chamber of Craft and Small Business of Slovenia (*Obrtna Zbornica Slovenije, OZS*) and the general secretary of the Association of Employers in Craft and Entrepreneurs of Slovenia (*Združenje delodajalcev obrti in podjetnikov Slovenije, ZDOPS*). The last three interviewees were selected to give us an insight into the situation in smaller companies because both companies we had decided to analyse in detail were big companies.

In our analysis we paid special attention to two sectors: a) the metal and electro industry; and b) the chemical industry. We analysed two companies within these two sectors (a white goods manufacturer and a pharmaceutical company). At the sectoral and company levels, we interviewed representatives of workers (president of the Trade Union of the Metal and Electro Industry – *Sindikat kovinske in elektroindustrije Slovenije, SKEI*¹, the general secretary of the Trade Union of the Chemical, Non-metal and Rubber Industry of Slovenia, *Sindikat kemične, nekovinske in gumarske industrije Slovenije – SKNG*², representatives of two companies' trade unions) and representatives of employers (director of the Association of the Metal Industry at the Chamber of Industry and

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1. SKEI (http://skei.si/o_nas/) covers around 40% of workers in the sector and is a member of ZSSS, the International Metal Federation (IMF) <http://www.imfmetal.org> and the European Metal Federation (EMF) www.emf-fem.org.
 2. SKNG is a member of ZSSS and covers more than one-third of workers in the sector.

Commerce, Združenje kovinske industrije, GZS, and HR managers in two analysed companies).

The two chosen sectors are interesting since they provide useful illustrations of the changes in the social dialogue in Slovenia in the last decade. There are examples of good social dialogue practices and also problems in the social dialogue in the two selected sectors. While some best examples of good practices (such as in Krka³, the company we chose for the case study) may be found in the chemical sector, in this sector the collective agreement was cancelled by employers in 2013 and there are cases of social dialogue problems (e.g. in the company Helios where recently a trade union representative was to be fired over a conflict with management during and because of the privatisation process). The metal and electro sector is a sector in which Gorenje⁴ (the other company we analysed in more detail) used to be a social dialogue role model but experienced difficult times concerning the relations of management and workers while still being one of the most successful companies in the sector. The sector has one of the strongest (and according to many the most militant) trade unions in the country, SKEI, that led some successful recent strikes. On the other hand, some of the most radical ideas regarding changing the legislative framework of industrial relations (e.g. abolishing the minimum wage) came from employers in this sector as well.

The two companies we selected for the analysis have a long history of being successful business entities and also being exceptionally good regarding the social dialogue. They both have dispersed ownership, and Krka mainly has Slovenian owners. These two companies used to be rule-makers in their industries but lost this status mainly due to the worsening situation in their sectors that made Krka with its excellent social dialogue practice an exception, while Gorenje's business adjustments and ownership changes have caused turbulence in the company's social dialogue.

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3. Krka, d. d., Novo mesto is an international generic pharmaceutical company with its headquarters in Novo Mesto, Slovenia. In 2012, the Krka Group's total sales amounted to €1,143.3 million. It was founded on 23 April 1954 (<http://www.krka.si>).
 4. The Gorenje Group is the largest Slovenian manufacturer of white goods. With a continent-wide market share of 4 per cent, it is one of the eight largest manufacturers of home appliances in Europe. It was founded in 1950. (<http://www.gorenjegroup.com/en/gorenje-group/about-gorenje-group>).

4.2 Implications of the reforms on the process and character of collective bargaining at the sectoral and company levels

The field research revealed the indices of decentralisation of collective bargaining in Slovenia. Although one cannot (yet) detect an entirely new pattern in terms of the articulation at different levels of collective bargaining (e.g. a complete shift from sector to company level), there are signs of a change in that direction such as the cancellation of the collective agreements for some sectors (among others for the chemical and rubber industry) as well as (informal) agreements reached at the company level in order to avoid redundancies. Our respondents reported on a change in the duration of the collective agreements – while collective agreements were previously signed for an indefinite period, now they are more often signed for a fixed-term and that term is ever shorter. More than 100,000 workers are not covered by collective agreements (temporary agency workers). According to our respondents on both sides – employers and trade unions are interested in achieving a collective agreement that would cover these workers,⁵ but an agreement on the level of standards that would be respected in the agreement has not yet been reached.

No procedural guarantees in sectoral-level bargaining are in place that would guarantee the avoidance of the development of a ‘disembedded’ form of capitalism. On the contrary, the new labour legislation allows more flexible arrangements that let social partners have more autonomy at the sectoral level. Our respondents mentioned the new labour law as a reason for more intensive collective bargaining at the sectoral level since the collective agreements should be harmonised with the new legislation. A trade union representative stated that the new collective agreements have introduced all the reductions of rights that are allowed by the new law ‘to make it easier for the employer... Everything that the law allows as an exception is used as a rule’. The new collective agreements do not cover the same scope of topics as before: ‘our collective bargaining is not like the German one. We are not trying to achieve something better, different, something more, more useful. They deleted 30 out of 90 articles. They, for example, deleted the whole part on education. We sat with the employers’ representatives for a whole day as part of the

5. There are different opinions about the coverage of agency workers with collective agreements. According to some commentators, agency workers should be covered by the collective agreement that covers the company they are working for and not by a separate collective agreement.

European project ‘The importance of education in the electro and metal industry’ and learned how education is important for individuals, for employers, for careers, for competitiveness. And a week later we got the collective agreement with the part on education deleted’.

The factor that works against the development of disembedded capitalism (besides the workers’ interest in being protected and the trade unions’ pressure to secure that) is the employers’ fear of unfair competition from employers who are not respecting decent standards of employment and remuneration of workers.

We are, contrary to some opinions, in favour of collective bargaining because we do not want to create instability in sectors without collective agreements. That would mean unfair competition to those who have collective agreements and a long tradition of social dialogue. (Employers’ representative)

Most of the employers’ representatives revealed that change in the employers’ perception of social dialogue – seeing the positive outcomes of collective agreements beyond securing social peace. On the other hand, a trade union representative expressed a fear of a reduction in the number and quality of collective agreements at the sectoral level.

The whole of Slovenia is fleeing from sectoral collective agreements. In some places directly – where they dare they just cancel them, otherwise they have curtailed them in the process of change... No new collective agreement has brought any improvement ... I am sure that employers want to cancel collective agreements at the sectoral level. That is now obvious. The social dialogue is such a truism in Slovenia. (Trade union representative)

Some employers’ representatives pointed out the interest of the employers’ side in the social dialogue:

Today a bad collective agreement (that does not protect the interests of employers) could cause the collapse of some companies... Bipartite collective bargaining is more constructive than tripartite social dialogue... That is because some (on the trade union side) do not understand that jobs are at stake... a badly bargained collective agreement would jeopardise jobs....

Many of our respondents estimated that collective bargaining in Slovenia is still more cooperative than conflictual. On the other hand, a representative of one employers' organisation estimated that the process of social dialogue varies greatly among sectors – while in some 'the process itself did not change at all, ... there are sectors such as construction or textile where there is practically no social dialogue anymore'.

It seems that in some places procedures going on by default but bringing fewer results than expected and needed.

First you present, then we present, then you rasp a little and we growl a little, then we agree on something and say that we can't agree on another thing and that remains unsettled, and we go on. No offenses, no revolution! (Employers' representative)

A trade union representative who assessed social dialogue as conflictual accused employers who instead of improving and finding better solutions 'try to curtail even that what exists, while we (trade unions) try to defend it'.

The other trade union representative assessed collective bargaining as much more difficult than before because of employers' ever more proposals that interfere with what trade unions regard as fundamental workers' rights such as a seniority bonus, a paid lunch break, or compensation for sick leave.

According to our respondents, there are not many concessions in sectors/companies on the trade union side where collective bargaining takes place. Trade unions do not accept much lowering of standards in collective agreements. However, there are many examples of internal company agreements where (temporarily) lowering salaries (and standards of other working conditions) are accepted in order to avoid redundancies.

There are plenty of cases where management said 'We will reduce our salaries by 20% and yours by 10%, but we will save jobs'... that were resolved without any conflict. That happened in companies where people believed in the company's future. (Employers' representative)

We did not detect the development of a generally hostile environment and an anti-labour relations discourse that is framing and undermining the legitimacy of bargaining. However, there are some (for the moment) quite isolated examples of employers/managers expressing radical positions such as a demand to abolish minimum wages or not pay workers while they are on sick leave. One of our respondents estimated that these radical individuals are loud representatives of more widespread opinions among the silent majority. Our respondents mentioned the Managers' Association as being (in the past more than presently) a promoter of more radical employer agendas.

Segmentation of the workforce poses a challenge to trade unions that are pressed by their members (who are paying membership fees) to differentiate among members and non-members and to protect better the members. A trade union representative assessed such demands as being both against the principle of trade union solidarity and not very efficient – because 'if you protect the weakest ones, you are securing basic standards for all'. Trade union representatives commented on the changes in attitudes – according to them, people, especially from the younger generation, express less solidarity.

Some representatives of both trade unions and employers discussed the need to find ways to institutionally ease the social dialogue by providing financial resources that would enable the social partners to take a long-term-oriented and strategic perspective (compulsory membership, government funds or similar).

4.3 The survival of social dialogue?

This government is not afraid of employers. No government until now has been afraid of employers. They are afraid of trade unions! (Employers' representative)

The role of the state was differently assessed by our respondents but there is no doubt that it plays a decisive role in framing the social dialogue. The state has an important role in defining the framework for collective bargaining primarily with statutory regulation but also through placing more or less importance on the process and outcomes of the social dialogue (its involvement, mediation in cases of conflict among social partners).

The representative of the state estimated that the ‘small steps’ made while reforming the legislation and policies did not cause any tightening of the social dialogue framework. She estimated that a new law on representativeness would be needed to improve the social dialogue.

At this moment the state is a guardian of the existing state. Of the status quo. For me – that is a negative intervention. I would like that the state allows me to employ more and to fire more easily. (Employers’ representative)

The representatives of employers estimated that state policies are oriented to securing the rights of workers on the account of employers. One employers’ representative gave as an example the Law on the Minimum Wage that he believes seriously weakens the bargaining position of employers. Trade union representatives, on the other hand, reported on last year’s attempt by the government to impede the Law on the Minimum Wage: ‘We were preparing big demonstrations and we would do all sorts of things. It was a serious threat ... then the government tried with an alternative proposal – to allow exceptional agreements at the company level below the statutory minimum wage ... that would be a complete withdrawal from the concept of the minimum wage ... as we know who would be the weaker partner in such a dialogue. We rejected that proposal as well’.

Our partner, when we look each other in the eyes and fight, is the state. The state can be influenced by capital. (Trade union representative)

A trade union representative pointed to the legislative practice that ‘protects the interests of capital more than the interests of workers’ as an interpretation of the otherwise good rules/legislation being in favour of employers. An example of that is the legislation on the employers’ duty to pay social contributions for workers. Many employers violate that rule, but before the courts they are often found not guilty as the interpretation is that they did not intend to violate the rule but were forced to do it by the bad business situation.

Capital dictates. At this time of crisis the power of capital has increased regardless of all the rhetoric and policies. (Trade union representative)

An employers' representative pointed out the importance of the 'perception of Slovenia' in eyes of the international community for the business condition of our economy and to the danger that an unstable or unfriendly fiscal, political or regulatory framework scares 'shy capital' away. She mentioned that the 'strike of capital' we are experiencing (the lack of foreign investments) is a result of Slovenia's lack of hospitality towards foreign capital. The employers' representative expressed an opinion that to be competitive in the global market the Slovenian business environment should be as 'comparable to the international environment' as possible (regarding all legislation, rules and arrangements including wages and bonuses, social security contributions, maternity/parental leave arrangements).

Employers noted the statutory regulation of wages and working time are particularly problematic and something that should be changed by the state to allow employers to compete equally with others in Europe. The high contributions that make Slovenian wages comparatively high are, according to employers, not allowing them to obtain (domestic) and recruit (foreign) the best human potential – creative and highly educated experts.

Our employers would prefer to pay workers higher net wages than gross wages because they like their workers more than the state.
(Employers' representative)

It costs an employer €200 to give a worker a €100 higher net wage.
(Small employers' representative)

Employers would also like the state to improve the business circumstances including banking and bureaucratic procedures.

The representatives of smaller employers and entrepreneurs expressed a much stronger concern regarding the actions and decisions of the government than of their trade union partners in the social dialogue. They were critical of government which they believe does not see the specifics of small enterprises and proposes legislative changes without reflecting on the negative effect of them for this part of the economy (we were given examples of real-estate taxation which would more than double taxes for 95% of their members and legislation regarding safety at work that threatened to fine employers who do not report on work

conducted above 2.5 m in height with fines ranging from €7,000 to €25,000).

When talking about the trade unions, the representatives of small employers mostly referred to powerful public sector unions ('...some trade unions give some populist statements and create unnecessary tension ... sometimes we are hostages of trade unions, particularly in the public sector') and not to the unions covering workers in their members' companies.

If we were to communicate directly with the trade unions, without the government, it would be easier to reach an agreement... (Small employers' representative)

The approaches of employers' organisations/employers are more varied than before as a result of the existence of divergent interests among different employers. On some issues smaller and large employers have 'diametrically opposed interests' (e.g. insolvency legislation). Employers differ regarding their business results as well. A respondent from an employers' organisation explained that differences in added value per employee among companies in the same sector could amount to 1:5 and because of that there are many of 'those who are pushing radically: 'don't make any concessions, lower costs if you want us to survive, otherwise we will exit''. The fear of losing members is forcing employers' representatives to radicalise their positions in collective bargaining. While employers' representatives argued that they have to take care of the interests of the weakest members, the trade union representatives argued that the standards have to be high enough to provide workers with decent working conditions:

A collective agreement can't be such a minimum to allow every thief to survive. A standard should be set. Those who achieve the standard could play the game and those who don't should close down before sending workers to a mental hospital.

Our respondents revealed that collective agreements had not only been cancelled in sectors that have problems, but also in those in a good condition. Those acts that were seen by the trade union side as a 'blackmailing attempt' were also explained by the position of the employers' organisations in which some representatives hold radical positions in order to attract new members, demonstrating that they will

be able to protect their interests: 'like in some trade unions, some people want to show up, to justify their position, even to recruit new members with a certain attitude' (trade union representative).

Although some divergences exist among employers within certain sectors, employers find some similar interests across sectors. One respondent pointed to the increasing regional connections and communication of employers.

Many trade union representatives we talked to assessed the process of social dialogue as being strongly influenced by the new context in which trade unions have lost members in some sectors⁶/types of employment and which is characterised by the strength of the neoliberal ideology and policies. Even some of the strongest trade union representatives in the country expressed some doubt about whether resisting the change is the best approach: 'We have that problem of differentiation between categories of workers; maybe trade unions produced that by insisting on employment for an indefinite time. I do not know. It is a question of what would happen if we didn't insist. Everyone would be precarious workers. It is hard to say... now there is really one part of the workforce without any chances, not organised ... look at these young agency workers – all outside the trade unions'.

Trade union representatives reported that workers (and trade union representatives) are afraid to speak up and fight for their rights in fear of losing their jobs.

There is a fear. A terrible, unexplainable fear, that should be overcome ... they are depending on the employer and they do not dare. They are afraid of losing their job. What will you lose? You don't have a job. It is just a state in which you are miserable and without money. (Trade union representative)

Some respondents mentioned the power of public sector trade unions as being a counterbalance to the reduced power of industrial trade unions. Because of their disciplined and numerous membership, public

6. According to the trade union representative, most members were lost before the crisis and primarily due to the closure of factories (in textile the number of workers declined from 80,000 to 5,000 and in the construction sector the closure of three big companies reduced the number of workers by 30,000, the number of workers in the chemical sector today equals the number of members SKNG used to have in this sector).

sector trade unions hold great mobilisation power. Some employers' representatives regarded this power as unfounded and problematic.

A few employers' representatives pointed to the high mobilisation power of trade unions in the industry despite their loss of membership. This was proven by the mobilisation of workers – ranging from the strike of Gorenje's workers in September 2009 when they blocked the factory's entrance, demanding a pay rise to the number of strikes/public meetings against the austerity measures in the last several years.

One respondent assessed that the relative power of the two sides in the social dialogue is also impacted by the low status of the managerial profession caused by many once celebrated managers who have recently been found to be corrupt, guilty of illegal business and ownership activities while, on the other side, trade unions act to protect the victims of the post-socialist changes.

Our respondents estimated that the actors of the social dialogue are developing their institutional and cognitive resources and capabilities/capacities. Some stressed the already well-developed expertise on the trade union side at the national/sectoral level (superior to that of the employers), while many expressed a need for improvements at the company level. A trade union representative defined trade union representatives in companies as 'the trade unions' weak point ... these are non-professionals employed in companies, dependent on the employer, doing trade union work on the side'.

4.4 Small is beautiful?

We were reminded of the big differences that exist among employers of different sizes in the two analysed sectors as well as across the whole economy. In small companies, the relationships between employers and workers are more personal and informal. 'Social dialogue' is often a one-to-one communication. That could put workers in a better position:

almost like in family as everyone knows everything ... and sometimes when there is no money, they gave workers some cash from their own pocket under the table to survive. Our employers would not lightly leave their workers hungry.

or in a worse position because of the lack of collective representation if working for ‘slave owners who are interested in immediate profit’.

Representatives of the small employers’ organisation made it clear that there is a big difference among the majority of their members being hardworking entrepreneurs and family companies with many decades of tradition (who treat their workers as family members) and some exceptions – short-term-oriented entrepreneurs with ‘unnatural growth’ mainly in construction (who do not treat workers correctly).

Since conflicts among workers and employers in small companies are personal, alternative ways of conflict resolution (such as mediation) are more appropriate. A representative of employers in craft and entrepreneurship reported on the introduction of mediation as an instrument of conflict resolution.

The employer knows everything about the worker and the worker knows everything about the employer. When they fight, they fight like in a family because of personal issues.

The power of the trade union of workers of crafts and entrepreneurship of Slovenia that signed the oldest collective agreement in Slovenia was estimated by the employers’ side as ‘not particularly strong’ because of its dispersed and mixed membership that is hard to mobilise.

Members of the Association of Employers in Craft and Entrepreneurs on average employ fewer than three workers. They are engaged in very different activities and their needs and problems are specific. Because of that, their association is currently pressed to negotiate specific agreements for some activities. Our respondents reported that it is hard to find common strategic interests and mobilise members to achieve them also because ‘the members do not think strategically. It is in their nature to think practically, how to survive... they are not particularly prone to contributing to the common good ... the fact is that there is no strong identification’.

Small employers lack personnel and knowledge capacities. Their representative estimates that most mistakes in the social dialogue in this sector are due to a lack of knowledge and information. He also pointed to the sometimes unjust treatment of small employers who are unfairly

identified with bigger employers and thus seen as the stronger side compared to workers regardless of the fact that there are '20–25% of members in the sector who are living on the edge of poverty'.

Small businesses in crisis: Employers and workers together at the risk of poverty

We have roughly 20–25% of people who are living on the edge of poverty. And they are still heroes and playing the game... self-employed or having a worker or two employed. And these two are bearing ... although probably without the minimum wage, saying 'it is better to be here as we have been together for 20 years... (Employers' representative)

Some of the self-employed 'entrepreneurs' are probably part of the phenomenon of 'entrepreneurialisation' we were told about by one trade unionists – the rising number of workers who, after losing their jobs, continue to work for their former employer as an 'independent entrepreneur'.

While present in other countries but relatively new in Slovenia, that phenomenon is very likely to produce a very vulnerable group of self-employed workers.

4.5 Implications of the reforms for the content and outcome of collective bargaining at the sectoral and company levels on wages and working time in particular

In Slovenia patterns of wage and working time bargaining are mainly influenced by the sector/firm economic situation, productivity levels, availability and use of company/sectoral-level derogations and statutory standards.

Statutory minimum wage

An important factor influencing both pay-related bargaining and wage levels is the existence of the statutory minimum wage. The statutory gross monthly minimum wage was €783.66 per month in 2013. According to Eurostat Minimum Wage Statistics, Slovenia belongs to the group of five member states (together with Portugal, Malta, Spain and Greece) with an intermediate level of minimum wages (€550 to €1,000 a month). In September 2011, 41,045 employees in Slovenia received the national minimum wage, representing 6.7% of all employees (Eurofound, 2013).

The increase in the minimum wage in the period from August 2009 to March 2010 was 18.6%; in the period from March 2010 to January 2011 it was 1.86%, and from January 2011 to January 2012 1.96%. According to the Development Report 2012 by the Institute of Macroeconomic Analysis and Development, the growth in wages in 2010 and 2011 was strongly affected by the economic crisis, the rise in the minimum wage, and the austerity measures in the public sector. Owing to the austerity measures in the public sector, the increase in the gross wage per employee in 2010 (nominal 3.9%) and 2011 (2.0%) was solely a consequence of growth in the private sector (Skledar, 2012, Eurofound, 2013a).

We did not detect any radical shift of the regulatory boundaries between statutory regulation, joint regulation by the social partners in terms of bargaining and unilateral decision making by management regarding wages. According to our data, the statutory regulations regarding pay are generally respected. That was confirmed by both the employers' and trade unions' representatives we talked to. There are, however, some breaches regarding contributions and holiday bonuses and isolated cases of disrespect of the statutory regulation that were dealt with by the Labour Inspectorate and attracted a lot of publicity. In companies in crisis there are also delays in payments and, as mentioned above, agreements on temporary pay reductions.

God forbid letting the law go! The law is the only thing that protects a bit. If we let go collective agreements for sectors too ... we will have China in ten years' time. (Trade union representative)

Smaller employers do use alternative ways to pay their workers – paying them a minimum wage and other wage parts of in forms that are less taxed – they pay for bonuses, medical exams, trips. There is also a grey zone of small and micro companies that are not reported or well documented.

Although it is not hard to understand employers' opinions that a time of crisis is not a time for collective bargaining on wage rises, the existence of minimum pay legitimises the demands for wages to be set above the minimum defined by the law. More than 14,000 Slovenian steel and electronics workers at 102 companies took part in a strike organised by the Steel and Electronics Industries Union of Slovenia (SKEI) on 23 January 2013 after which all pay in the sector was set above the level of the national minimum wage.

A trade union representative reported that the threat of going on strike has always been the only effective argument in trade union bargaining over pay, in the absence of which employers do not agree on any rises. According to her, that does not depend on the economic situation: ‘... even when we had the best situation – in 2007, when it bloomed, when it was bursting, productivity growth was 15–20% ... even then, they were not prepared to give more than the rise in inflation’.

Some of our respondents argue that Slovenia needs a new pay model that is less complicated. Employers would like to have a pay system that equalises workers regardless of their working experience. A big bargaining issue is thus the seniority bonus that makes an older worker more than 15 % more expensive for an employer than a younger one. Employers argue that this explains the more difficult employment prospects of the elderly.

One respondent mentioned the lack of financial discipline as a problem that causes delays or unpaid wages, as an employer who does not receive payments himself and ‘has to pay for the electricity, has to pay suppliers, ... thinks that is the easiest ... and he doesn’t pay wages, contributions’.

We heard about many more derogations regarding working time. We found evidence of differences between higher formal standards and informal practices regarding working time arrangements. The annual reports of the Labour Inspectorate also show that most irregularities found in companies are in relation to working time.

Employers’ representatives argued that the statutory regulation of working time is unrealistically high and uncompetitive as Slovenia is one of the few countries that has a paid meal break during working time. According to them, that makes our statistics on working time and overtime incomparable with other countries. Another problem they see is that overtime work being paid at a higher rate imposes an additional burden on employers. Employers resolve this problem with ‘time banks’ that register overtime work that is partly paid, partly used in the form of sick or holiday leave. These arrangements are informal in nature and not negotiated between the social partners. The trade union representatives find them not only ‘illegal’ but also an indicator of a ‘moral crisis’, a situation where in the absence of very strict and regular outside control, self-control of people who should be more responsible does not work well. Even workers

themselves do not oppose violations of the rules regarding working time – according to the trade union respondents this is partly because they even do not know what the rules are and partly because better paid overtime work helps them to improve their otherwise low incomes.

In order to earn more, people accept everything, working all the time ... many times the trade union also turns a blind eye. (Trade union representative)

Some respondents reported on employers denying workers the right to annual holiday leave, and contesting the rights to a paid meal break and travel expenses.

Our respondents confirmed the widespread argument of employers about overregulation as the reason for a violation of the rules. Employers argue that it would be better to have a system in which it is possible to comply with the rules than to fight for unrealistically set norms. Some norms and rules stipulated in the sectoral agreements are not implemented in practice.

Trade unions are fighting for a system that is already overregulated. That system is not implemented. We know that it is not implemented! (Employers' representative)

The reforms and crisis did deteriorate the outcomes of collective bargaining in terms of the work-life balance, increasing differences between various groups of workers (such as men/women and more/less protected groups), and firm flexibility. One respondent held the opinion that we are only seeing just one part of the picture of the effects of the changes and the crisis by investigating what is going on with collective agreements because the really negative effects of the crisis are being felt by workers who are not covered by collective agreements. It is estimated that there are more than 100,000 of such workers, and this figure is rising.

People who do not have that status, who are outside (collective agreements) are in a really unpleasant position. And there are ever more of them. In that way, employers amortise uncertainties – with people on fixed-term contracts or agency workers who are not covered by collective agreements – they work according to Bulgarian or Romanian standards. (Employers' representative)

Trade union representatives reported that employers generally do not want to talk about any topic concerning gender equality or the work-family balance: 'That is certainly the biggest victim of the crisis ... the private part of life is affected ... especially for young people. Those few young people who do get jobs – they work all day long. The mentality is changing – what is considered normal and what is not ... things that were not normal several years ago ... because of the circumstances we are living in, pressures and changes in society have become normal' (Trade union representative).

On the contrary, there are cases of long debates on issues that should not be discussed as they are in conflict with the logic of the legislation. A trade union representative reported on recent collective bargaining where employers proposed use of the institute of suspension (that is used for workers when they are exercising a political mandate or similar) to not pay workers when they are on sick leave. That debate involved the Labour Inspectorate and the Institute for Work and it was only after receiving two independent expert opinions that this would be not 'only unacceptable but also unconstitutional' did employers withdraw the proposal.

It seems that the changes occurring during/because of the crisis have distributed different roles to trade unions at various levels – the big trade union centrals have gained a stronger role in representing the interests of workers (not only their members) at the national level, while smaller/company trade unions are helping managements find ways to overcome the crisis. Some of our respondents explicitly addressed the difference between the radical stance and power of trade unions at the national level and their lower capacity to protect their members at the company level. These estimations also indicate the employers' expectations regarding the proper role and level of involvement of trade unions.

They (trade unions) are very aggressive and tough at the national level, but ... when there is a problem on a company level, ... when one does not get paid, when someone is harassed , they are invisible...I think that they are not well connected with their members ... there are plenty of officials in Ljubljana who seldom go to companies to protect people... (Employers' representative)

Some employers' representatives indicated even more explicitly the proper space for social dialogue:

We are dealing with state politics instead of the problems in companies ... that is why Mura and Gorenje happened. Gorenje was the biggest blow to the trade unions. But they just continued shamelessly with pushing the government and interfering in things that should not be their concern. Let's be honest, and I am ... far from the neoliberals, to let someone interfere with the owner, with what the owner will sell or how he will manage his property ... that is like as if I were to come to your home and ... (Employers' representative)

Our respondents also reported on variations among successful and less successful companies regarding the capacity of management to implement change and respond to the present economic situation. While many competent managers have used the crisis to strategically reconsider their companies' business position and improve it through 'rationalisation, professionalisation and innovation, the crisis has revealed some incompetent managers' according to one HR manager. A respondent from an employers' organisation stated that during the crisis the exports of Slovenian medium and large companies have doubled, while smaller companies are still too focused on the domestic market.

4.6 Krka: Business success and exceptionally highly developed social dialogue at the company level

Krka is one of the most successful Slovenian companies and a serious and respected international player in the pharmaceutical industry. An important part of Krka's identity and public image is the high standard of social dialogue that is followed by a high quality working life, an exceptional organisational culture, the workers' identification with the company, and the high reputation of the company's management. Krka provides exceptional and almost disturbing proof of the compatibility of business success and workers' well-being in a sector that has many difficulties overcoming the turbulent times of the crisis.

**A best practice case:
relations between the employees and management in Krka**

See the presentation at Krka's website: <http://www.krka.si/sl/o-krki/druzbeno-odgovornost/skrb-za-zaposlene/odnosi-med-zaposlenimi-in-vodstvom/>:

The company has a workers' council and two representative trade unions (KNG Krka Novo Mesto and the Trade Union of Krka). The workers' council and the unions collaborate well.

The company's collective agreement is mainly agreed, changed or amended by a tripartite system of coordination between the management, the company's professional services and workers' representatives (trade unions and the workers' council). Irrespective of who initiates a proposal, all interested parties are active in its harmonisation in different ways and through various (written and oral) forms of communication until they reach a consensus. The workers' council and the trade unions work together closely and in this way build a partnership in pursuit of the interests of workers.

In 2008, 15 workers' assemblies were organised within the company. All were well-organised and very well attended (2,120 workers). In 2008, the workers' director Danica Novak Malnar was reappointed for a new term. The Worker Director is a member of the Management Board who represents the interests of employees with regard to personnel and social issues.

The workers' council has 15 members. Members of the workers' council act as a link between employees and management, in terms of both transferring information and offering comments and suggestions. With the support of the Chairman and with the help of the company's professional services, the workers' council contributes to the good mutual relations and thus to Krka's good business performance.

Communication between the management, employees and workers' council takes place through different routes. All employees can communicate directly with the Chairman of the Board by e-mail, council members communicate with each other once a week, all employees can communicate with the president of the workers' council through an internal website ('Krkanet') and the workers' council may inform employees through that website.'

Although according to our interviewees the crisis has hit the pharmaceutical industry as hard as others (forcing companies to merge, reduce workforce, or even close), since 2008 Krka's annual growth has been at least 5% annually. Our respondents estimated that this success is a result of a well-prepared and timely strategy to grow in Eastern markets.

Krka's representatives often do not publicise their successful performance and/or practices and somehow feel 'as if they do not really fit into the rubber-chemical sector'. Besides having 30% higher salaries than defined by the sector's collective agreement (the lowest net salary in Krka is €800 and the average net salary is above €1700), Krka has well-developed pay, incentives and promotion systems, education, training and talent development programmes, programmes for development and measurements of the satisfaction of workers, as well as policies for the better reconciliation of working and family/private life. When talking to Krka's representatives, one can see how such virtuous cycles make an excellent workplace ever better.

Part of the strong organisational culture is Krka being a Slovenian company, embedded in the local environment and taking care of it. Our respondents from Krka stressed this proudly and explained their business advantage over the second big pharmaceutical company in Slovenia with the fact that Krka 'defines the politics, system, strategy here ... and the philosophy of foreign owners is different'.

Capitalism must have a limit. For me, the key question is whether management understands that we are not only serving capital. I am not idealistic. We also do have problems. But – we are fair!
(Representative of Krka's management)

I was raised by this company. I was 15 years old when I got a job as a worker. Then I got an education after two kids. I did not obey my parents as I obeyed this company. The company has given me a lot and I hope that it will give me more. I am doing my best to give the company as much as possible. (A pharmacist, a representative of Krka's workers)

In many other companies in the sector the situation is completely different – 'there is no social dialogue at all. It is as the management says' (Trade union representative).

The crisis has affected the employees in Krka in a way that it has ‘made people realise that not everything can be taken for granted; trade unions, at least ours, understand that’.

Our respondents also reported the greater acceptance of change on the side of workers during the crisis in other companies as well. In Krka as well as many other Slovenian companies there is a history of consensually accepted plans for resolving business problems that were used en masse in the early 1990s due to the break-up of Yugoslavia, i.e. the loss of the Yugoslav market.

4.7 Rule-makers in the electro sector: from being hostages of Gorenje’s high standards to practices of paying for factory parking

We found evidence of the diminishing role of sectoral rule-makers and changes with regard to the identity of rule-makers. In fact, the declining role of rule-makers in sectors is an indicator of the decentralisation and fragmentation of the social dialogue that was described by one of our respondents: ‘Our management is now mainly focused on our workers. They realised that their power chiefly depends on the trust of workers and not on how they influence Slovenian general public opinion ... I think we have closed in’.

There are no general unified employer perspectives ... there is no longer any cohesiveness. In these times of crisis employers are focused on their own problems ... I do not feel the power of the sector any more ... the power of the sectorial interest association has declined somewhat ... even during bargaining ... the majority of employers’ representatives bargain for results that will benefit their own companies ... there is no common interest ... partial interests dominate. That is reducing standards. (Employers’ representative)

Employers used to be a hostage of Gorenje as Gorenje had strong trade unions, strong social responsibility; the workers’ councils were strong; they set the standards that average and above-average companies used to reach without problems ... but Gorenje has 30,000–32,000 of added value and for companies with 20,000 or 22,000 – they had problems. When the trade unions felt that something was wrong, they

just threatened with a strike in Gorenje and the pressure from Gorenje and its suppliers made all accept what was demanded ... today it is not like that anymore ... now one could even say to Gorenje to withdraw. The situation in the sector is so serious. (Employers' representative)

The changed position of Gorenje among other companies in the sector reflects changes in the social dialogue within the company. Certain management business decisions as well as ownership changes provoked discontent among workers that culminated in a company strike in 2009. Gorenje has been hit by the global economic crisis due to its dependency on exports. Besides the low salaries, which have remained unchanged despite the subsidies approved by the government, the workers complained of non-paid overtime work. The workers' monthly salary ranged between €280–400. That was the first time Gorenje workers had gone on strike since Slovenia attained its independence. The move was not supported by the company's union. Workers blamed the union for maintaining too close ties with the company's executives.

A representative of the trade unions described the situation in Gorenje in 2009 as some kind of paradox: 'They seemed to be a company with a well-established social dialogue, but I think they went too far ... when the director and the trade union's president agreed on something that was taken for granted, without any questioning, without any explanations'.

The president of the Association of Free Trade Unions of Slovenia tried to mediate the conflict between workers and the management. After a one-day strike, the workers' representative, company trade union and company management agreed to increase the wages by 10%, and to pay cost-of-living allowances to workers with the lowest income (including workers 'on hold'). The leadership of the company's trade union changed and the social dialogue in Gorenje had to be re-established. They formed a group responsible for the social dialogue in the company and strengthened the communication and HR activities (quarterly workers' assemblies to provide regular information, annual HR planning, annual interviews). After moving some of the production to Serbia that created additional tension among the workers, an agreement on 'saving jobs until 2015' was signed in the company. The management representative estimated that the crisis has served as a catalyst of a positive change regarding the social dialogue in Gorenje. He estimated that both sides have redefined their positions – the employer realised how important

the workforce is for the survival of the company while the workers have realised that they cannot succeed without the success of the company.

The reaction of Mr Lahovnik, the Minister for the Economy in 2009 regarding problems in Gorenje was that ‘the problem is inadequate communication’.

Lahovnik pointed to inadequate communication as an important reason for the employees’ dissatisfaction. ‘If the management made staff aware of the real situation, reveal all their income and all ownership links to the company, there would not be any escalation of the discontent’, Lahovnik stated. He noted that the salaries of the management in Gorenje exceed the government’s recommendations and, although Gorenje is not owned by the state and the recommendations are not obligatory, it would be appropriate to take them into account. He also noted that the Management Board would have to clarify all doubts regarding the ownership consolidation between INGOR owned by executives of Gorenje, some other companies and Gorenje. The minister added: ‘It is necessary to put the cards on the table. It is understandable that the employees in Gorenje feel that the results are unequally shared and it would be appropriate if leadership would tighten their belts more as the employees feel that they are the only ones saving’. Lahovnik believes that the leadership should fix the problem of wages immediately, but consider long-term profit-sharing among the employees.’ (STA 2009)

The situation in the Slovenian electro industry is tough and different strategies have been taken in companies to address the changes. Some of them are not built upon social dialogue principles. One of the more radical opponents of most of the social dialogue framework and existing labour legislation is Mr. Dušan Šešok, the owner and manager of the Iskra Group, part of what was once one of the biggest and most successful Slovenian companies. Known for his radical statements regarding the need to abolish the minimum wage and attempts to lower workers’ salaries in Iskra, Mr. Šešok once again shocked with the decision to charge Iskra employees for parking in the factory yard (Troha 2014).

A new rule-maker in the Slovenian electro industry? Šešok ignores the decision of the Labour Inspectorate

Although the Labour Inspectorate decided that the Iskra should eradicate those annexes to employment contracts which have reduced

10% of the employees' wages, the executives with Dušan Šešok at the forefront obviously have no intention of doing that.

After the Iskra leadership required employees to give up part of their wages, the Labour Inspectorate decided to the contrary, namely that Iskra must respect the collective agreement for the electro industry. This means that it should not interfere with the basic salary. But it is obvious that the Chairman of Iskra's Board, Dušan Šešok, who recently stated that an employee who does not sign the annexes is not good for the company, does not care about the decisions of the Inspectorate.

It is not clear from the latest proposal which Šešok gave to Iskra's workers' Council that the annexes will be abandoned. Instead of Iskra eliminating the annexes according to the instructions of the Labour Inspectorate, Šešok is, according to our information, urging those employees who have not signed the annexes yet to sign them 'because of correctness and equalising the conditions for all workers'. Such 'correctness' would among other things result in a higher profit for the Iskra Group that is 90% owned by Šešok and the board member Jože Godec' (source: Morozov 2014).

Our trade union respondent reported to us that in June Mr Šešok agreed to abolish the controversial annexes. According to her, that was proof that a violation of workers' rights could be stopped or at least fixed if it has already occurred. But she stressed that workers have to report violations because only then can trade unions and the Labour Inspectorate react. The problem is that 'There is no legal security in this country ... people do not believe in the legal system, in inspections ... there is a conviction that everybody violates the rules, and nothing happens...'

Some of our respondents mentioned the important role of bigger foreign companies entering Slovenia and setting new standards/organisational cultures and HR practices and thus (unintentionally) serving as rule-makers. Workers who are generally satisfied in these companies because of their secure employment and good wages do not even compare these new practices to the existing rules/legislation. Trade unions in these companies are mainly company trade unions that are collaborating well with the company's management.

Accordingly, our respondents reported some foreign owners who have changed companies' existing HR systems. Although some of the

changes introduced are based on rules that reduce some previously/statutory existing protection/rights of workers, they were not opposed by the workers or the trade unions. On the contrary, the trade unions' attempts to oppose some of the new HR approaches were contested by the workers. An example of that is a system of bonuses and incentives introduced by the foreign owner of a company where the very low initial wages could be supplemented by bonuses for presence at work:

if someone is not on sick leave for a month s/he gets a €25 bonus, if no one in a team is on a sick leave for a month, each member of that team gets an additional €25 bonus ... people go to work ill just to get the bonus ... otherwise, they would probably crawl among themselves. This creates competition among people ... If they don't use their annual leave during summer they get €300 in gross income... If someone has not been on sick leave for 20 years they get a paid vacation for two. (Trade union representative)

4.8 General trends and possible scenarios regarding the operation of the industrial relations system in Slovenia

The labour market reforms, the crisis and the threat of change together with the dynamics and consequences of the post-socialist change (ownership changes, restructuring of the economy in the 1990s) and entering the EU have all influenced the system of collective bargaining and social dialogue in Slovenia.

In the processes of change there is evidence of some continuity (institutions, legislative framework) while the logic, content and quality of the social dialogue are changing.

The social dialogue that was seen as an important component and facilitator of change during the transitional period in Slovenia currently does not perform that role. Estimates of the strength of other partners vary among the social partners while they all see successful social dialogue as needed but prevented by a lack of trust and too radical expectations of the other side in the dialogue. Possible scenarios of future strategies and approaches to collective bargaining and social dialogue will be strongly influenced by the economic circumstances and political changes.

The infrastructure in terms of both the actors of social dialogue and the legal framework has not been importantly changed or weakened, but the recent developments reveal a push on the employers' side towards greater decentralisation while the trade union side shows most of the strength (in terms of mobilisation and expertise) on the national and sectoral levels.

We found that the social dialogue and collective bargaining dynamics vary with regard to some factors that will be presented next.

Differences between companies within the same sector and between sectors – in successful companies the social dialogue is part of the good performance, while in troubled companies it is (if it exists) helping in finding solutions to overcome the crisis. It seems that trade unions in the private sector are still capable of protecting the basic rights of workers (statutory guaranteed pay, unfair dismissals) and being involved in negotiating the terms of company changes such as closures/privatisations that affect large groups of workers.

On the other hand, trade unions are less/not capable of preventing a worsening of the working conditions (self-exploitation of workers). This is connected to differences in the relative power of IR actors regarding different issues/at different levels. While trade unions are not strong enough to stop the precarious working conditions of an increasing part of the workforce, to prevent the cancellation of sectoral agreements they use the power of mobilisation to protect some minimal standards that are currently part of the labour legislation (such as the minimum wage) at the national level. Employers are in a position where they can unilaterally cancel collective agreements and hold considerably more power at the company level so long as they do not interfere with the mentioned basic standards.

We found differences between cooperative relations on the company level (in both successful and some troubled companies) and more conflictual relations among social partners at the sector/national level.

We also found differences regarding the type of ownership, not regarding the source (foreign or domestic) but the nature (long-term- or short-term-oriented). Foreign capital does, however, change HRM and IR practices.

We established that there the very strong pressure of the ‘there is no alternative’ rhetoric is influencing the social partners.

As both the employer and trade union representatives see the state as an important player that sets the framework for social dialogue, great importance is attached to the position to be taken by the new government regarding the development strategy of Slovenia and whether it will continue with the uncritical acceptance of EU-enforced structural reforms (especially privatisation and greater flexibility in the labour market).

4.9 At the crossroads after 20 years: Stalled social dialogue in Slovenia

Everyone acknowledged that we need a social agreement, mainly as a framework for the necessary reforms, for achieving some trust. At the same time, there is a problem that the partners don’t trust each other. That is crucial – the lack of trust among the partners and the high level of conflict that arises from that. It is very hard to lead a constructive dialogue.

Our research confirms earlier analysis that concluded that while industrial relations in Slovenia had not undergone any major changes in its formal structure (tripartite and bipartite negotiations, wage bargaining being part of collective agreements) and EU pacts (fiscal pact, six pack, EuroPlus Pact) which had not yet impacted Slovenia as far as wage-setting mechanisms or the abolition of wage indexation is concerned, the state of the social dialogue in Slovenia has deteriorated since the beginning of the crisis (Krašovec and Lužar 2013). Authors mention increasing breaches of collective agreements by employers, increasing workers’ unrest and the number of strikes; a rise in unilateral and hasty government interventions in public sector working conditions and the growing militancy of the trade unions. All of this has characterised industrial relations in Slovenia during the crisis. However, it is hard to say that these developments are exclusively the outcome of the crisis. We think that they are a result of the changed constellation of political and economic power – the main actors’ interests and their relative power. While the post-socialist transition and EU integration were national development projects based on consensual and inclusive strategies that

were naturally blended with an active social dialogue, the current political and economic reconfigurations are embedded supranationally and are not based on a consensus regarding the nature and pace of change. An indication of the lack of the strategic and developmental embeddedness of the social dialogue is seen in one of our respondents' evaluation of the work and role of the Economic Social Council: 'They do not consider the interest of the state. Each of them is concerned for their own sector ... the crisis has placed a focus on local interests. I think that social dialogue in Slovenia has stalled a bit'.

After 20 years of practice, both sides of the social dialogue are rethinking their identities and priorities. This rethinking is occurring in a context that is characterised by paradoxes. Trade unions that protect workers' basic rights to decent working conditions are seen (sometimes even by themselves) as culprits responsible for the position and increasing number of precarious workers. At the same time, the best Slovenian companies are still building their success on strong social dialogue.

While the best employers search for instruments of motivation and for obtaining a good workforce, some representatives of employers' organisations wishing to achieve a better competitive business position of Slovenian companies uncritically propose adjustments to foreign practices that would reduce existing standards. It is clear that proposals to dismantle well-established arrangements (like, for example, that of parental leave which is both internationally recognised as a model of good practice and has a long history and strong support in the Slovenian public) without thinking about the potential consequences (for the employment of women and quality of life) indicate a readiness to radically change the logic of the existing economic and social model.

Although all social partners still believe the new Social Agreement is needed, the fact that its conclusion has been constantly delayed may be seen as a salient sign of the actual fading of the perception that social dialogue is an important part of the developmental and strategic framework. Reactions of the trade unions and employers' organisations to the draft of the new social agreement ran in opposite directions – while the trade unions called for more social dialogue concerning all aspects of economic and social policy (especially in these times of crisis), employers' organisations pointed to the need to unburden employers by cutting the costs of the labour force, allowing greater flexibility and

discretion to employers. Employers' estimations of the new labour legislation remaining too socialist, employers having not enough and trade unions too much power in industrial relations cannot be seen as being in favour of the new social agreement or the further development of social dialogue. Some of the employers' representatives in our field study explicitly expressed an unwillingness to sign the proposed social agreement, criticising trade unions 'who don't understand one thing: the economy is in crisis and they are still demanding the same workers' rights that they had before. We are determined – we will not sign the social agreement if it remains as it is currently proposed'.

The leaving minister for labour stated that 'if the government had not resigned certain social agreements would have been achieved'. It has yet to be seen how high on the priority list the social agreement is for the new government. This relates to the question of whether the new government will have the drive, strength and political support to mobilise for change that will overcome the logic of the inevitability of an ever more flexible, insecure and competitive economic environment that is currently overwhelming Slovenia. The existing social dialogue infrastructure and tradition could be used as a starting point for the next strategic development step. However, it is also possible that the increasingly decentralised collective bargaining would in the future have a much narrower function, protecting ever fewer trade union members.

The possible social dialogue scenarios in terms of social and political actors' strategies and approaches to collective bargaining and social dialogue will also depend greatly on the economic situation and strategy of the EU.

There is no evidence yet of how the changing economic circumstances (very recent and very weak signs of recovery) and the very recently changed domestic political environment are affecting developments in collective bargaining in the industries studied and related government action.

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All links were checked on 2.12.2015.

Chapter 8

The reform of collective bargaining in the Spanish metal and chemicals sectors (2008–2015): the ironies and risks of de-regulating employment regulation

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Introduction

The chapter is based on research conducted in 2014. It is structured in two parts. The first part seeks to outline the background of the system of collective bargaining in Spain and some of the forces for change emerging from the post-2008 recession and neoliberal policies on regulation. Secondly, the text focuses on reflections and experiences arising from a range of individuals within the state, employers, trade unions and academia. It is critical of the reforms, but also focuses on the degree of uncertainty and concerns about the political and organisational risks that may subsequently emerge. The narrative concludes with a review of some of the main points and the evolution of a more disorganised and dualist system of labour relations, which is ironic given that those plugging neoliberal reforms couched their arguments and support for so-called ‘deregulation’ in terms of a dualist labour market. In our view, a large part of the ‘social partners’ across the board are becoming aware that Spain is now more dualist and fractured as a labour market and system of regulation.

1. Background of the reforms

1.1 Introduction

The collective bargaining system in Spain was considered by some to be one of the strongest in Europe by virtue of its coverage, although implementation has been an issue. From the development of the liberal democratic political system in the late 1970s – after the end of the Franco

dictatorship (1939–1975) – collective bargaining was being developed systematically. Forms of pseudo-bargaining had existed at various levels during the latter years of the Franco dictatorship, albeit led and managed by management and the state, which dominated a state-organised trade union (Martínez Lucio 1998; Martínez Lucio and Hamann 2009). However, there were instances in which management did negotiate with certain elements of the emerging independent labour movement which, while formerly still clandestine, did manage to engage with certain ‘works council style’ elections in some instances. With the advent of democracy and the consolidation of various labour rights through the Worker’s Statutes and Organic Law of Trade Union Freedoms the pattern of bargaining in companies and workplaces became normalised. Local provincial bargaining for a range of sectors, such as construction and hospitality, made it possible for the terms of conditions of various workers in small to medium sized firms to be determined collectively, even where labour representation was weaker. Such smaller firms relied on higher level agreements (Sissons *et al.* 1991). In addition, the steady emergence of sectoral bargaining in, for example, the chemical industry managed to establish a basis for a more articulated structure of bargaining, with minimums being established for particular sets of workers (Hamann 2011: 150–154).

While national agreements and pacts of a tripartite nature were high in number and varied according to scope, there was also, according to some, continuous dialogue at the higher level, which ideologically or strategically framed the local practice of social dialogue (Guillen *et al.* 2008). The number of pacts – on a range of issues – since the late 1970s indicates, for some, a continuity in dialogue at state level. There has been much discussion of whether this level of bargaining really did effectively influence the structure of bargaining as the pacts were more concerned with reforms and modernisation in terms of labour relations on issues such as learning. Frameworks for setting collective increases in pay at peak level did exist, with overall changes in the content of bargaining, especially pay, being established through national bipartite agreements at specific times. However, whether this national-level activity on specific elements of the employment relationship was acting as a vehicle for sustaining a systematic dialogue beyond specific pacts and becoming embedded in systematic neo-corporatist structures is questionable (Martínez Lucio 1998). However, a culture of social dialogue between the majority unions, the main employer federations and the state was

apparent, which at key moments of political divergence was invoked to stabilise industrial relations (Roca 1983).

Thus, union involvement in policy making has depended on the government's willingness to negotiate with unions and employers (Martínez Lucio 1998). In addition, crucial parts of the government's economic, social and labour market policy agenda were not negotiated with the unions, but instead adopted directly, often against vociferous trade union opposition (Hamann 2012). There are two views of the tradition of social pacts. The first tends to see it as a strategic process that aims to legitimate government decisions and placate organised labour on a range of issues: however, this has not led to deep institutional relations over longer term issues in economic and social policy (Martínez Lucio 1998 2000; Hamann 2012). That is not to imply that complex informal processes and modes of information sharing are not possible within tripartite bodies such as the Social and Economic Council (Consejo Económico y Social). Hence, a series of ongoing dialogues on a range of issues has existed, although they are increasingly focused on the supply-side dimensions of the economy and less on the demand side (Martínez Lucio 1998). For some, marketisation and strains on political exchanges in Spain have been extensive. Others (Guillén *et al.* 2008; González Begega and Luque Balbona 2013), as we have argued above, suggest that the sheer amount of agreements – both nationally and regionally – means that they cannot be dismissed as merely minimal or symbolic. As Encarnación (2003: 8) argues: 'Spain is deservedly regarded as the paradigmatic model of a pacted transition ... every kind of pact has been attempted in Spain: from secretive gentlemen's agreements to grand social and economic accords enjoying tremendous public fanfare'. In addition, the impact of coordinated national bargaining and political exchanges has affected wage increases across time, suggesting an ongoing national dialogue even if the forums are not always transparent, continuous and concrete (see Martínez Lucio and Hamann 2009 for a more extensive discussion).

During the 1980s through to the late 2000s collective bargaining was able to cover around 80 per cent of the workforce. In 2005, for example, 4,647 collective agreements were signed covering 8,745,700 workers (Consejo Económico y Social 2005: 330). From 1997 to 2004 there were between 3,700 and 4,200 agreements annually, and between 7 to 8 million workers were covered. This covered a range of topics related

to pay, working hours and training, although one of the criticisms concerning collective bargaining is that beyond the larger firms there was a tendency for SMEs to rely on either national sectoral agreements or provincial sectoral agreements for their wage increases and working hours in terms of content, and rarely engaged with broader issues and the contents of collective bargaining.

Underpinning this relative stability and consistency was the role of the two major trade union confederations, CCOO and UGT, which, since the late 1980s, had begun to work more closely together in terms of their strategies towards the development of collective bargaining. These trade unions receive the bulk of the vote in the trade union elections which every four years determine the nature of works councils and individual workplace representatives. These competitive elections have tended to result in a union increase in the share of union delegates in such bodies, from around 55 per cent in 1978 to 75 per cent in 2007 (Beneyto 2008). As stated, such elections have normally had a turnout of over 80 per cent of the workforce, so one can discern a strong institutional underpinning to the process of social dialogue. However, low union membership density – between 10 and 20 per cent over the past 30 years – and related financial difficulties have led to concerns about the ‘crisis of representation’ in Spanish unions. Jordana (1996) has argued that trade union membership in the 1970s was significantly overstated and thus the picture of subsequent decline is misleading. As in France, formal union ‘representativeness’ for the purposes of reaching collective agreements and for participation in tripartite bodies, is judged according to the results in the workplace elections (see below) in which all employees, whether union members or not, are entitled to vote. Thus the Spanish union movement has been labelled a ‘voters’ trade unionism’ rather than a ‘members’ trade unionism’ (Martin Valverde 1991: 24–25). In other words, organisational influence depends on electoral success as much as on membership figures. In these terms, the main Spanish unions appear to be more favourably regarded and more widely supported by workers than their membership figures might indicate.

However, throughout the 1990s onwards there emerged a political discourse on the right and in neoliberal-leaning parts of the Socialist Party which questioned the actual effectiveness and perceived ‘rigidities’ of collective bargaining structures and labour market regulation, especially in terms of employment termination. This narrative built on the centrist-

market leaning politics of the González Socialist government in the 1980s and early 1990s, which tended towards policies of privatisation and limited social regulation and investment (Smith 1990). The Spanish labour market had adopted certain features of labour market regulation from previous regimes. These features did not reflect any progressive or pro-labour features of the previous regime or of the social elites driving the transition to democracy, but emerged from a symbolic contract with the working class based on the nature of its exploitation in political terms. It was a system of political quiescence which established a series of regulatory characteristics of work organisations which elites felt would defuse any need for alternative or independent forms of labour representation (see Foweraker 1989). It is essential we understand this historical context:

regardless of this forced internal and external dispersal of trade unionists the state could not allow a vacuum to develop in terms of the industrial relations system. Coercion no matter how extensive could be but one part of a politics of industrial relations and the regulation of employment in favour of employers and capital more generally ... In terms of representation, the Organización Sindical Española was developed. This 'vertical union' brought worker representatives and employer representatives into the national level of this state body down to the regional and sectoral level (Ellwood 1978). ... Secondly, a system of 'representation' was developed within the workplace and in companies. In effect, this system of representation was neither independent nor free of state influence but began to operate, albeit on the terms of employer interests. Thirdly, and more importantly with regard to its later effect and ongoing influence until recently, the state passed what are termed labour ordinances, a set of detailed regulations on employment categories and classifications to some extent. They configure the position and jobs of individuals and while employers maybe did not always take them seriously the ordinances assisted in the organising of employment relations and the need for regularity and certainty – albeit one that was state directed and for the most part favoured employers. Even employment termination became regulated in terms of how it was processed and remunerated with relatively high levels for redundancy, although there is a question mark over whether these were consistently paid. (Martínez Lucio and Hamann: 2009: 126)

These legacies, and the manner in which they were crystallised within contemporary industrial relations, were beginning to be seen as problematic. There had been reforms of the labour ordinances through a range of discussions under the González governments (from introducing flexibility in the labour market through fixed-term contracts to discussions regarding the reform of the collective bargaining system, which was seen as ‘too centralised’). The cost of dismissals for employers was steadily reformed and slightly reduced as well prior to the 2008 crisis. Throughout the 1990s a series of reforms of these features of the employment relationship were enacted – partly through social pacts – as the cost of labour dismissals to employers was steadily decreased through a series of agreements and the reforms of the labour ordinances (Sala 2013). However, there was an emerging political discourse that argued for a more robust assault on these regulations, tied to a growing ‘Tea Party’ style influence within the Spanish right, even if during the 1996–2004 the Aznar Conservative Popular Party (PP) government’s relations with trade unions had in policy terms been more than reasonable (partly buffered by the use of extensive training funds from the state which were delivered and administered in large part by trade unions and employer federations) (Rigby 2010).

The role of sectoral bargaining began to emerge as a point of contention for some on the right of the political spectrum. National and provincial sectoral bargaining were the main point of reference within the system due to the large number of small and medium sized firms that lacked their own agreements (Sanz de Miguel 2012). Some saw the sectoral level of bargaining as creating a degree of inflexibility within the system of labour productivity and relations, and of obscuring the weaknesses of the system, thereby providing trade unions with the appearance of more influence than what they really had. It was seen by some members and officials of various employers’ organisations as a way of subsidising and organisationally carrying the trade union movement (interview data from authors).

Hence, well before the crisis we begin to see the advanced embryo of a more assertive neoliberal critique of the system of regulation in terms of its coverage. The system of industrial relations regulation was seen a framework of control which, according to the political right, hobbled productivity increases. This narrative resurfaced in the post-2008 period, especially towards the end of the Socialist Zapatero government

(2004–2011) and the current Conservative PP government, which fixed its sights on the question of labour costs as an alleged impediment to economic renewal. We will return to this later.

The crisis was therefore steadily linked to this question of labour in ideological terms. However, the origins of the crisis are more complex. The first is that the housing market in Spain, which has been viewed as a major vehicle of ‘economic development’, was becoming increasingly volatile and the target of speculation, being partly fuelled by economic and monetary union and the relaxation of regulations and constraints in the financial sector (Conefrey and Gerald 2010). The emphasis on the construction industry as an absorber of labour and human resources was important in bringing a range of working class constituencies and new migrants on board, as well as generating state revenue from the building, sale and employment aspects of this dimension. A growth model emerged that was premised on the continuing development of this sector. In addition, the absence of a proactive industrial policy in relation to manufacturing and related research and development strategies from the 1980s onwards were seen to contribute to a pattern of growth linked to the development of – and links between – the finance, housing and hospitality sectors. The financing of this growth through a highly deregulated mortgage and loan system was linked to remuneration systems within the banking sector for elite employees and created an unregulated loosening of finance.

This was also a state that had – since the 1970s – under democratic governments on both the right and the left begun to de-industrialise Spain, which had previously become a major manufacturing country in terms of automobiles, steel, white goods and other related sectors. The nature of growth had shifted from value added production to a speculative property market and financially driven model. This created a state reliant on – potentially volatile – tax revenues. Another narrative of a critical nature is that Spain had joined the euro at too high a rate and was unable to use its external economic and exchange policy to readjust in the face of changes and crisis. There were discussions in some circles of withdrawal from the euro, or of scenarios for a potential withdrawal, but this was limited and did not really become a general discussion. The question of the euro and its regulation has not been a central feature of formal political discourse to the extent one would have imagined compared with some other contexts.

However, the right in Spanish politics have pointed to a specific set of structures that were also unable to sustain the nature of economic development in terms of the regional structure of the state and the manner in which debt had accumulated at that level. During the early 2000s the public deficit and debt was fairly low and within the Maastricht criteria. However, this situation began to steadily unsettle and eventually deteriorated in the past ten years or so. The right thus turned its focus on the structure of the state and the labour market as a vehicle of reform, partly legitimated by the fixation with the ‘cost of labour dismissal’ and the perceived ‘archaic’ system of labour relations and bargaining; this was further supported through references to the discourse of deregulation that emerged from within the European Union and various international financial rating agencies.

Returning to industrial relations, one major point of contention was the failure to renovate collective agreements. Many agreements were not always re-negotiated and re-signed: instead, they were automatically revised, meaning that certain indicators within that agreement would be adjusted in line with inflation, for example. In 2010 of the 5,067 registered agreements, 3,607 were subsequently revised (Fulton 2013). In effect, the failure to sustain social dialogue within the workplace meant that the process of collective bargaining was slowing down and becoming truncated, such that it relied on a process of automatic renewal in the absence of new agreements. For many on the right this indicated the growing bureaucratic inertia within labour relations and its dysfunctional qualities. In effect, according to this narrative, industrial relations were seen to be failing as a workplace vehicle for dialogue: it was viewed as being out of sync with the needs of the economy and in that respect a ‘relic’ of a previous regime of regulation. This led to the stigmatising of labour relations and regulation and to ironic association with the dictatorial legacy of the past. We are therefore witnessing an anti-industrial relations narrative emerging on the right that predates the crisis but is being accelerated by it (Fernández Rodríguez and Martínez Lucio 2013).

This narrative has been bolstered by very high levels of unemployment which brought to the fore the failures of labour market processes (although the cause of this unemployment is the subject of much debate). Spain has had one of the highest levels of unemployment in Europe since the early 1980s, although the extent of hidden and undeclared labour may

have meant the figure was lower. In 2007 unemployment was just over 8 per cent, which was considered low by comparison with previous levels. By 2013, however, the figure was 27 per cent (Statista 2014). This was, according to the political left, due to the failure of the economic growth model (as discussed earlier), but for the right – which won the elections in 2011 – it was the outcome of an archaic system of labour regulation. In 2012 unemployment among young people under 25 years of age was 55 per cent (Eurostat 2013). This engendered an insider/outsider discourse which viewed the ‘insiders’ as being protected by redundancy legislation and the processes of collective bargaining.

1.2 Reform processes

The initial response to Spain’s crisis was a strategy along ‘Keynesian’ lines. The Zapatero socialist government (2004–2011) implemented a series of public works programmes during its latter years, from 2008 and 2009, which emphasised state-led employment and financial injections into infrastructure projects. It was called ‘Plan E’. This was a short-term reaction framed by the belief that the crisis was temporary. This short-termist ‘Keynesian’ moment was not in keeping with the neoliberal ‘continuity’ policies of Zapatero, which maintained a marketised economic policy and did not develop the public sector or the role of the state extensively in the wake of the previous conservative government. Some scholars, such as Field (2009), consider that this government did not depart from the economic policies of the previous governments – which were mainly neoliberal – despite the underlying structural problems of the economic growth model. Zapatero’s social agenda focused mainly on social values and issues related to ‘liberal individualism’. Hence Plan E was a short-term response to declining consumption trends and increasing unemployment after 2008.

In addition, towards the final year or so of Zapatero’s government, policy became couched in terms of public expenditure cuts and increases in indirect taxation. This has been a major feature of the later right-wing government’s critique of the left. The fact that the Socialist government began to move steadily towards austerity policy before the 2011 election is taken to mean that any critique of the right after 2011 should be deemed unjustified. In addition, some labour reforms – as we will discuss in terms of employment contracts – were propagated during the last two

years of the Socialist government. It attempted to create a series of pacts on employment and flexibility within the labour market, emphasising the need for labour reforms. The election of the PP government in 2011 brought forth a more savage austerity policy based on public sector expenditure cuts, reductions in public sector incomes and the containment of future public expenditure projects through privatisation proposals, especially in the health sector and aspects of the public media.

This strategy was developed through the PP's majority in the Spanish parliament, which meant that the government was able to vote through changes irrespective of the level of parliamentary opposition. In addition, it used a series of laws to change the nature of employment regulation and did so in a forceful and direct manner. However, as we will show below, this was not without recourse to a series of negotiations with organised labour, although trade unions mobilised in a series of general one-day strikes during this period. However, according to González Begega and Luque Balbona (2013) industrial disputes had been part of a complex interplay of political signals and mobilisations which were used to punctuate an ongoing dialogue between the state and labour throughout the previous periods of social concertation in the 1990s and up until 2011. These mobilisations were clearly becoming important to reclaiming much needed public space and legitimacy for unions after a spate of popular social movements had linked them to the apparatus of the state due to the emphasis that unions placed on servicing. However, the growing exhaustion of popular mobilisation in the wake of a government that has the institutional means to impose reform has led to a steady reformulation of priorities within organised labour. The systematic deployment of coercive features of the state in relation to social and economic conflict has been apparent and the circumscribing of social and political rights (in terms of the redefining of the nature of assemblies in public space and the limitations on the specific locations of mobilisations and demonstrations) have brought forth a more coordinated authoritarian character.

Furthermore, the link with the Troika and the key institutions of the European Union and the International Monetary Fund have been significant. The imposition of a series of recommended changes to the ambit and reach of the state by external agencies, and the detailed recommendations of the way finance policy was to be conducted, were utilised by the government in Spain as not just a point of legitimacy for

its changes but also as a way to castigate the previous government and civil society for its ‘failures’ to ‘constrain’ Spain’s ‘negative’ economic behaviour. This political link with external agencies was paralleled by a growing shift in policy discourse on the labour market and labour regulation. The fundamental obsession with labour costs and the impact of the supposed difficulty of making people redundant has concocted the view that the problem emerges from the existence of a protected and highly regulated workforce:

The IMF assessment is certain to come as a disappointment to the Rajoy government, which pushed through an ambitious labour market reform last year that made it cheaper for companies to fire workers and easier to depart from collective wage deals. Though the Fund praises the reform, saying it has had ‘some positive effects’, it warns that more drastic action is needed. It wants wages and work arrangements to be made more flexible still, and calls on Madrid to end the much-criticised ‘duality’ between temporary and permanent work contracts. ‘The reform effort must continue’, said James Daniel, the Fund’s mission chief for Spain, in a conference call with journalists. (Buck, *Financial Times* 2013)

This demonising of Spanish workers has been a part of the ideology of the external agencies who have continuously applied pressure on the government to pursue labour market reforms (Fernández Rodríguez and Martínez Lucio 2013). This ideology links those external interests with those of the internal market facing reformers (particular groups of employers and mainstream economists), paving the way for the reforms to come in the labour market legislation.

1.3 Content of the labour relations reforms

As already mentioned, ‘rigidity’ has been considered the main problem in the Spanish labour market, and in every economic crisis this discourse has reappeared, influencing the development of measures deployed to introduce more ‘flexibility’ (Fernández Rodríguez and Martínez Lucio 2013). Given the fact that the current crisis has been considered by most of the media and analysts as the worst since the 1929 crash, it was not surprising that the advocates of labour market liberalisation call for drastic changes in labour legislation in order not only to respond to

the crisis, but to frame a new industrial relations landscape in which deregulation would lead to greater economic efficiency and employment growth.

Indeed, the Spanish economy has been facing strong challenges during the crisis. During the years 2008–2011, the economic crisis was particularly intense in Spain and there was a period of job destruction. The year 2009 can easily be considered one of the worst years in Spanish history in terms of economic activity and unemployment. It is estimated that during that year more than one and a half million people lost their jobs, increasing the number of unemployed to more than 2 million since 2007. This represented a major challenge for the Spanish economy whose economic model (based in part on a speculative construction sector and related services) had collapsed (López and Rodríguez 2011). The beginning of the sovereign debt crisis in Greece during the autumn of 2009 increased the external pressures from financial markets and European partners, and soon the Spanish government was put under severe pressure, forcing Zapatero to make a u-turn in its anti-crisis policies (Meardi 2012). A set of unprecedented political measures were taken to avoid a debt crisis. Cutting public wages and freezing them for the following years, and trimming social expenditure, were coupled with reforms related to labour market regulation that have had a very strong impact upon collective bargaining.

In this section we will turn our attention to the main reforms in the field of collective bargaining during the past couple of years. There is still not much literature in English about these reforms, except for some papers (Meardi 2012; Molina and Miguélez 2013). However, there is an increasing body of work on the matter in Spanish, although slightly biased towards labour law studies, with very few sociological or industrial relations research based papers.

To give an overview of the reforms, we will divide this section into three main parts. In the first, the main features of the Spanish collective bargaining system will be described in order to understand the key points of the reforms, which will themselves be described in the second section. Finally, the third section will be devoted to evaluating the scope of the changes undertaken in recent years.

(i) A brief description of the collective bargaining system

As already mentioned, the Spanish industrial relations model situates collective agreements at the core of its employment relations. Labour rights are specified in the Workers' Statute, in which trade unions are deemed the key actors in the development of collective agreements. Those labour agreements cover a wide range of issues in different sectors and different companies, shaping the employment conditions of a substantial part of the Spanish workforce (Nonell *et al.* 2006). This covers aspects such as the way wages are fixed, work and employment conditions and the general regulation of collective relationships at different levels (including health and safety at the workplace, training, measures to fight against the dualisation of the labour market).

The basic principles of the system can be summarised in three points:

- (i) Legitimacy of the 'most representative union' to participate, an issue that depends on support in the works council elections, not the number of affiliated workers. This means that nationally only CCOO and UGT are deemed to be the 'most representative unions', accompanied by some Basque and Galician smaller unions in those autonomous states.
- (ii) The principle of statutory extension. This establishes that any collective agreement higher than the company level must be applied to all companies and to all workers forming part of the geographical and industry level in question. It is irrelevant whether they have participated in the bargaining process or not. This sets the limits for further agreements, thus guaranteeing a certain set of minimums in the company level bargaining.
- (iii) 'Ultra-activity' refers to the following principle: if an agreement has not been renewed, it remains valid after its expiry.

Negotiations usually take place between trade unions and employers' associations. However, in some cases they are also signed by the government in order to add an element of legitimacy. Different sets of dialogues may occur at four different levels: national, regional, industry and company/organisation. As already mentioned they cover a broad range of issues, such as training, job classification, sickness, maternity arrangements and health and safety. Since 2005 there has also been

a sharp increase in the number of agreements covering employment, particularly regarding an increase of permanent employees at the workplaces. The results of the negotiations had effects on all employees in the area that the collective agreement was covering. Therefore, if an agreement was reached in a sector of the economy and in a province, then the companies of that sector which were based in that province would be subjected to those labour conditions, although as stated above the aspects that were adhered to varied. The negotiations were driven by employers and works councils but, at the higher levels beyond the organisation, the agreement could be signed only by representatives of the 'most representative unions' at the national or regional level. The law describes how negotiations are to be conducted and the composition of both sides. Agreements tended to last two years or more, and almost invariably started from the beginning of the year (though negotiations could begin at any time). It is important to notice that lower level agreements used to include a clause providing additional payments if inflation exceeded an agreed level.

During the years 1997–2007, the Spanish economy experienced a boom that helped to increase GDP and the number of people employed (up to 20 million people), leaving the unemployment rate at a historical low rate of 7.95 per cent by 2007. Collective bargaining also expanded. By 2008 the data of the *Estadística de Convenios Colectivos* (Collective Agreements Statistics) showed a number of 5,987 collective agreements under which 1,605,195 companies and 11,968,148 workers were covered by jointly agreed employment conditions. This has been considered a historical maximum (Aragón Medina *et al.* 2009). However, from 2009 the numbers began to collapse drastically. By 2013, the number of collective agreements dropped to 1,963 (provisional data of February 2014), with approximately 5,892,600 workers covered. This represents a drastic change in Spanish industrial relations: according to the official statistics, in just five years the number of collective agreements decreased significantly to little more than one-third of the number signed in 2008, covering less than half of the previous number of workers (the number of people working has also decreased notably, with the Spanish unemployment rate standing at around 25 per cent).

We have already mentioned that the emergence of industrial relations in Spain post-1975 was still influenced by a political project shaped around the construction of a positive notion of labour citizenship. The *Estatuto*

de los Trabajadores (Workers' Statute) and some other laws were inspired by social democratic perspectives (Alonso 2007). Nevertheless, the deepening of the crisis during the 1980s, the rise of unemployment and the new policies adopted by the PSOE to join the European Economic Community (EEC) had led to a change of direction that remained stable as a discourse for the rest of the democratic period. As already mentioned, some orthodox economists from the Bank of Spain started to suggest a number of possible reforms as they perceived that the automatic pay increases negotiated in collective agreements were a threat not only to controlling inflation but to the 'competitiveness' of Spanish firms and corporations, thus highlighting the rigidity of the model. For instance, Bentolila and Jimeno (2002) claimed that the Spanish economy was approaching a new scenario which required a drastic reform of Spanish industrial relations – and saw the rights discussed above merely as a political compromise of the transition period to democracy that was now obsolete in a more developed modern democracy.

Such a new economic scenario could be defined by the following trends:

- (i) Increasing demand, both qualitatively and quantitatively, for skilled workers had effects on the way negotiations were conducted, with a 'dualisation' of the Spanish labour market in terms of skills. Pay increases and decisions taken at a higher level than the organisation would have the effect of raising the unemployment rate of non-skilled workers, it was argued.
- (ii) Spain had joined the EU internal market, which implied freedom of movement for goods, capital and labour. This entailed substantial challenges for unskilled workers who faced competition from new groups of overseas workers from other parts of Europe (for example, central and eastern European countries) and beyond.
- (iii) Spain had also joined the Economic and Monetary Union and therefore had adopted the euro as its new currency. Therefore, economic policy could no longer rely on monetary policy. Currency devaluation had been a salient policy during the democratic period, and had helped to boost the Spanish economy after the 1993 crisis. However, joining the euro had become an absolute priority for Mr Aznar's PP government, which claimed that it was essential for situating Spain among its European peers in terms of economic

modernisation. It was also known that further adjustments in the future might be perceived as a direct impoverishment of the working conditions of Spanish people (through wage cuts) once devaluations could no longer be used. According to Bentolila and Jimeno (2002), to avoid situations of high unemployment and slow economic growth more flexible wages and higher productivity would be required.

- (iv) Increasing heterogeneity in every sector of production meant that not every company showed equal levels of competitiveness, some being more technology-based and innovative than others. Established sectoral arrangements with regard to regulation did not take this into account, leading many companies to face problems in terms of rigidities and lack of flexibility.

From the beginning of the 1990s onwards, employers' associations expressed their discontent about the way collective bargaining had been established and the governments of the PSOE and PP began to respond. The labour market reform of 1994 had included elements that implied a certain decentralisation of industrial relations. They deregulated certain aspects of labour regulation and decentralised collective agreements (where regional agreements could prevail over national ones, an important issue, given the disparity between levels of economic development among different regions). It also allowed the option of including clauses that would leave open the possibility of a '*descuelgue salarial*' (a company is able to abstain from adhering to pay agreements in the sector if it is in financial difficulties). However, few measures were taken in that direction and Spain joined the euro with a system of collective bargaining that was criticised by some employers and sympathetic orthodox academics. Their view was linked to the free dismissal discourse we mentioned earlier (Fernández Rodríguez and Martínez Lucio 2013).

Hence the crisis was seen as the perfect excuse to trigger the reforms. Given the traditional low investment in technology or R&D by Spanish companies, it was clear that wages – understood broadly as 'labour costs' – would be at the forefront of future adjustments and the crisis has proved this, according to some. According to such scholars, Spain has undertaken a policy of internal devaluation to exit the crisis and labour market reforms have been launched to achieve that goal.

(ii) The nature of the collective bargaining reforms

The Spanish government responded to the crisis with several measures, particularly labour market reforms. These latest reforms are linked to the new spirit of austerity that has shaped Spanish economic policies since 2010, exemplified by Mr Rodríguez Zapatero's decisions from May 2010 to the end of his government, and later on by Mr Rajoy's conservative government. This period has been characterised by the adoption of a more unilateral approach to policymaking on the part of the government, particularly the PP (Molina and Miguélez 2013). Three reforms were launched in little more than eighteen months by the two cabinets that have run the country during the crisis, all of them bypassing social partnership to a great extent.

In 2010, in a context of deep economic crisis and a certain panic derived from the Greek debt crisis and the interest rate rise on Spanish bonds, a first labour market reform was passed. It complemented the first austerity measures announced in May in parliament by the Zapatero government (Azpitarte Sánchez 2011). Published in the official State Bulletin in June 2010 just a few weeks after the drastic reorientation of economic policy and reformed slightly in a second version in September of the same year, it was justified in terms of the extraordinary circumstances of the crisis. The negative evolution of economic indicators was portrayed as the result not only of the financial crisis, but also of imbalances and problems in the Spanish labour market and industrial relations. In this sense, the government seemed to accept the recommendations by the Bank of Spain, whose head had advocated reform in that direction, and various employers' associations.

This reform covered many issues. The most relevant for our topic were the following:

- (i) It lowered dismissal costs and broadened the notion of 'objective causes' for firms to justify redundancies.
- (ii) It also accepted that companies and employees could reach agreements in which they would voluntarily place themselves outside the framework of collective bargaining agreements at the sectoral level, easing the preconditions for the *descuelgue salarial*.

- (iii) It added a number of incentives for promoting indefinite (permanent) contracts.
- (iv) It increased the participation of temporary work agencies (which had been steadily evolving, albeit through a regulated framework, but which was now being pushed more rigorously).

The reform was met with criticism from the trade unions and a general strike took place in September 2010. However, this did not influence government policies. The reform paved the way for further decentralisation of industrial relations and reinforced a certain neoliberal spirit that had been present in PSOE's policies since Felipe González's leadership, as mentioned earlier. There were expectations that the reform would set the pace for economic recovery and help to soften the pressure from the markets and European authorities. This reform was passed amidst further measures towards privatisation and deregulation during the last year in office.

However, the monetary turbulence did not stop the following year. The Troika (ECB, IMF and European Commission) organised loans to 'rescue' the economy of three countries (Ireland, Portugal and Greece twice), imposing strict conditions in exchange. All these events helped to raise risk premiums to unprecedented levels in countries such as Spain and Italy. Under strong market pressure, the next reform was launched in August 2011, a few months before the elections. It is important to highlight that in the same period the main political parties – the PSOE and PP – implemented a change in the Constitution in order to give priority to external debt payments in the national budget and thus appease the international financial markets. The measures taken with this last reform abandoned the plan of converting fixed-term contracts into indefinite ones for a period of two years (until December 2013; this was a reform based on a political decision taken some years before). During that time, employers were allowed to offer only fixed-term contracts with no further employment commitments. It also made it possible to offer on-the-job training contracts to workers under the age of 30. However, the essential points of the reform related to collective bargaining:

- it gave preference to company agreements over sectoral agreements;
- it reduced the possibility of so-called ‘ultra-activity’, introducing an external mediator in order to obtain a final decision; the mediator can re-write the agreement;
- employer’s opting out of wage schemes agreed at higher levels;
- more internal labour market flexibility.

This implied a substantial reform in the content of collective bargaining, especially once the agreements become decentralised at the company level. However, the most profound reform took place in February 2012 under the PP government. This last reform can be considered a landmark in Spanish industrial relations, reshaping the balance of power. It introduced the ‘flexibilisation’ of wages inside the workplace and was followed by another strike in March 2012. It permits the employer to impose decreases, allows firms to place themselves outside the framework of collective bargaining agreements and cheapens dismissal costs further. The contents of the reform were and remain controversial, and represent a significant ‘development’ in Spanish industrial relations, based on the explicit goal of adapting Spanish industrial relations to the principles of flexicurity. Meardi (2012) identifies the following developments as particularly important:

- The employer’s unilateral prerogative to introduce ‘internal flexibility’ (changes in job tasks, location and timetables), without the need for trade union or works council consent.
- A new employment contract, called the ‘*contrato de apoyo a los emprendedores*’, which lays down one year’s probation without employment security. This has been criticised by some academics (Palomeque López 2013) as a fake indefinite contract.
- Reduction of compensation for dismissals in some cases (from 45 to 20 days per worked year), the removal of the ‘bridge payments’ which the employees dismissed were entitled to while waiting for a court ruling and the removal of administrative permission for collective dismissals (the famous EREs).
- Absolute priority of company-level agreements over multi-employer ones, and the employer’s prerogative to reduce wages without union consent, subject to arbitration.
- Reduction of the time extension (ultra-activity) of collective agreements, previously indefinite, to a maximum of two years, after which all established rights from previous agreements terminate until

a new agreement is signed (in Spain, some agreements have been extended for up to ten years).

As a result, at present, company agreements have complete precedence in key areas, even if the provincial-level agreement covering their industry is still in force. Agreements at the level of the organisation are able to set terms on basically every issue (wages, hours, promotions, work/life balance), irrespective of those already in industry-level agreements. In addition, where a company faces particular financial difficulties, it is able to suspend many of the agreed terms and conditions. The areas covered by this suspension include essential issues such as working time, pay systems and pay increases, shifts and increased functional and geographical mobility. While unions should be consulted on these proposals, if they do not agree the issue has to go to arbitration for a decision.

This reform represents a fundamental U-turn in the traditional arrangements of collective bargaining in Spain since the return to democracy. Trade unions were opposed to the reform, considering it a challenge to workers' rights and they organised two general strikes in 2012; employers found the reform appropriate but felt it fell short of what they wanted (Lacasa 2013). No form of systematic or deep tripartite social dialogue has been restored since the Law was passed (Molina and Miguélez 2013). While institutions such as the IMF have claimed that additional reform of the labour market should be undertaken, the Spanish government has asserted that the results of the reform have been positive, despite the fact that more unemployment has been created.

(iii) Discussion of the reforms

The reforms resulted from a combination of two main political and economic trends, one external and one internal to the country, that have finally linked up to transform the landscape of Spanish industrial relations. The external one is the EU's neoliberal policies and its development of flexicurity principles as the basis of its doctrine regarding employment policy. This neoliberal drive has been reinforced by the dominance of the European Central Bank in European policy-making and German leadership in promoting austerity policies. The internal one is represented by the employers' associations and right-wing political demands for higher labour flexibility and reductions in labour costs: the two are linked, as we discussed above.

Palomeque López (2013) has indicated that the labour market reform of 2012 tries to comply with a philosophy of flexicurity, but fails to introduce any kind of security. According to this view, the main ideas behind this reform are as follows:

- It reinforces the power of the individual employer, who is entitled to manage all working conditions and change employees' contractual position almost at will.
- It helps to facilitate the modification of working conditions and dismissal by the employer, increasing managerial prerogatives.
- Authorities have detached themselves from the workplace and many bureaucratic procedures and authorisations (such as the one for collective dismissals) have been eliminated. The role of the state is decreasing substantially in employment relations.
- Dismissal costs are being reduced substantially, from a norm of 45 days per year to only 20.
- Possibilities for opting out are being generalised, which means that company-level agreements prevail over the others. It is interesting to note how many collective agreements have ceased to exist, as we mentioned earlier. The end of ultra-activity is helping to speed up that process.

In economic terms, it is clear that wage settlements have been deeply affected since the reform: losses in real wages have already happened and are expected to keep on happening in the near future (Molina and Miguélez 2013). The number of collective agreements has decreased notably, as data from August 2014 show.

In gender terms, Lousada Arochena (2013) claims that the reforms have been extremely negative with regard to gender equality and work/life balance, given that some reforms have promoted specific types of employment (part-time particularly, but also tele-work) which do not guarantee work/life balance, not only because part-time work substitutes for full-time work, but also because there is an expectation that women will end up being offered those type of positions. Spanish jobs have traditionally featured very long working hours – a heritage of a very masculine and traditional approach to work where taking care of the family is reserved for housewives – and the 2012 reforms do not seem to take this into account. Internal flexibility is likely to damage work/life balance.

Table 1 Number of signed collective agreements in Spain, 2000-2014

Year	Number of collective agreements (total)	Number of covered workers (total)	Number of collective agreements (company level)	Number of covered workers (company level)	Number of collective agreements (higher levels)	Number of covered workers (higher levels)
2000	5252	9230400	3849	1083300	1403	8147100
2001	5421	9496000	4021	1039500	1400	8456500
2002	5462	9696500	4086	1025900	1376	8670600
2003	5522	9995000	4147	1074200	1375	8920900
2004	5474	10193500	4093	1014700	1381	9178900
2005	5776	10755700	4353	1159700	1423	9596000
2006	5887	11119300	4459	1224400	1428	9894900
2007	6016	11606500	4598	1261100	1418	10345400
2008	5987	11968100	4539	1215300	1448	10752900
2009	5689	11557800	4323	1114600	1366	10443200
2010	5067	10794300	3802	923200	1265	9871100
2011	4585	10662800	3422	929000	1163	9733800
2012*	4006	9899000	2893	826800	1113	9039600
2013*	2408	6956800	1702	460500	706	6496400
2014*	1135	3873800	774	253800	361	3620000

Note: * Provisional data.

Source: Collective Agreements' Statistics, Ministry of Labour, Spain.

Regarding quality of work, some scholars (Prieto 2009) have highlighted the low quality of most of Spanish jobs due to the current economic structure. The implemented reforms do not seem to have improved the situation but rather to have worsened it; internal flexibility and the policies enabling employers to opt out of collective bargaining have helped to decrease wages for the first time in Spanish history.

Some other reforms have been undertaken in many fields linked to employment, with hyperactive governments trying to reverse declining economic activity, based on a particular perception of its causes. One of the key reforms has been that of old age pensions, which raises the compulsory retirement age from 65 to 67 years. The plan was heavily criticised as the high rates of temporary employment and the frequent unemployment spells of younger workers would make it very difficult for them to reach the maximum pension levels (Molina and Miguélez 2013). There have also been constant references to facilitating entrepreneurship, a stronger focus on activation policies and other developments. All these reforms can be linked to the principles of ‘flexicurity’ – or rather ‘flexi-insecurity’.

Therefore the reforms in Spain can be fully understood as structural reforms of the labour market: they represent a new cornerstone in the deregulation in Spanish industrial relations. It can be considered to be more of a paradigmatic reform than an institutional one, as it represents a substantial change, as we can already observe in the statistics. It is certainly a reform that favours employers (Valdés dal-Ré 2012). Lately the government has claimed that the economy is improving and praises the labour market reform as key to improving competitiveness and halting the destruction of employment. However, positive effects of the reforms with regard to employment creation have so been conspicuous by their absence.

1.4 Overview of Part 1

The reforms inflicted on labour regulation in Spain have taken directions that one could not have imagined ten years ago. The extent to which dismissal from employment has been facilitated from the point of view of employers and the major restructuring of collective bargaining and de facto decentralisation have raised many concerns. These reforms have been pushed through directly by the majority PP government since its election, with very little social dialogue at the national level. Opposition

to these reforms have been extensive and have been led by both trade union and social movements, although the relations between these two constituencies has been unclear. The reforms and the crisis have led to problems and tensions between civil society organisations and labour organisations. The extent of the reforms has brought a new pattern of fragmentation and decentralisation within industrial relations. Running parallel with this have been the ongoing increases in unemployment and reforms of the welfare state, which have led to rising levels of poverty and social degradation. The systems and actors of regulation – especially the trade union movement – have seen capacity issues emerge in terms of their ability to sustain the support and management of collective bargaining and collective regulation in general. What we need to know now, in the context of these changes, is how local levels and arenas of bargaining and labour relations more generally have been undermined and affected by such changes. Have we seen a real withering of social dialogue or institutional dialogue in terms of management and labour? How have the restriction of higher tiers of bargaining and the ability of local levels to circumvent the content of such higher tiers influenced the form and content of collective bargaining and labour relations at the level of the firm and the workplace? How have specific themes of a more social nature changed due to this more fractured approach and what effects have there been in terms of gender equality, for example?

The narrative and intervention of the Troika cannot be seen simply as an external lobby or point of influence that has caused such developments or assisted them directly. Our argument is threefold. First, under the Socialist governments of the past the commitment to social dialogue was not as extensive as was once imagined. There was a flirtation with marketisation of the economy, while attempting to establish floors in terms of rights and regulations at work. Second, the neoliberal dimensions of social democracy and on the right in particular have for some time been nurturing and developing an anti-trade union and anti-regulation discourse. This has been driven by a fundamental ideological critique of the rights of organised labour drawn from current Anglo-Saxon narratives, with particular and direct input from new US rightist elements. Thirdly, this means that the policy changes in terms of labour relations in the past few years have been accepted and driven from within Spain but with legitimacy derived from the European Union, both ideologically and technically, irrespective of the crisis. The crisis has accelerated and sustained this shift and provided the Spanish right with

the means to pursue an agenda which was steadily emerging towards the end of its last mandate. To this extent the reforms are grounded nationally in a way that may make their future removal somewhat difficult.

2. Research findings

2.1 Case study selection

Our aim is to examine the impact of the labour market reforms since 2008 on collective bargaining in Spain. We focus on the results of different case studies at company level, as well as interviews with national experts and key social partners. As already mentioned, national regulatory frameworks are mediated by institutional arrangements and moulded by various struggles over particular national practices and we observe the way the reforms have been shaped and contextualised. Hence we use many of the comments and views of the individuals we interviewed. We aim to build an analysis that uses the voices and concerns of the individuals involved in the process. The narrative is organised as follows:

- A discussion of the methodology utilised and an outline of the expert interviews and case studies we carried out.
- A discussion of the basic elements and traditions of collective bargaining in Spain.
- Specific aspects of the reforms.
- A general and tentative conclusion regarding the longer term effects and developments emerging from the reforms.

In our conclusion we try to outline the main issues and longer term impact of the reforms. While we have seen a greater degree of unilateral activity on the part of employers and a reduction in the breadth and impact of collective bargaining – much of which is quite extensive – we nevertheless continue to see collective bargaining playing an important role, albeit a recalibrated one. What is more, we have seen a series of anomalies and contradictions emerge from the reforms as the question and process of joint regulation becomes more politicised and fragmented. Finally, the interviews with HR professionals, trade unionists, employer organisations and experts suggest that there is a fear that the value of social dialogue and the importance of coordination is not appreciated by those driving or, shall we say, enamoured of such reforms.

2.2 Methodology

As already mentioned, the methodology of this research was based on interviews with various people in Spanish industrial relations. We interviewed a number of individuals in two main categories: experts and actors engaged with collective bargaining at sectoral or company level. All the interviews were carried out by the three members of the Spanish team of researchers (the authors) and were recorded and transcribed.

This research has been based on interviews with different people in the field of Spanish industrial relations. We have interviewed a number of individuals linked to two main categories, experts and social actors engaged with collective bargaining processes at a sector or company level. The experts were the following: a former Minister of Labour, two key academics linked to trade unions, the ex-director of labour relations of an employers' association, one academic linked to a neo-liberal think tank, and one expert from a leading law firm. Regarding social actors, we interviewed six representatives from the main trade unions in different levels and three leaders of employer's associations, plus different individuals linked to six company case studies, two from the automobile industry, three from the broader metal manufacturing industry, and an additional one from the chemical sector. In addition, we invited some of those experts to a national workshop, which led to a discussion around different views of the reforms. All the interviews, which numbered 28 and were conducted during 2014, were carried out by the three members of the Spanish team of researchers (the authors) and were recorded on digital audio and transcribed. We feel the research was different in its focus compared to other projects covering these topics because we were more concerned with the way the reforms were understood by key experts and participants. We focused in on how the outcomes were understood and what kinds of risks and challenges were seen to emerge from these types of developments. How would the decreasing reliance on sector level bargaining, the greater decentralisation of collective bargaining, and the challenges to local management and trade unionists of such changes, for example, impact on labour relations and with what effect in terms of the culture of social dialogue (very generally put) and the emergent consensus within the Spanish system of industrial relations of the last four decades.

2.3 Peculiarities of the manufacturing sector in terms of collective bargaining

Key features: collective bargaining in Spain

As already mentioned, the Spanish model of industrial relations puts collective agreements at the core of its employment relations, and trade unions and employers' associations are key actors in the development of such agreements. These labour agreements cover such aspects as the way wages are fixed, work and employment conditions, and the general regulation of collective relationships at different levels (including health and safety at the workplace, training and measures to combat labour market segmentation).

The system's basic principles are as follows. The legitimacy of the 'most representative union' with regard to participation depends on support in the works council and trade union elections, not the number of affiliated workers. In terms of the principle of 'statutory extension', this establishes that any collective agreement higher than company level must be applied to all companies and to all workers forming part of the geographical and industry level in question. It is irrelevant whether they have participated in the bargaining process. This sets the limits for further agreements, thus guaranteeing a certain minimum in relation to company-level bargaining. Finally, there is the extension of collective agreements: 'ultra-activity' refers to an agreement remaining valid if it has not been renewed.

Negotiations usually take place between trade unions and employers' associations. However, in specific cases they are also sometimes signed by the government in order to provide further legitimacy. Different sets of dialogues may occur at four different levels: national, regional, industry and company/organisation. As already mentioned, they cover a broad range of issues, including training, job classification, sickness, maternity arrangements and health and safety. The results of the negotiations affect all employees in the area that the collective agreement covers. Therefore, if a certain agreement is reached in a particular cluster of the manufacturing sector and in a particular province, then the companies in that sub-sector and based in that province would be subjected to those labour conditions, although what aspects are adhered to varies in practice. The negotiations are driven by employers and works councils but, at the higher levels above the organisation, the agreement can be signed only by the 'most representative unions' at national or regional

level. The law describes how negotiations are to be conducted and what the composition of the two sides is to be. Agreements tend overall to last two years or more, and almost invariably start from the beginning of the year (though negotiations can begin anytime within that year).

In the case of manufacturing in Spain, the sector's characterised features are of interest in considering how reforms have altered the development of collective agreements. It should be noted that traditionally manufacturing has been at the core of Spanish industrial relations, with strong and militant unions, well-organised employers' associations and a long history and tradition of industrial conflict. However, the sector itself differs greatly from the classic image of big corporations in industry. In fact, the manufacturing sector, as well as its various sub-sectors, are in general highly fragmented in terms of company size. Therefore sub-sectors such as metal feature many small firms embedded in the local economy plus a few bigger companies, mostly multinational subsidiaries. Therefore, national agreements were rarely concluded and province-based agreements dominated, although there may be company-level agreements in larger firms. According to a representative of the metal employers Confemetal, this was due to the peculiarities of the sector, which, in a way, mirror the economic structure of the country (based on small and medium-sized companies):

the national agreement is posted on the website of ... Confemetal, you can check it, you can download it. The second chapter details how the sector is structured and well, recognizing the reality of the industry, we find ... that provincial agreements predominate. Logically, state-level bargaining would then be limited to those issues. Provincial agreements, sector-level agreements and company-level agreements, that is what exists. That is precisely the level around which collective bargaining is structured in the metal sector. It is a sector – in line with the rest of Spanish industry and the Spanish economic structure – which is dominated not only by SMEs, but particularly by micro-companies; 92 per cent [of Confemetal members] are SMEs, which are very tiny with fewer than 10 workers, and who expect a certain protection through provincial agreements (Metal employers federation official)

Despite attempts to conclude a national agreement, provincial-level agreements remained the norm. Ultra-activity and the automatic

extension and continuity of previous collective agreements in cases where there were no new discussions or agreements related to their renewal was a common feature. Besides, while important agreements might be achievable in the metal, chemicals and perfumes sectors, there has been criticism of the low number of detailed and good agreements at the lower level in the sector. There appears to be a reliance on the upper levels' providing frameworks for lower level agreements which are not then fully 'customised' to the conditions of the company, although these implementation pacts in some cases can be quite thorough and the actual sector agreements – as in the case of chemicals – fairly broad and encompassing.

While there is a dominant trade union structure due to the results of the four annual works council elections, which gives the left-wing CCOO and socialist UGT a dominant position in works councils and bargaining mechanisms at various levels, there are exceptions, as in the Basque Country, where there are also nationalist unions and radical minority unions in various sectors.

2.4 Impact of the reform on the process of collective bargaining in the manufacturing sector: social dialogue and contents of collective bargaining

Purpose and politics of the reforms

The ongoing reforms implemented by the Spanish state in relation to collective bargaining have led to a range of legislative changes and innovations aimed at 'modernising' collective bargaining and focusing the process and outcomes of bargaining on economic competitiveness. The aim has been to allow companies to reduce wage costs and to ensure a greater degree of flexibility in terms of the deployment of labour with regard to contracting, internal organisational deployment and dismissals. Wage costs (Fernández Rodríguez *et al.* 2014) underlie many of these reforms. In neoliberal circles, the cost of labour in Spain and the characteristics of the Spanish workforce have been mythologised into a vision of an intransigent and inflexible workforce. Furthermore, the government believes that the high unemployment since 2008 can be dealt with only by reducing labour costs in terms of wages and the cost of dismissal, which require legislation on reforming collective bargaining (decentralising it) and employment protection. Third, the reforms come

in the context of an EU strategy to reduce Spain's public deficit and debt – in great part caused by the banking crisis – that has focused on the need to reduce labour costs. To this extent there has been an ongoing questioning of the nature of social dialogue in democratic Spain.

This system is regarded by government and certain employer circles as having a series of rigidities (couched within a highly ideological view of the Spanish labour market):

- The high cost of dismissal in terms of compensation for years worked.
- There is a complex labyrinth of national sectoral, provincial, sectoral and company agreements that are not always clearly linked.
- Collective agreements remain in place if there is no subsequent renewal (ultra-activity).
- There are few mechanisms for redeploying and reutilising employees within the firm and various 'inflexibilities' in terms of the use of working time.

Thus since 2011 legislation has proceeded to focus on the following:

- reducing the cost of dismissal in terms of redundancy payments for firms;
- enabling firms to opt out of agreements and change their contents if they have an 'economic, technical, organisational or productive' reason to do so under the law;
- making it possible to lay down terms and conditions of employment if an agreement is not renewed due to ultra-activity;
- enabling firms to develop more mechanisms for a flexible workforce.

The 2012 reform implied drastic changes in what were considered the pillars of the collective agreement system in Spain. For instance, it gave absolute priority to company-level agreements over multi-employer ones and gave employers the prerogative to reduce wages without union consent, subject to arbitration. Furthermore, the reform made a reduction of the time extension (ultra-activity) of collective agreements obligatory, limiting it to a maximum of two years. This means that established rights from previous agreements would terminate until a new agreement is signed. Additional measures include allowing employers to unilaterally introduce 'internal flexibility' (changes in job tasks, location and timetables), without the need for trade union or works council

consent and further reducing dismissal costs, particularly controversial being the removal of the need for administrative permission for collective dismissals. According to many scholars, industrial relations in Spain seem to be on the verge of a transition and it is worth examining these changes, which are being made across different economic sectors.

During the period of our research *El Mundo* (25 July 2014), along with other newspapers, reported the results of a study that attributed the creation of 400,000 new jobs in the private sector (not including agriculture) to the labour reforms. The lowering of the costs of dismissal was seen as a major factor. However, in addition, employers could also now reduce wage levels if the economic, organisational, productive and technical conditions of the firm 'require' it. Companies can opt out of agreements in certain circumstances and where there is no agreement national state bodies can 'arbitrate'. The attribution of job creation effects to collective bargaining reform has brought the deregulation of industrial relations centre-stage in the government's response to the crisis.

At the workshop we held, a participant who broadly supports the reform argued:

In the first place, I think the idea that the crisis highlighted the need for reforms of the collective bargaining system is key. This need did not start yesterday, but it is a long-term problem ... The Spanish system is practically the only one, along with the Portuguese ... and the Greek, that combines automatic exemption, standing requirements – ridiculous compared with other countries – and ultra activity ... This reform is not my reform, it would not be my reform, but the decentralisation of collective bargaining fits my views very well, the limits on ultra-activity too ... I would have gone further, because, in my view, the challenge is to create a system where we can talk, properly, of collective agreements that are collective contracts. That is, that apply to those companies and individuals who have chosen to be part of those contracts, and there must be mechanisms to extend them afterwards if they gather a sufficient number of companies and workers. I mean ... national agreements for small companies, company-level bargaining for the large ones. With high coverage, but this is not yet observed. What do you notice instead? ... These agreements work because they are very tough. They have ... been

forced to accept concessions, but they can never be part of the core collective bargaining system in Spain. Contracts have to be respected and you cannot provide companies what I call ‘the red button’. That is, for years we do not worry, we pay salary rises and when there is a difficult situation: ‘pa!’ [strikes the table]. I set the timer to zero, threatening dismissals and wage cuts. This is not the way forward. But this is the part of the reform that has had more impact. I think that the resistance of the social partners and their disengagement from the reform have meant that the positive effects we were looking for did not emerge. This is because there is an enormous resistance to abandoning the fragmentation of collective bargaining in Spain, this sectoral-provincial level which makes no sense... (Economist linked to neo-liberal think tank)

When looking at the reforms in question we need to appreciate that in some cases their main effect has been to change the nature of bargaining and its general impact in terms of how expectations and calculations have been modified. The latter is very important because in many cases it has been the threat of using the legislation that has impacted on industrial relations and encouraged more moderate attitudes or conciliatory responses from trade unions. In one large metal company, for example, this was seen to be important in sending a signal to the workforce. A significant reduction in wages was proposed and achieved by the firm, on the basis that most other elements of the terms and conditions of employment were not substantially reformed.

The question of opting out: ultra-activity and the bypassing of agreements

The need to stop ultra-activity in the Spanish industrial relations system was a requirement of the European Commission, particularly since 2010–2011, when the most difficult period of the crisis started. Therefore, the last PSOE government passed a first reform of the collective bargaining system. This reform abruptly tried to put an end to ultra-activity by imposing arbitration when employers and workers could not reach a new agreement. However, this is problematic from the point of view of state action, once it is obvious that any attempt to impose agreements on the social partners borders on illegality: in one way or another, this decision violates fundamental rights in a free market economy. In fact, this first reform was immediately denounced as unconstitutional (although there was no time even to begin the procedure as the government’s term of office was nearing its end). According to Valeriano Gómez, former Minister of

Labour and one of the persons behind this frustrated reform, one of the main weaknesses of the industrial relations system in Spain has been the inability to develop institutions of mediation and arbitration. Such institutions should have not only legitimacy but a real capacity to force agreements on a scale that would be meaningful and could set the terms of a balance of power between employers and employees. Therefore, in the case of labour relations in Spain, and in the absence of an agreement, the final resolution of a conflict usually ends up in the courts and their interpretation of the law, instead of using relatively neutral arbitration institutions that would try to reach a mutually acceptable agreement, adapted to the specific circumstances of the conflict. It is in this sense that we have observed how, from the workers' point of view, the recent legal reforms have been used as a kind of threat in the negotiation process. If negotiations fail and both parties go to court, it is likely that the resolution of the conflict will favour the employer's interests, since the latest legal changes have tended to strengthen their position (or that of their representatives). However, any law is subject to interpretation and the situation is very complex after a succession and accumulation of ever-accelerating reforms. The fact is that many effects of the reforms are still ambiguous and it is not easy to assess the real impact in the medium term of the dismantling of the foundations of the pre-crisis system of collective bargaining.

Social dialogue continues, but increasingly it is coerced by the employer. What we are seeing is less the de-recognition of trade unions and labour relations, as in the United Kingdom, and more one of forcing through agreements on the employer's side using the new legislative means.

The crisis makes negotiations difficult. The year that had most bargaining coverage in Spain was 2008 and since then it has gone downhill. It was logical that as the labour market developed coverage would be a little lower. However, since the reform of 2012 in February – which comes into force in February, even if it does not become law until later – the loss of coverage has been brutal. This is because, among other things, the reform of 2012 included the possibility of avoiding 'ultra-activity', which in reality involves an attempt to avoid loopholes. This process is key in collective bargaining. This has had serious consequences: when there was an expectation that collective agreements might cease to have an effect, collective bargaining slowed down notably. (UGT trade union economist)

Due to restrictions on ultra-activity we are seeing large parts of the workforce not covered by collective bargaining due to delays in negotiations:

Collective bargaining covering nearly 38 per cent of workers has not yet been concluded. (UGT trade union economist).

Ultra-activity in the form of the automatic renewal of collective agreements and the automatic linking of pay increases to inflation is therefore being challenged by the legislation, as employers can opt out and unilaterally set the conditions of work, given certain organisational and economic circumstances. We are seeing, as noted above, that many companies are left without agreements or have suspended arrangements. However, there are cases in which agreements remain valid due to specific clauses that lay down that they will remain in force until one partner bails out. In such cases the employer has to take deliberate steps to avoid the agreement and it remains to be seen in the longer term how many firms will to do so. As mentioned earlier in relation to one of our case studies – a large metal firm – there was positive dialogue on change, but this was achieved partly on the back of a legal threat from the employer to invoke the government reforms. Hence the legislation allows a certain kind of game-playing and ‘chicken’-like collective action scenarios, as in game theory. Much depends on whether the firm sees social dialogue as valuable across a range of issues and strategic dialogues and on political sensitivity to any changes within the region the firm is located in, as in the Basque Country. It appears to be more a case of threatening to use the legislation to gain significant changes, especially in terms of wage reductions. There has been a ‘recalibration’ of industrial relations through the use of and reference to the reforms.

We have seen the reforms used as a potential coercive resource to force social partners – especially trade unions – to take more ‘realistic’ positions. However, the longer term is more complex and these strategies have serious social and economic consequences. The ultra activity-related reforms are leading those companies who are making use of them and unions that have to respond to such changes to revise their agreements. There is evidence that this is being rushed and is not being used to deepen dialogue to take in more strategic issues. There is, in effect, no expansion of the remit of collective bargaining and its strategic value. The main question for the future is whether such reforms actually

deliver more economically sensitive dialogue or a more truncated minimalist one within the sphere of the firm.

However, in the metal sector the changes in terms of working hours and other conditions as a consequence of the '*descuelge*' from the collective agreement are becoming clear:

Many, many companies have withdrawn and this also has positive aspects. It is likely that the tremendous unemployment rate [in Spain] would have been higher without that wage cut, because that is a measure of flexibility for companies to survive, right? Most implementation agreements have been concluded with rates of 90 per cent and more, but the crisis, in the end ... is still enormous in the sector, lots of companies are disappearing. Another problem we have is that the weight of the industrial sector in relation to GDP is becoming smaller ... Employment and social security data are very good but of course there is very precarious employment, temporary employment and what they bring to the social security system, these nearly 200,000 workers, is very little, most of them are working part-time. That is better than nothing but they provide very little to the system. When the season ends these people hit the road again, ... you're also seeing, for example, something unusual, that I have never seen, I have been here many years ... I mean increases in working hours, the tendency was always a combination of increments and cuts, well, we have seen agreements that have increased working time; for example, in Burgos working time per year has increased no less than 16 hours, in Cádiz I don't not know whether it was 12, in Cantabria 3 or 4, something that did not occur before. (Official of the Metal Employers Organisation)

The reform of ultra-activity has been considered a key issue in the reforms. According to the representative of CEOE, it had been a long-term goal for the employers. In her view, trade unions always started from a position in which the only option was to improve on previously agreed conditions. Therefore, the reform was supposed to help to balance employment relations, putting both sides at a same and fairer level:

For example, regarding the issue of ultra-activity, what we see is that it has been rebalanced; previously there was no real balance whatsoever because, well, you knew that you would negotiate on the

basis of what you had in the previous agreement. Therefore unions always started from a bottom line in the negotiation, which was the earlier agreement, and simply demanded more wages, more free time, more holidays, more paid leave, and so on. Hence there was no equilibrium in bargaining. What we understand, then, is that reform issues such as ultra-activity have contributed to rebalancing the imbalance that existed before. However, and logically, different social partners have completely different positions on this. (CEOE official)

For trade unions, the reform implied a new opting-out strategy for firms. However, in practice and in order not to disrupt industrial relations too seriously, employers made agreements with unions to preserve the contents of the agreements for several years, as one employers' representative made clear:

Trade unions and employers are equally fearful of ultra-activity. That is, there are times when employers themselves are the ones who want to keep their ultra-activity agreement. What does this mean? This is not, let's say, a rigorous statistic, but of the new collective agreements that were signed after the reform and, theoretically, could be of limited duration in time, I presume that between 40 and 50 per cent are agreeing unlimited ultra-activity. You can see many reasons for the agreement between the two sides: the union might say, 'Hey, either we agree a limited ultra-activity or we do not accept wage moderation' or whatever. The truth is that the statistics point towards 40–50 per cent of agreements including ultra-activity. Let's say that 20 per cent of agreements have been adjusted to the legal terms of the average maximum ultra-activity: one year, a year and a half. The rest, meanwhile – perhaps around 30–35 per cent – have been looking for limited but much longer periods of ultra-activity. That is, if the collective agreement ends, there may be at least two or three years of ultra-activity. (ex-CEOE official)

However, it seems indisputable that the reforms of recent years have opened up a space to weaken the regulatory power of collective bargaining, expanding the grounds and facilitating the process by which companies can 'opt out' of the guidelines laid down in collective agreements (mainly on issues related to the working day, shifts and time distribution of work, payment mechanisms and performance systems).

There has been too little time to assess the impact and specific uses of these new ‘opting out’ options for businesses. However, in parliament on 17 September 2014, the current Minister for Employment, Fatima Bañez, claimed that ‘since the entry into force of the labour market reform in 2012 there have been 4,900 derogations from collective agreements, 99 per cent with agreement between the parties, which has saved more than 300,000 jobs’.¹

Table 2 **Opting out: agreements, companies, workers and company size**

Company size	Opting out from agreements (cases)		Companies		Workers	
	2013	2014 ^(*)	2013	2014 ^(*)	2013	2014 ^(*)
TOTAL	2,512	1,627	2,179	1,474	159,550	53,137
1–49 workers	1,965	1,342	1,770	1,241	21,328	14,281
50–249 workers	313	203	259	168	25,699	13,593
250 or more workers	189	55	108	39	109,312	24,800
Unavailable	45	27	42	26	3,211	463

Note: (*) Provisional data, last update in August.
 Source : Collective Agreement Statistics, Ministry of Labour, Spain.

The Ministry of Employment generated this new statistical series, collected in Table 2, whose development will be further analysed in the future to assess the impact of ‘opting out’. While the total number of workers affected since January 2013 is still modest (212,687), it is indicative of how medium or large businesses (over 250 employees) have begun to use this route mainly to avoid wage increases agreed in collective agreements at provincial or state level. It is particularly significant that over 90 per cent of these opting-out strategies have been agreed with workers’ representatives, in many cases as an emergency prerequisite before signing new conditions in a separate company-level agreement. It is in many ways a situation that strengthens the corporate position: the end of ultra-activity agreements, together with the possibility of opting out from their contents, facilitates agreements with union representatives but always with a different dynamic, pervaded by declining conditions.

1. <http://www.europapress.es/economia/laboral-00346/noticia-economia-laboral-banez-asegura-inaplicaciones-convenios-salvado-300000-empleos-reforma-laboral-20140917104940.html>

The recent use of external companies – labour law experts – to handle negotiations is due, at least in part, to this vast array of choices. The cost of using external consulting firms is increasingly offset by their ability to negotiate the terms down, aided by more and more complex labour laws.

We now turn our attention to a general description of the kinds of issues that are being affected by these changes.

The question of content and agreements

In terms of the content of agreements, as a general consequence of the reforms we have seen an emerging focus on wages and working hours which, ironically, reinforces the narrowness of bargaining. In the interviews it was occasionally mentioned that only working hours and wages are discussed, in a very conservative scenario reinforced by the crisis.

Opting out of agreements, according to trade unions, leads to immediate wage reductions. In economic terms, it is clear that wage settlements have been deeply affected since the reform: losses in real wages have already happened and are expected to keep on happening in the near future (Molina and Miguélez 2013). The number of collective agreements has decreased notably, as shown in Table 1, based on data from February 2014. There is increasingly a new distribution of working time, a growing abuse of extra working hours and challenges to maternity leave within the framework of the culture being created by the reforms, according to one of our interviewees from the trade union CCOO.²

Changing role of the state

One irony of the reforms is that where there is a challenge and where unilateral action needs to be taken it requires an increasing role for the state in judicial terms. In theory, the state has to give the green light to the unilateral actions of employers if systematically challenged (on a range of issues) and this requires detailed scrutiny of individual cases, most recently with Coca Cola and its redundancy programmes, which were not accepted by the courts due to the lack of information provided to the works councils. In the case of French retail firm FNAC the economic argument for restructuring was seen as spurious. Hence, the reforms

2. It is difficult to find data on these issues. However, websites such as <http://www.abusopatrones.es/> provide examples of different forms of exploitation in firms and businesses operating in Spain.

have the potential to politicise restructuring and create a more political climate in the debates on the terms and conditions of employment.

Besides it is not possible to withdraw from agreements, you always need an agreement with the workers' representatives. That is, a company cannot opt out because it is required that workers' representatives sign the agreement unless there are real issues of economic crisis in the company. The real point of this reform is that it is compulsory to reach an agreement to opt out. Therefore, opting out only works in those companies that are doing really badly, that is, mortally wounded firms. In these companies, there is no problem, workers understand what is going on and sign, because they know that either they sign the opt-out or the company simply goes bankrupt tomorrow. However, those other companies where the causes are not as real, or that simply decide something like 'look, let's take the opportunity to save some money here', well, they can't opt out because they are unable to reach a deal with the workers' representatives. And for me that's a problem that the reform leaves unresolved: what happens when there is no agreement on the opting out and the derogations. (Official, FEIQUE: chemical industry employers' organisation).

The problem, however, lies in the fact that state agencies are not consistently stepping in to resolve things as planned and not really intervening to set the rates of pay and terms of conditions where there is no agreement or where there is a lack of clarity on the cited economic causes. The courts and judicial process are very slow in dealing with cases and appeals and this is creating a further regulatory vacuum in which employers can act unilaterally where they feel that they can. This dysfunctional feature of the Spanish labour courts has been a challenging aspect of labour relations in the country for some time, especially in dealing with health and safety cases (see Martínez Lucio 1998 for a broad discussion). It serves to facilitate deregulation by default, because the state – even when willing – cannot cover the increasing range of cases.

In this context, among the procedures that undoubtedly deserve more attention are those related to mediation and refereeing, which many of the interviewees consider underdeveloped and in need of reform. Currently, when discrepancies arise regarding collective agreements, an advisory committee is in charge of finding solutions to resolve the conflict. This

body – Servicio Interconfederal de Mediación y Arbitraje (Fundación SIMA) – has representatives from both trade unions and business organisations (CEOE, CEPYME, UGT and CCOO). If discrepancies are not resolved by the advisory committee they might be diverted to external arbitration. In that case, an arbitrator might be proposed by the committee, usually an expert with experience in public administration or academia. However, while the advisory committee has successfully mediated in thousands of cases, some of the experts interviewed claimed that there is room to improve the functioning of the external arbitrator. As one expert from the national employer body puts it:

The system, right now, is focused on mediation and has not made the leap forward to arbitration. Why? Because there is still mistrust ... each party uses its own mediator. There is a lack of trust in the referee as he or she cannot be a neutral figure ... In the best case, there is usually one mediator, but in most cases there are two, who talk to one another. And mediators, with all due respect, are not professionals. “They call me from time to time ... “hey, look, we have a conflict here”, because someone once put me on a list. “A conflict here at Coca Cola, if you want to come.” And I say, “I have no ... idea what Coca Cola is about. How am I to mediate the issue of Coca Cola? I don’t know, I’m an amateur, even though I’m a professional, etc. Therefore I think we should go towards a system of professional arbitration. Professionals who live from arbitration. This is happening in America, experts charge lots of money for this service because they are professionals, they are guys that play the role of judges ... And secondly, there is another view: someone from the Ministry of Labour, from the world of labour inspection, had an interesting project, which is what we might call ‘preventive mediation’. That is, find good people, almost always from outside the company, that before any outbreak of conflict commit themselves to find solutions to avoid the extension of the conflict within the company or industry ... And then there is a third element, a third possible body, which it should be investigated, I have some references: systems of internal mediation and arbitration at the company level. When we negotiated the collective agreement for Spanish Public Television three years ago, we implemented a system of internal arbitration. Television unions and the management body appointed a mediator-arbitrator, who knows the company well from inside and takes care of the arbitration, right? Internal systems are possible in large corporations, but not in SMEs. We must use external

systems. But thinking with those three possibilities I think you could go a little bit further in improving the systems, right? (former CEOE national official)

Furthermore, there appear to be legal anomalies, especially in relation to the general rights of trade unions as the reforms are clearly undermining constitutionally based rights regarding voice and representation.

In particular, during the past two years 81 lawsuits have been launched against more than 300 strikers, of whom over 260 are union representatives (several with regional management positions within the union). These lawsuits implement a section of the Penal Code adopted in 1995, but never previously used, making available prison sentences of between six months and three years for ‘coercing others to start or continue a strike’, what is also known as ‘informational picketing’. In June 2014 two trade unionists were sentenced to three years and one day in prison because they participated in a picket during the general strike of 29 March 2012. They were accused, paradoxically, of crimes against workers’ rights. What is particularly unusual about these lawsuits is that they were initiated at the request of the public authorities and not based on individual complaints (with a few exceptions). That is to say, such lawsuits seem to have become an instrument of intimidation to stop any attempt at resistance and opposition to recent reforms. During our fieldwork, we found a case in which a company’s management board seems to have taken advantage of this new attitude in the public administration as a way to intimidate union representatives (in a factory with a heavily unionised workforce and a long tradition of industrial conflict). In this case, the trial itself was launched because of a complaint by one manager of the company. This manager alleged that he had been physically coerced by some of the company workers when trying to enter his office. This happened in one of the strikes that took place while negotiating the company-level agreement in 2012. From the point of view of one of the workers concerned, this conflict is seen as another episode related to the new options opened up by the law, made use of by the management in order to impose its will on the shop floor:

Well, the attacks are impersonal but, quoting *The Godfather*, ‘it’s just business’. What is collapsing is the rules. They try to break those rules ... as they have managed to break the rules that gave power to unions and workers to negotiate and to reach agreements which

were ironclad. Above all, the loss of ultra-activity conventions is a weapon that destroys workers and unions, and takes our rights away in the most brutal fashion. It is already eating away at our wages. ... Logically ... that ends up being materialised in the corporations. In a firm with a certain tradition of industrial conflict, whose unions have power and strong principles, well maybe ... it takes several attempts to win out. So the first assault ... in the first two rounds we were more powerful because it did not succeed. We are determined to make the second attempt fail, but we know that we are, somehow, an island. And because we are an island ... we are threatened by a tsunami of labor reform ... (Trade Union representative, multinational metal firm)

The prevailing perception among the union representatives we interviewed (both at the grassroots level and in positions of responsibility in their organisations) is that legal changes are strengthening the bargaining position of employers and their representatives. If entrepreneurs traditionally avoided recourse to the labour courts (since it was considered that they favoured the protection of workers' rights), recent changes invite us to consider that workers might prefer bad agreement before going to court (because with the recent legal reforms, judgments tend to favour and protect the interests of companies).

What we are seeing is a new complexity which brings forth its own bureaucratic dilemmas. The legislation appears to facilitate a greater degree of employer prerogative, on one hand, but it also leads to a greater degree of uncertainty in terms of industrial relations processes and conflict. In the final part of this chapter we develop these general anomalies and ironic outcomes in relation to the reform of collective bargaining.

A fragmented landscape: small and medium-sized employers

One of the main concerns relates to smaller firms that depend, with regard to industrial relations, on higher level agreements and basic local company agreements that are framed within them. There is a fear among trade unionists that such firms are beginning to leave the orbit of regulated social dialogue and collective bargaining.

Trade unions involved in small and medium-sized firms and the negotiation of provincial agreements have noted that firms are beginning to test the resolve and capacity of unions and their local representatives

to counter attempts by the firm to opt out or downgrade negotiated conditions of work. Unions see a significant change in attitude, but there are some sectors in which dialogue and informal relations are strong.

New types of legal agencies have emerged and are establishing a network whereby companies can '*descollar*' from agreements – there is evidence of agreements having to be signed even with deteriorating wages so as to hang onto some semblance of collective agreement. Smaller firms are turning to legal firms and consultancies to steer through changes to agreements and to undermine provincial agreements. New agreements are being used as a template for signing reductions in pay and increases in working hours and the use of new forms of labour deployment. These are being circulated and used as a way to rethink the process of social dialogue. These law firms and consultancies are a developing industry that deal with the very form of negotiation, not to mention its contents.

Such law firms are a staple of Spanish labour relations but there is a noticeable increase in the number of those willing to participate proactively in more hostile action against trade unions. Such firms hold events and lunches to attract businesses to hire them. These new types of consultancy reflect some of the developments observed in the anti-union lobbies of the United States and the United Kingdom. They are in some cases linked to right-wing organisations and capitalise on the hostile climate towards trade unions in Spain (see Fernández Rodríguez and Martínez Lucio 2013 and 2014).

This new panorama of employers seeking to opt out of or limit the regulatory processes of collective bargaining – especially in smaller firms – will have a negative impact on workers' overall terms and conditions of employment due to the nature of industrial relations in those sectors. Trade unions have relied heavily on the role of national sectoral and provincial sectoral agreements as frameworks for such employers and groups of workers in the past. In this respect the trade union strategy was to use such frameworks to underpin at least the basic terms and conditions of work, building a platform for local agreements to enshrine and, if possible, add to these agreements. This strategy also included campaigns in relation to works council and trade union representative elections that made it possible allow for local networks and representatives to share the terms and conditions of agreements and related issues. The trade unions at regional and provincial level were able to use the quadrennial

trade union and works council elections to raise their representation in such workplaces that are normally harder to reach due to their size and location. However, entering such workplaces ‘armed’ with the relevant provincial collective agreement provided a point of legitimacy for the union as terms and conditions could be explained and compared with those elsewhere. The problem is that as companies opt out or bypass such agreements their legitimacy becomes less significant, especially as their terms and conditions of work are reduced.

However, the union strategies used to reach smaller firms, especially during such works council workplace representative elections have been an ongoing challenge, even if the union has a specialised unit for this. There is evidence that there is greater difficulty in reaching and communicating with such firms and that the climate is more hostile to trade unions accessing the workplace as employers begin to opt out of social dialogue in operational and even ideological terms. The reforms are testing the ability of the unions at the level of small and medium sized firms and at the provincial level to manage and control working conditions. The pressure on union resources due to such strategies of local support and networking means that it is difficult to survey local areas and smaller employers. This is not necessarily a direct result of the reforms in collective bargaining but as firms begin to ‘opt out’ then the local agreements relevant to them are a less effective tool for such campaigns.

2.5 General impact of the reform

The reforms do not have unanimous support among employers. The idea that this new neoliberal or Troika-driven turn in the regulation of the conduct of labour relations is something that pits capital against labour fails to pick up the value of joint regulation in terms of establishing the terms and conditions of employment, as well as social peace in the workplace and the labour market. The sectors we researched reveal very long traditions of dialogue around a range of organisational change and restructuring issues. At one large metal manufacturing company of national importance the HR manager argued that it was easy to forget the very detailed discussions and difficult choices made with unions in previous years, which had been pivotal to the peaceful restructuring of the firm. The fact that the costs in terms of redundancies may have

been higher than in some other European countries does not negate the achievements. This required a major effort from the majority unions in the face of more critical minority unions and internal factions. The HR manager went on to argue that this process and experience was central to the '*reconversion industrial*' of the 1980s. The lead industrial relations expert for the chemicals association echoed the view that there had been much progress in creating national and local frameworks for discussion, which should be appreciated:

although the issue of *ultractividad* was mainly defended by CEOE, that is, by businessmen who wanted to promote a more flexible collective bargaining and, well, it was necessary that agreements would lose their validity, for us, the chemical sector this was not so important because we were not afraid to continue with an agreement. We have thirty years' experience of negotiations, negotiations have always developed and new texts have come to an agreement. We are not at that point. We are not scared. And indeed, many entrepreneurs from our sector, they feared otherwise. They said, 'Well, if it loses its effect now and ends, we lose everything we have achieved during these thirty years: many mechanisms that are very helpful for us, such as flexibility, for example. We do not want to lose everything that we have negotiated over the years. (Official, FEIQUE: chemical industry employers' organisation)

The Confemetal representative described the reform of ultra-activity as another tool for exerting pressure in negotiations rather than something really useful for employers:

Both last year and this one there has been a return to the traditional formulas: while an agreement has not been reached, the previous one remains in full effect, partly because collective agreements clearly do cost money ... many materials are included in the agreement over the years and then, starting again from scratch ... and then the fear of losing the agreement involves the fear of deconstructing the organisation: if I lose the agreement what kind of service do I provide to companies because everything revolves around that; on the union side this is just the same. Nobody is interested in the decline of the agreement. Another issue is that, from a business point of view, the disappearance of ultra-activity is being used to obtain other benefits, it is used as a bargaining strategy ... I'm telling you that it is only in

Guipúzcoa where the agreement has ceased, the rest is exactly as it used to be. (Official, Confemetal, metal employers' organisations)

The issue may be understood differently in other sectors but in terms of key sectors such as metal and chemicals the view is that social dialogue was an essential part of the management process, even if some changes were acknowledged as important. There was also a view that the reforms were focused on allowing larger export-oriented companies to limit their labour costs in quantitative and qualitative terms and that this has resulted in a form of reverse social dumping as their circumstances and obsession with their collective agreements have unsettled the whole system of social dialogue. Even among employers there were concerns about dumping, which is seen as able to destabilise the framework of industrial relations that had brought a certain degree of industrial peace in recent decades:

The crisis coincides with the reforms of 2011 and 2012 and a major attack on the provincial agreements, accusing them of being backward and preventing flexibility in business. The reform tries to break them down and create what Article 84 of the statute specifies: matters of priority for company-level agreements, different opting out strategies ... this generates huge expectations, well, I could already opt out of provincial agreements and apply the minimum wage and trickle-down conditions, absurd things that happily have not taken place, because they have no rhyme or reason. Moreover a big issue was emerging, in the end tremendous new unfair competition between companies was arising in the sector. This might happen more often in the future and probably the companies themselves will undertake a turnaround and change the situation a bit. The legal attack on provincial agreements has therefore not led anywhere, because these agreements play a role, a very important role because you can't manage an SME unless you have such an agreement. (Official, Confemetal, metal employers' organisations)

Meanwhile, the reform of ultra-activity has not been pushed sufficiently by the social partners. According to the CEOE representative, many collective agreements are including such pacts again:

Nowadays we are surprised to realise that in our last reports in collaboration with the National Advisory Committee on Bargaining

one key issue is that the agreements keep going for years. Despite the fact that the labour market reform had raised the cessation of ultra-activity after one year ... unless otherwise agreed, well we are noticing that a large majority of the agreements are either extending the period of one year or are even stating that the agreement shall remain in effect until a new one is negotiated. ... The cessation of ultra-activity is therefore being used as a tool to revitalise collective bargaining: negotiators are using collective autonomy to, in some way, bet on security concerning renewal. It is also true that the issue of ultra-activity is still raising many questions: what happens to the higher level agreement, what happens with this regulatory vacuum, what it is applied in the case of agreements prior to the reform that had clauses which determined that the agreement was maintained until the new ... until they negotiate once again. Are these clauses still valid or not? I think that this accumulation of doubts, the fact that there were many social actors in favour of keeping the working conditions of the agreement, and that there could be a way to diminish judicial pronouncements, is making negotiators bet on maintaining ultra-activity, which, well, somehow is not making that strategy we had in mind work. (CEOE official)

Meanwhile, leading figures in the UGT claimed that the internal deregulation pursued by the government would favour the interests mainly of the biggest export firms:

The political right and large Spanish companies agree that the solution to the crisis in Spain will be one thing: ... a focus on exports. And for that, the competitive factor was maintaining the advantage of low labour costs. From here you can guess the role they want to give collective bargaining. (UGT national leader)

Divisions among employers and the perceived importance of social dialogue is something that was apparent throughout the discussions held at our national workshop and in many interviews. Tensions between metal and chemical manufacturers trying to sustain dialogue ran up against almost evangelical and anti-institutionalist neoliberal organisations in the debate. New neoliberal agencies seem out of sync with developments in the purpose and nature of Spanish labour relations, and almost totalitarian and obsessive in their 'reformist' zeal. The more critical positions seemed to have a simplistic and naïve view

that industrial relations could be reformed by the state quite easily through legislation and had no real understanding of the way industrial relations systems emerge and how they are constructed in real time and historically.

Furthermore, these reforms have not occurred in a high-trust environment in many cases, as the challenge to trade union rights and resources has intensified. The use of 'forgotten' legislation which makes it difficult to picket and demonstrate, coupled with the systematic undermining of trade unions in symbolic terms through the press has had a further adverse effect on how the reforms are understood and used. The case of one of our metal companies referenced earlier suggests that the legal dimension in relation to demonstrations and so forth is in some cases being used apart from the collective bargaining reforms to 'contain' some aspects of the unions. The collective bargaining reforms cannot be seen as technical modernisation but exist in a climate of hostility towards social dialogue that appears to be based on increasing authoritarianism (Rocha 2014). The extent to which this creates a less positive predisposition towards collective bargaining within unions does not seem to be the issue, but it does create a climate of distrust and uncertainty the longer term consequences of which are unclear.

However, various HR and labour relations managers have been becoming aware of growing pressure on the majority unions with regard to their ability or willingness to negotiate agreements making significant changes in working conditions. In the case of one petrochemical multinational there were signs that more radical and militant minority unions were pressuring and gaining ground on the majority unions. There were signs that one of the majority unions in that case was breaking from its traditional commitment to emphasising dialogue over conflict. The fragmentation of the works councils of such firms and any fissure between the majority unions would make agreements much more difficult in the future. The majority unions were seen as being responsible or passive in the face of the reforms and the new agreements that emerged which could be reflected in future works council elections. The question is how these developments impact on the extent of collective and individual conflict.

Another metal manufacturing multinational, which had decided not to engage fully with the reforms in collective bargaining in order to

sustain the commitment to social dialogue which it considers central to its corporate identity, sees health and safety and workplace stress issues emerging as a new area of concern for trade unionists, especially more radical minority unions. The fear expressed even in cases in which the reforms were not being fully engaged with and traditional forms of bargaining sustained was that the growing strain on the workforce of longer working hours or more 'flexible' forms of deployment in the organisation would lead to a greater emphasis and conflict around social and health-related issues at work, as well as a generic fragmentation of the focus of collective bargaining and labour relations generally. While the general mobilisations against the reforms and related public policy in the form of 24-hour strikes have been less apparent in the past year there is a realisation that the challenge will be less one of overt political challenge to management and more one of growing fracturing in social dialogue.

In the case of the national chemical sector agreement many firms build their local and firm-specific negotiations on the back of this highly respected agreement through implementation pacts. These allow firms to remove or underplay contentious and possibly conflict generating agendas from their local bargaining and to focus on specific local issues. This was very important to those firms in regions with a more radical or unstable labour relations panorama. The question here was that any decentralisation of bargaining and any systematic move to the realm of the firm as the basis of the regulation of employment could create a more politicised approach, according to the employers in such sectors, in relation to such issues as pay and working hours. The previous and current system have to some extent managed to contain dialogue and structure it in ways that avoid conflict and a politicisation of workplace issues.

Various HR managers interviewed pointed to the need to recognise the contribution of organised labour to Spanish economic and social development, and expressed concerns with right-wing public discourse. The role of positive informal relations and good peak-level tripartite relations is considered important in sustaining continuity and this is more apparent in larger firms. The fear was that this tradition could be lost in key sectors. A leading HR manager from a steel multinational argued that the failure to recall the sacrifices of trade unions in assisting in the restructuring of the sector since the early 1980s meant that social

dialogue could be undermined even if one thought that some rebalancing of collective bargaining relations was essential.

The consequences of hurried and fractured collective bargaining processes may even have wider implications. The impact on equality and its regulation within the firm may be serious as the crisis and shortage of resources within social partners, especially unions, mean that there is less money for training in equality. Experts in the unions dealing with equality-related issues have argued that the pressure on the unions may lead to an emphasis on defending core conditions and being unable to be proactive as they have been through their monitoring of equality plans. In terms of the firm the Spanish legislation on equality in recent years expects them to develop equality plans through their bargaining and social dialogue mechanisms. What is unclear, but was referenced in our interviews, is that collective bargaining is being suspended in some cases or truncated in terms of contents. The fact that the interests of the Spanish economy and the firm are visualised in terms of regulatory opt-outs, quick changes in terms of working conditions to allow greater management prerogative in the deployment of labour, and short cuts in setting wage levels means that a deeper culture of dialogue, especially in larger firms, on questions of equality and disadvantaged groups may be affected, especially as in Spain these are at a comparatively embryonic stage. As funds for training and social dialogue are reduced by the state – and training for bargaining purposes is also reduced – this is an area which may be significantly influenced in the coming years. The project of the 1990s and 2000s within labour relations – especially for the trade unions – was based on expanding the thematic remit and agendas of collective bargaining and of entering into new themes and deepening such issues as health and safety. The current context has seen a suspension by default of this project due to the pressures of keeping up with the task of sustaining collective bargaining and of salvaging agreements in smaller firms and for those trade unionists supporting such smaller firms:

There are continuities, however, as larger companies and established sectors are not necessarily using the legislation and are in fact working as if nothing has changed in some cases but this may be due to cases where there is a strong level of European or global corporate integration:

The labour market reform, well watch out, very few companies have implemented it. Yes, they are taking to lower wages and layoffs, in

some cases, let's say, supported by the labor reform, by which they lose money or lose or whatever. Yes, there are new elements to reduce staff, wages. But the overall state-wide implementation in companies is not very deep. This is because the labour market reform is against common sense, I think, of what the people at the company level do and at the level of workers ... In the end it leaves the worker with no resilience. That is, the idea would be a company with individual worker agreements. In some cases there are workers who believe they can negotiate individually. But ... as a trade unionist I can proudly say, the more the union presence, normally the better the wages and, let's say, better work. Work has a more sociable side. Normally this is how it is. (Trade union representative, large car manufacturer)

According to the labour relations manager of the same company he shares this view although the question of change remains important.

It's very complicated. And to put into the hands of the company, everything we have historically achieved ... well I think that is something that represents an attack on unions and non-unionised workers, actually all workers and citizens. ... The problem is that we are witnessing reform after reform. ... Politicians are not like us ... Here, both at the company and in the bargaining process, when we are wrong we rectify. (Labour relations manager, multinational car manufacturer)

As stated previously, many HR managers and employers' organisations continued to praise the role of the unions. There seemed to be a culture of regulation and dialogue which was likely to resist changes and to maintain some notion of historical memory and understanding of social dialogue.

Finally, much seems to hinge on the nature of the crisis and the question of what engenders employment. To regard collective bargaining and labour regulation mechanisms as the main cause of Spain's high unemployment is questionable and this means we need to push the discussion towards a broader debate on political economy. In the words of one of our interviewees and panellists:

Because you have to keep in mind that, I've said it many times, there is no crisis but an overall crisis of the previous [system of] growth....

No European country increased the activity rate by 60 per cent from 1994 to 2007; the European increase was only 16 per cent. Of course, now there is a lot of unemployment, but why? Because of the previous and very significant growth. At least, almost half ... of the current unemployment is the result of the exaggerated growth of the previous period. (Santos Ruesga, academic)

In this respect, the reform of collective bargaining and its tendency to reduce everything to the problem of cost and bureaucracy obscures a much deeper dilemma in the case of Spanish economic development. It also obscures the curiously positive role social dialogue has played in recent years in Spain.

3. Summary and final thoughts

The study and this text have tried to bring together some general trends and developments. It has focused on a range of predispositions and thoughts in relation to the reforms and outlines the extent of the reforms but also some of the main points of impact. It is not a formal study of labour market structures and regulations: it is instead a review of perspectives and evaluations. It has tended to focus on management and employer respondents. One could argue whether the reforms are successful or not, and whether they are creating a broad shift in the culture and practices of Spanish labour relations. From our point of view the breadth and depth of joint regulation is in decline and the impact on working conditions has been negative. This is a narrative that raises concerns about the social and economic effects of deregulation. However, we have picked up some specific concerns. The first is that many organisations and individuals in key employer bodies have expressed concern at the effects the changes will have on social dialogue and consensus. There is a worry that these changes may undermine the main voice of trade unions and their role alongside various employers and the state in resolving major challenges to the economy. The fabric of the social partners is under great stress. There is also the issue that many organisations – and management as well – will be under enormous pressure even if they appear to have a wider range of discretion and organisational choices. They will be more open to litigation and less able to seek support from the workforce for their decisions. In the research we noted a real tension between different employer and management traditions: those with a

tendency to support social dialogue and mutual collective bargaining have been under great pressure and are concerned with the long-term stability of the labour relations system. What is more it appears that the state – which is undergoing tremendous restructuring itself – is not able to service and support labour relations and social partners as effectively as they did; individuals and organisations turn more often to the judicial and mediation – as well as arbitration – services of the state for more assistance and intervention. In effect, the state is brought back into labour relations in a more direct manner but without the necessary capacity to support labour relations. The objectives of the reform were to push labour relations closer to the market away from the political – or so goes the rhetoric in official terms – but the outcomes may actually be more complex and more political as a consequence.

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All links were checked on 2.12.2015.

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